



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.07.2023

Coram:

The Honourable Mr.Justice **A.D.JAGADISH CHANDIRA**

S.A.No.383 of 2023

P.Sriramulu

.. Appellant

Vs.

A.Pitchandi

.. Respondent

Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 24.01.2023 made in A.S.No.64 of 2019 on the file of Principal Sub Judge, Vellore, Vellore District, confirming the judgment and decree dated 25.02.2019 made in O.S.No.378 of 2010 on the file of Additional District Munsif, Vellore.

For Appellant : Mr.M.Prabhakar

JUDGMENT

Defendant, who suffered a decree of permanent injunction, the same having been confirmed by the Appellate Court, has preferred the present Second Appeal.

2. The case of the plaintiff is as under:-

(i) The suit property belongs to the plaintiff having been purchased by him from one S.V.P.Periyannan and six others, by virtue of sale deed dated 29.1.1997. After purchase of the same, the



plaintiff had put up a shed with tin sheet roof and has been using the same as a godown for storing materials in connection with his business. The plaintiff has been in continuous, open and uninterrupted peaceful possession over the suit property from the date of purchase. On the southern side of the suit property, the plaintiff has got his house in which he has been residing with his family. On the norther side, the plaintiff has got another property. On the southern side of the suit property, there is a 10 feet height compound wall which was put up by his predecessor in title and the same has been shown as "EF" in the rough plan annexed with the plaint. The plaintiff has been granted Patta in respect of the suit property.

(ii) The defendant, a neighbour of the plaintiff having his house on the southern side, by laying a false claim over a portion of the suit property, on 10.10.2010 made an attempt to demolish a portion of the compound wall on the eastern side. The defendant had already encroached a portion to a length of about 5 feet.

(iii) Despite the attempts of the plaintiff to prevent him, the defendant has been wielding threat to encroach the suit property belonging to the plaintiff and hence, the suit.

3. Denying all the plaint allegations in general, the



defendant has filed the written statement contending as under:-

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i) The defendant owns his property on the southern side of the plaintiff's property. The defendant had perfected his title by adverse possession also. It is only the plaintiff, who had been in actual encroachment of the defendant's property and the same has been found out by the revenue officials while measuring the same and when it has been questioned by the defendant, the plaintiff filed the vexatious suit and thereby, the plaintiff is not entitled to get any relief.

ii) If at all any remedy is required, the plaintiff had to file a suit for declaration of his title over the suit property and the present suit filed for permanent injunction in simplicitor is not maintainable.

iii) The suit is bad for non-joinder of necessary parties as the plaintiff has not impleaded his adjacent neighbours and in all, the suit is liable to be dismissed.

4. On the above pleadings, the Trial Court framed the following issues:-

i) Whether the suit without prayer for declaration of title is maintainable?

ii) Whether the suit is bad for non-joinder of necessary parties?

iii) Whether the plaintiff is entitled for decree of permanent



injunction?

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iv) To what other relief?

5. Before the Trial Court, the plaintiff had examined himself as PW1 and another witness as PW2 and marked two documents viz., Certified copy of the sale deed dated 29.1.1997 and Patta as Exs.A1 and A2. On the side of the defendant, the defendant examined himself as DW1 and examined two more witnesses as DW2 and DW3 and marked five documents as Exs.B1 to B5. The Advocate Commissioner was examined as CW1 while his Report and plan were marked as Exs.C1 and C2.

6. On examination of the oral and documentary evidence, the Trial Court had decreed the suit filed by the plaintiff granting permanent injunction restraining the defendant. On examination of the entire materials and the judgment of the Trial Court, the first Appellate Court concurred with the finding of the Trial Court. Aggrieved against the same, the defendant has come up with the present Second Appeal.

7. Heard the learned counsel appearing for the appellant and perused the judgments of the courts below in the light of the questions of law raised by the Appellant.



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8. The appellant has sought to raise two questions of law, the intent of which appears to be that the courts below have arrived at the conclusion merely on the basis of the Advocate Commissioner's Report without analysing the documentary evidence and without complying with the provisions of Section 101 of the Evidence Act.

9. The grievance of the plaintiff is that the defendant, his neighbour has become a threat to the peaceful possession and enjoyment of the suit property by the plaintiff by his attempts to demolish the compound wall on the southern side of the suit property. The permanent injunction sought for by the plaintiff is against the attempt of the defendant to demolish the compound wall to interfere with the plaintiff's possession of the suit property. The plaintiff has pleaded his specific right and title over the suit property by producing Ex.A1. The defendant is his neighbour as evidenced by Ex.B1 possessing the adjoining property. The Trial Court, having gone through the oral and documentary evidence, found that the plaintiff's property bears Survey No.142/2A16 and the defendant's property bears Survey No.142/2 and thereby they hold title for separate properties and the dispute between them relates only to the compound wall constructed on the southern side of the plaintiff's



property.

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10. On finding that both plaintiff and the defendant claim possession in respect of two separate properties by virtue of the sale deeds standing in their names and the dispute is only in respect of the compound wall which is claimed by the plaintiff as having been constructed by his predecessor in title, the Trial Court has rightly found that the suit filed for permanent injunction in simplicitor without seeking a relief of declaration of title is suffice. Having found that the plaintiff's title is not in dispute or under a cloud, the appellate court had concurred with the Trial Court on the finding that the suit filed for permanent injunction without seeking a relief of declaration of title is suffice.

11. With regard to the defence taken by the defendant contending that the suit is bad for non-joinder of necessary parties, the Trial Court has rightly found that the claim of the plaintiff is not in respect of any other neighbours and thereby, there is no necessity for impleading any other neighbours and the suit is not bad for non-joinder of necessary parties.

12. The legal provision, which the defendant alleges to have



been not complied with by the courts below viz., Section 101 of the Evidence Act reads as under:-

"101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

13. Of course, the Trial Court has found that there is no mentioning about the wall in Ex.A1, sale deed of the plaintiff. Equally, it has been found that in Ex.B1 sale deed of the defendant, which is earlier in time, there is no mentioning about the wall. However, it appears that the existence of the wall itself has been disputed by the defendant. At this juncture, it is relevant to note that the defendant has taken a conflicting stand in para 5 of the written statement to the effect that he **had been in possession** and enjoyment of the property **as per the documents under which he had purchased** the same and he had **perfected his title by adverse possession also**, which is against the settled principle that plea of title and adverse possession are mutually inconsistent and both cannot be advanced simultaneously.



14. It is still worse that the defendant had laid almost a counter claim to the effect that **it is only the plaintiff** who had been **in actual encroachment of the defendant's property** and the same has been **found out by the revenue officials** while measuring the same and when this has been questioned the same by the defendant with the plaintiff, the plaintiff had filed the vexatious suit against the defendant. Had it been true, the defendant would have been the first person to knock the doors of the court by producing any revenue records in support of his claim. Even in the present suit also, he has not chosen to produce any such records.

15. The plaintiff claims existence of the wall as having been constructed by his predecessor in title and thereby his ownership to the same, but, the defendant comes out with an unclear picture. He tries to take advantage of non-mentioning about the wall in Ex.A1 sale deed of the plaintiff to contend that the wall was no in existence at the time of purchase of the property by the plaintiff. Similarly, there is no mentioning about the same in Ex.B1 sale deed of the defendant. Therefore, if the wall was constructed by the plaintiff after his purchase of the suit property, the defendant would have objected and prevented the same in the manner known to law.



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16. Without having taken recourse to any such action, the defendant comes out with denial of existence of the wall itself, which necessitated for appointment of Advocate Commissioner to arrive at a concrete decision and subsequently, relying on the Report of the Advocate Commissioner and the logical inference made by the Advocate Commissioner, the existence of the wall and its ownership were decided by the Trial Court. When there is some ambiguity or dearth of information in the documents relied on by the parties, the courts will be left with no other option except to have a clear cut picture only by way of appointing Advocate Commissioner. Therefore, this court does not find any error or infirmity in such a course of action adopted by the Trial Court. Having gone through the documentary evidence on both sides and considering the Report of the Advocate Commissioner, the Trial Court found that the wall belongs to the plaintiff and granted the relief of permanent injunction as prayed for. Therefore, this court is of the view that the question of non-compliance of legal provision will not arise in this case.

17. The appellate court after re-appreciating the oral and documentary evidence and analysing decision rendered by the Trial Court concurred with the view of the Trial Court both on facts



and law.

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18. Having carefully analysed the materials available on record including the judgments of both the courts, this court is of the view that no substantial question of law is involved in the appeal requiring admission.

19. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** has categorically held as under:-

"23. Sub-section (1) of [Section 100](#) of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of [Section 100](#)



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of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re- formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

20. In view of the above, in the absence of any substantial question of law, the Second Appeal fails and is, accordingly, dismissed without being admitted. No costs. The connected Miscellaneous Petition is closed.

03.07.2023

ssk

To

1. Principal Sub Judge,
Vellore, Vellore District.



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2. Additional District Munsif, Vellore.

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



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A.D.JAGADISH CHANDIRA,J.

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