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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	15.07.2021
Pronounced On	23.08.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.Nos.152 & 153 of 2014

(Through Video Conferencing)

1.G.P.Mani

2.M.Vel @ Meivel

3.M.Jayakumar

...Appellants/Defendants in both S.As.

vs.

1.Veerasami

2.Ramalingam

3.Saminathan

4.Rajamanickam

5.Raman

...Respondents/Plaintiffs in both S.As.

S.A.No.152 of 2014: Second Appeal filed under Section 100 of Civil Procedure Code, 1908 against the Judgment and Decree dated 10.10.2013 passed in A.S.No.21 of 2012 by the Principal Sub Judge, Tirupattur, Vellore District by confirming the Judgment and Decree dated 12.07.2012 passed in O.S.No.203 of 2007 by the District Munsif Court, Tirupattur, Vellore District.

S.A.No.153 of 2014: Second Appeal filed under Section 100 of Civil Procedure Code, 1908 against the Judgment and Decree dated 10.10.2013 passed in A.S.No.15 of 2013 by the Sub Judge, Tirupattur, Vellore District by confirming the Judgment and Decree dated 11.07.2012 passed in O.S.No.193 of 2007 by the District Munsif, Tirupattur, Vellore District.

For Appellants : PA.Sudesh Kumar(in both S.As.)

For R1 to R4 : No Appearance



COMMON JUDGMENT

By this common order, both these two Second Appeals are being taken up for hearing and disposed.

2. These two appeals arise out of two separate judgments and decrees passed in A.S.No.15 of 2013 and A.S.No.21 of 2012 by the First Appellate Court. The appellants and the respondents are neighbours who own approximately 22 cents and 29 cents of land in Survey Nos.134/1 and 133/3 respectively:-

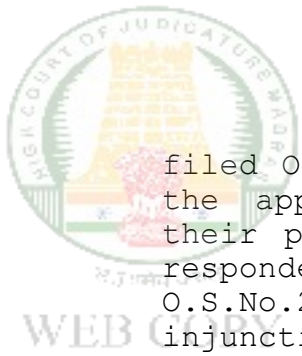
Respondent	Appellant
Property situated in S.No.133/3 extent of 0.11.5hectres (29 cents)	Property situated in S.No.134/1 extent of 0.09.0hectres (22 cents)

3. The appellants herein had constructed a house along with the compound wall from north-south separating the two properties with very little space of running long of 22 ft. and 12 ft. high. When the appellants started construction, a dispute arose between the appellants and the respondents.

4. The appellants thus filed O.S.No.725 of 1996 before the Trial Court for a permanent injunction. The suit was compromised and the boundaries of the properties were re-drawn. The respondents had to be ceded an extent of 2 ft. by 57 ft. on the north-east corner of their property in S.No.133/3 to the appellants while the appellants were to cede an equal extent on the south-west corner of the property in S.No.134/1 to the respondents.

5. Though, the dispute was compromised between the parties and the boundary was re-drawn as per compromise decree in O.S.No.725 of 1996, when the construction of the appellants were in an advanced stage, the respondents erected two poles parallel to the 12 ft high and 22 ft. long wall erected by the appellants. On these two poles, the respondents laid a zinc sheet as a roof at a high of 8 fts. and thereby made it impossible for the appellants to plaster the out wall facing the respondents' property after the boundary was re-drawn.

6. Since the appellants wanted to enter into the respondents' property for plaster the wall, the respondents



filed O.S.No.193 of 2007 for a permanent injunction to restrain the appellants from disturbing their peaceful possession of their property. Since the temporary structure put up by the respondents made the plastering impossible, the appellants filed O.S.No.203 of 2007 for permanent injunction and for a mandatory injunction against the respondents.

7. The Trial Court dismissed in O.S.No.193 of 2007 filed by the respondents and decreed in O.S.No.2007 of 2007 filed by the appellants. Aggrieved by the dismissal of O.S.No.193 of 2007 and decreeing of O.S.No.203 of 2007, the respondents herein filed A.S.Nos.15 of 2013 and 21 of 2012 before the Appellate Court.

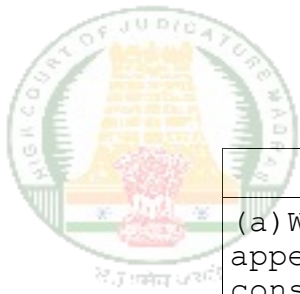
8. The Appellate Court by its separate judgments and decrees dated 10.10.2013 in A.S.No.15 of 2013 and A.S.No.21 of 2012 reversed the judgment and decree passed by the Trial Court in O.S.No.193 of 2007 and O.S.No.203 of 2007 and thus decreed the suit filed the respondents and dismissed the suit filed by the appellants herein.

9. Aggrieved by the respective judgment and decree passed by the First Appellate Court, these appeals have been filed by the appellants herein the owner of the property situated at Survey No.134/1.

10. Details of the proceeding and the appeals are hereunder:-

O.S.Nos.	A.S.Nos.	S.A.Nos
203 of 2007	21 of 2012	152/2014
193 of 2007	15 of 2013	153/2014

11. These two appeals were admitted on 24.3.2014. Following questions were framed as substantial questions of law for being answered at the time of final hearing of these two appeals :-



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S.A.No.152 of 2014	S.A.No.153 of 2014
(a)Whether the first appellate court has considered the "Doctrine of equitable estoppel" under which the respondents are estopped to object and obstruct the plastering and maintenance of the wall at later point of time, after allowing them to construct it with out any objection or hindrance at the time of its initiation with an acquiescence of the fact that they shall be mulcted with an obligation to serve as serviant owner of the serviant heritage to maintain such a wall? (b)Whether the courts below have dealt the case applying Section 24 of the Indian Easements Act, 1882 for the purpose of granting the relief of mandatory injunction as sought for in the plaint with its own restriction and limitation as enumerated therein to exercise the appellants 'accessory right' to plaster and maintain the wall as its owner? (c)Whether both the courts below have applied the law relates to "Doctrine of equitable estoppel", "Accessory right", "Necessary easement", "Urban servitude" and "Implied grant by acquiescence" involved in the lis in its enlighten signifcation to rule out correct proposition?	(a)Whether the first appellate court is right in holding that the respondent herein installed such zinc hoardings within their boundary, causing disturbance and obstruction to the appellants construction work is right in law? (b)Whether the first appellate court is right in granting the relief of injunction to the respondents against the appellants, despite their own evidence that there is no necessity for the appellants to enter into their premises for such construction? (c)Whether the courts below are duty bound to grant the relief of injunction, whenever the seeking party simply proves his title, though it is not necessary?



12. The learned counsel for the appellants submits that the Trial Court had correctly decreed O.S.No.203 of 2007 filed by the appellants and dismissed O.S.No.193 of 2007 filed by the respondents. He submits that the rights recognized under Section 24 of the Indian Easement Act, 1882 has been denied to the appellants by the impugned judgments and decrees of the Appellate Court.

13. He further submits that the Appellate Court failed to note that the respondents had raised the structure with two poles and had put a zinc sheet only to interfere with the rights of the appellants.

14. Learned counsel for the respondents submits that the impugned Judgments and decrees of the Appellate court in the respective appeal were well reasoned and requires no interference.

15. I have considered the arguments advanced by the learned counsel for the appellants and the respondents. I have also perused the impugned Judgment and Decree of the First Appellate Court in the respective impugned Judgment and Decrees and that of the Trial Court. I have also perused the deposition of the parties and documents which were marked exhibits before the Trial Court.

16. Both the parties are neighbours and share a common boundary with each other. The respondents are the owners of 29 cents of property in S.No.133/3 while the appellants are the owners of 22 cents of the property in S.No.134/1. The properties are divided by 141 ft. compound wall. It was put up by the appellant. It is approximately, 6 ½ inches thick and 7 ½ ft.high. Its construction preceded filing of O.S.No.725 of 1996 by the appellants against the respondents.

17. When the appellants started construction of a house adjacent to the aforesaid compound wall from north to south, the respondents resisted. Therefore, the appellants filed O.S.No.725 of 1996 which was eventually compromised and the compromise was decreed on 26.03.2003 whereby the parties agreed to cede in favour of each other an extent of 2ft. by 57 ft. land in favour of each other from their respective property pursuant to the measurement by the authorities.

18. The appellants were thus entitled to an extent of 114 sq. ft. of land in the respondents land in 133/3 on the north-west side of the appellants' land in S.No.134/1. Likewise, the respondents were entitled to an equal extent of land in S.No.134/1 from the appellants' land on the south-west of the



appellants land. Thus, boundaries of the respective properties were re-aligned.

19. The appellants thus became entitled to build over the land which was ceded by the respondents in the compromise decree in O.S.No.725 of 1996 in terms of Section 7 of the Indian Easements Act, 1882.

20. When the construction of the house by the appellants was nearing completion, the respondents filed O.S.No.193 of 2007 for permanent injunction to restrain the appellants from coming into their property for plastering the wall from their property.

21. The respondents later put a temporary structure parallel to the permanent structure put up by the appellants by leaving a small gap of 6 inches only which has made the plastering of the wall by the appellants impossible. The temporary structure put up by the respondents on their property was meant to thwart the appellants from plastering the construction put up by the appellants on the north western side. Under these circumstances, the appellants filed O.S.No.203 of 2007.

22. The respondents have acted contrary to the compromise decree dated 26.03.2003 in O.S.No.725 of 1996 after the appellants raised a 12 ft. high and 22 ft. long wall from north western side.

23. Though the Trial Court had rightly dismissed O.S.No.193 of 2007 and decreed O.S.No.203 of 2007 filed by the appellants, the First Appellate Court has reversed the aforesaid Judgments of the Trial Court and thereby answered the case in favour of the respondents.

24. The First Appellate Court has found fault to the appellants for having put up a construction near the compound wall without providing for any gap between the compound wall facing the respondents' property.

25. However, such a view is not available inasmuch as the rights and liabilities of the parties were determined by the compromise decree in O.S.No.725 of 1996. It was not open for the respondents to put up temporary or a permanent structure to thwart the appellants from plastering the wall on the land which came to be allotted to the appellants.

26. The law recognizes the right of every owner of immovable property to enjoy it without disturbance to another the natural advantages arising from its situation. The exclusive right of every owner of land in a town to build on such land is subject



to any municipal law for the time being in force.

27. If the appellants had really violated any of local development control rules, it was incumbent on the part of the respondents to have informed such statutory/ local or municipal authority to take steps for removing such construction.

28. It was not open for the respondents to put up temporary structure so as to disable the appellants from plastering the wall on their portion of the land, though by having access to the respondents' property.

29. Therefore, the appellants are entitled to enter upon the respondents' land for the purpose of plastering their wall facing the respondents' property. The appellants are entitled to ask the respondents to remove the temporary structure and on failure of the respondents to accede to the request, the appellants, enter upon the respondents' property with the help of local police and complete the plastering of their wall and restore the temporary structure put in by the respondents.

30. Under the circumstances, the substantial questions of law is answered in favour of the appellants and against the respondents by upholding the decree passed by the Trial Court in the respective suits filed by the appellants.

31. Accordingly, these second appeals are allowed. No costs.

Sd/-
Assistant Registrar

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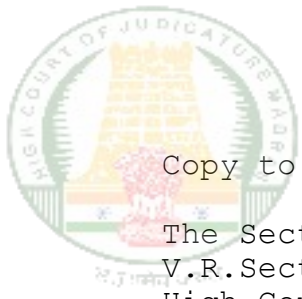
Sub Assistant Registrar

kkd

To

1.The Principal Subordinate Judge,
Tirupattur, Vellore District

2.The District Munsif,
Tirupattur, Vellore District.



Copy to :

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.PA.Sudeshkumar, Advocate Sr No.42592

S.A.Nos.52 & 153 of 2014

MG (CO)
PR (26/11/2021)