



S.A.No.2211 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.2211 of 2004

1.Thamariselvi
2.Premkumar ... Appellants

Vs.

Vijayalakshmi
... Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree of the learned Additional Subordinate Judge, Salem dated 30.09.2004 made in A.S.No.40/04 confirming that of the learned 1st Additional District Munsif, Salem dated 24.06.2004 in OS.No.916 of 2003.

For Appellant : Mr.I.Abrar Mohamed Abdullah

For Respondent : No Appearance



JUDGMENT

The unsuccessful defendants in the Courts below are the appellants before this Court. The suit in question has been filed for permanent injunction. The facts in brief are narrated herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff would contend that she is the absolute owner of the house property bearing Door No.6A/19, at Nalalingam Street, Arisipalayam, Salem. The defendants 1 and 2 are the neighbours on the south of the suit property (a house property bearing Door No.6/20). The plaintiff had purchased the suit property on 28.04.1975 and after her purchase she had effected the mutation of the revenue records.

3. The suit property originally belonged to one Chellammal by virtue of a sale deed dated 02.11.1932. After her demise her only son had inherited the same and had sold the property to the plaintiff. After the purchase, the plaintiff and her family are residing in the said property. In the year 1992, the plaintiff had converted the eastern half portion of the original house (suit property) into a terraced house. The plaintiff had demolished the southern



and northern wall on the eastern portion of the suit property completely and raised a new wall. The entire southern and northern wall of the suit property belongs absolutely to the plaintiff which is evident in the sale deed dated 28.04.1975. The wall is about 9 inches thick and the plaintiff had also put up constructions in the 1st floor.

4. The defendants had purchased their property in the year 1993. At the time of their purchase, the eastern portion of the defendants' property was a tiled building. The property purchased by the defendants is on the southern side of the southern wall of the suit property. Thereafter, the defendants with the permission of the plaintiff had demolished the tiled building and constructed a terraced building in the year 1994 and while so, constructing, the defendants sought the permission of the plaintiff to use the plaintiff's south wall for support and the plaintiff had also permitted the defendants to fix their constructions on the southern wall of the plaintiff.

5. At the time of the purchase, the defendants' property was partly tiled and partly terraced and the western portion was a terraced building. The vendor of the defendants Zarina Begum had constructed the terraced



building by affixing her superstructure on the east-west southern wall of the plaintiff. The western portion of the plaintiff's southern wall is an old one made up of a bricks and mud. The plaintiff had demolished her tiled building in the western portion of the suit property and put up the new constructions. Thereafter, the plaintiff wanted to raise pillars and while doing so they were inserting the said pillars to an extent of 5 inches over the existing east-west of the southern wall. The defendants started objecting to the same. The plaintiff would submit that even the sale deed under which the defendants had purchased the property would indicate that the southern wall belonged to the plaintiff. Therefore, in view of the objection and taking into consideration the fact that the suit wall was being in existence for over 93 years. The plaintiff has filed the suit in question.

6. The defense to the above suit by the defendants was that the they had put up their constructions only within the property purchased by them and the plaintiff now seeks to encroach into the defendant's property beyond the area purchased by her and it was with this intent that the plaintiff had attempted to damage the northern wall of the defendant's property.



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7. The defendants would further contend that the plaintiff had attempted to dig pits with the intention of damaging the northern wall of the defendants. The defendants would state that he has no objection to the plaintiff putting her construction within the extent purchased by the plaintiff under the sale deed dated 28.04.1975. More specifically, within east-west 67 - ½ feet and north-south by 12 - 3/4th feet. He would further seek to have the suit dismissed.

8. The learned Trial Judge had framed the following issues:-

1. Whether the southern suit wall absolutely belongs to the plaintiff ?

2. Whether the permission given by the plaintiff to the defendant for supporting the wall over the suit wall is true ?

3. Whether the defendants constructed the northern wall within his property ?

4. Whether the plaintiff is entitled to the relief of permanent injunction ?



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5. To what relief ?

9. The plaintiff had examined herself as P.W.1 and marked Ex.A.1 to A.12. On the side of the defendants, the 1st defendant had examined himself as D.W.1 and marked Ex.B.1 alone. The Commissioner who has appointed had filed his report and plan as Ex.C.1 and C.2 respectively.

10. The learned Judge on considering the evidence on record and taking into account the recitals in Ex.A.1, sale deed where it has been clearly and categorically stated that the sale is inclusive of the southern wall held that this would clearly show that the wall belongs to the plaintiff. Further, under Ex.A.7 which is the sale deed in favour of the 1st defendant, it has recognized the insertion put up in the wall in question. Even, Ex.A.8 which is the title deed of the defendant's vendor reference is made to the constructions put up thereon. The plaintiff would submit that she is the exclusive owner of the southern wall and the defendants only has a right to put up the constructions onto the wall which is what is stated in Ex.A.7 and Ex.A.8. Therefore, the Trial Court had decreed the suit filed by the plaintiff.



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11. Aggrieved by the same the defendants had filed the appeal on the file of the Additional Sub Judge, Salem who had also confirmed the judgment and decree of the Trial Court. Challenging the same the above Second Appeal has been filed and admitted on the following Substantial Questions of law:-

"1. Whether the lower appellate Court was right in granting relief to the plaintiff based on the case pleaded by the defendants?

2. Whether the lower appellate Court's appreciation of the report and plan of the Commissioner is not perverse when it overlooks the vital aspects, namely, the measurements?

3. Whether the lower appellate Court was right in confirming the finding of the trial Court without considering the evidence independently which it is bound to do as final court of fact?"

12. Heard the learned counsel for the appellant.



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13. Respondent though served has not entered appearance either in person or through counsel.

14. The suit was decreed with a condition that the plaintiff will insert pillars in the east-west southern wall of the suit property without causing damage to the wall. The suit has been filed for permanent injunction restraining the defendants from in any way causing hindrance or disturbances to the plaintiff proceedings with the construction in the suit property or to her peaceful possession and enjoyment of the suit property and for costs. The suit has been decreed as prayed for.

15. The Courts below have decreed the suit taking into consideration Ex.A.1 which is the sale deed in favour of the plaintiff and Ex.A.7 and Ex.A.8. A perusal of Ex.A.1 would clearly show that the sale included the southern wall and Ex.A.7 and Ex.A.8 would indicate that the defendants have been given a right only to insert a constructions on the wall. Therefore, the defendants cannot claim an exclusive right to the southern wall and



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thereby prevent the plaintiff from putting up the constructions.

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16. The Courts below have extensively considered the evidence both oral as well as documentary to arrive at this conclusion and I see no reason to interfere with the same. The Substantial questions of law therefore held against the defendants, consequently the Second Appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed, if any.

13.12.2022

Index : Yes/No
Internet : Yes/No
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To

1.The Additional Subordinate Judge, Salem.

2.The 1st Additional District Munsif, Salem .



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P.T. ASHA, J,

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