



S.A.No.710 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.710 of 2023

and

C.M.P.No.22320 of 2023

1.R.Aravamudhan
2.A.Prema

... Appellants

Vs.

P.Srinivasan (since deceased)
1.Bhavani,
2.S.Tharun Kumar,
4.P.Rani

... Respondents

PRAYER: Second Appeal filed under section 100 of the Civil Procedure Code to set aside the judgement and decree dated 08.08.2022 made in A.S.No.551 of 2010 on the file of the VII Additional Judge, City Civil Court, Chennai confirming the judgement and decree dated 17.08.2009 on O.S.No.5588 of 2009 on the file of the VIII Assistant Judge, City Civil Court, Chennai with costs.

For Appellant : Mr. S.R.Sundar



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JUDGMENT

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The plaintiffs are the appellants before this Court challenging the concurrent judgment and decree passed in A.S.No.551 of 2010 by the VII Additional Judge, City Civil Court, Chennai in and by which the learned Judge has confirmed the judgment and passed by the VIII Assistant Judge, City Civil Court, Chennai in O.S.No.5588 of 2009.

2. The brief facts which have culminated in filing of the above second appeal are as follows.

(i) The plaintiffs had filed the suit for a bare injunction restraining the defendants from trespassing into the suit property by cutting the compound wall or by way of drilling or putting up the columns for the pillars over the compound wall in the exclusive passage.

(ii) The suit schedule property has been described as follows:

SCHEDULE OF PROPERTY

House and ground premises situated at Old



Door No.18/2, New No.14, Rangaiah garden street, Mylapore, Chennai-4, comprised in Old S.No.2790, C.C.No.891. S.No.1701/34,35, Now as per patta in R.S.No.1701/34 measuring about 794 sq.ft and in R.S.NO.1701/61 measuring 429 sq.ft., as per patta totally measuring about 1223 sq.ft (as per document measuring about 1249 sq.ft) Block No.36, C.A.No.46/90, Mylapore, Triplicant taluk, Chennai District consisting of ground and first floor, with an exclusive passage lying on the south eastern side of the suit property having a width of 5' and length of 37'-9".

This dispute relates to this exclusive passage which has been described above.

(iii) It is the case of the plaintiffs that they are the owners of the Old Door No.18/2, New No.14, Rangaiah garden street, Mylapore, Chennai-4 having purchased the same from the legal heirs of one



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Madhavan Nair, under two sale deeds dated 23.04.2001 and bearing Registration Nos 1091 and 1092/2001 on the file of the SRO, Mylapore, Chennai.

(iv) The plaintiffs would contend that they have mutated the revenue records in their names and obtained separate pattas in respect of the two portions purchased by them. The properties are comprised in R.S.No.1701/34 (794 sq.ft) and R.S.No.1701/61 (429 sq.ft). The plaintiffs would submit that they are therefore in possession and enjoyment of a total extent of 1249 sq.ft ever since the date of their purchase without any third party interference.

(v) The suit property, according to the plaintiffs, is facing westwards, where a street exists and there is a rear portion with a passage on the south eastern side of the suit property measuring 5' in width and 37' 9" in length.

(vi) The plaintiffs would further contend that in respect of this



passage there was an agreement dated 29.10.1987 between the plaintiffs' predecessor-in-title, Madhavan Nair and the legal heirs of one A.P.Govindasamy Naicker, the grand father of the deceased defendant, P.Srinivasan. As per this agreement, the parties had agreed that the first floor construction which was in existence over the passage would be used by the defendants and in case they sell it to any third party or make any reconstruction then they will not be entitled to put up any construction on the first floor over the passage and the passage including such constructed portion, would automatically become the property of the plaintiffs' predecessor-in-title.

(vii) The plaintiffs' contention is that the defendants were putting up construction in their portion, which is situate adjacent to the exclusive passage and it is the contention of the plaintiffs that such construction is being put up without obtaining planning permission as the land measurement being 415 sq.ft did not require such permission. The plaintiffs would submit that therefore defendants are attempting to trespass into the property by cutting and drilling the compound wall of



their passage and also by putting up pillars over the plaintiffs passage in order to put up the construction on the first floor. This attempt was made on 02.07.2009. When the plaintiffs attempted to solve the dispute, the defendants and their men had threatened them with dire consequences. The plaintiffs had immediately lodged a police complaint and has followed it up with this suit in question.

3.(i) The deceased sole defendant had filed a written statement *inter-alia* contending that the suit is bad for non-joinder of necessary parties in as much as the plaintiffs have not chosen to implead his brothers namely Purushothaman, Anandan and Easwaran who are also the co-owners of the said house. The defendants would, at the outset, submit that there is no compound wall on the northern side of the passage leading to the plaintiffs' house where the parent wall of the defendant's house is situate. Likewise, the passage leads to the plaintiffs' house on the south and the parent wall of the house bearing Door No.19. The defendant had submitted that the contention of the plaintiffs that there exists a compound wall is absolutely false. The



defendant would submit that the suit filed for a bare injunction without seeking a declaratory relief is bad in law and has to be dismissed. That apart, they had contended that they have never trespassed into the suit property. The house bearing Door No.18/1 belongs to the defendant and his brothers. It was constructed by the defendant's grandfather, Govindasamy Naicker. The defendants would further submit that on 29.10.1987, the rear portion of the property was sold to one Madhavan Nair together with a four feet passage on the south western side, the width of the passage though shown as 5 feet in the sale deed, is only four feet on site. The house had been reconstructed by the defendants only within their boundaries.

(ii) The defendant would further submit that the front portion measuring 415 sq.ft, which was allotted to the defendant's paternal uncle, G.Narayanan, has been sold to the defendant under a sale deed dated 29.10.1987. The defendant would submit that there is no cause of action for the suit and further, they have been advised to put up the pillars since the wall was not strong enough to hold the first floor



construction. Therefore, they had sought for the dismissal of the suit.

4. The trial court had framed the following issues:

- 1. Whether the plaintiffs are entitled to get the permanent injunction?*
- 2. To what other relief the plaintiffs are entitled to get?*

5.The first plaintiff has examined himself as P.W.1 and marked Ex.A1 to A13. The defendant had examined himself as D.W.1 and marked Ex.B1 to B4. Ultimately, the trial court had dismissed the suit.

6.The learned trial Judge had observed that, in Ex.A5, agreement between the plaintiffs' predecessor in title, Madhavan Nair and legal heirs of one A.P.Govindasamy Naicker, the “B” Schedule property therein was sold to the plaintiffs/predecessor-in-title together with the passage measuring an extent of 5 feet in width and 37'9" in length. This passage exclusively belonged to the plaintiffs predecessor-in-title and by reason of their purchase, the plaintiffs have become the absolute



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owner of the suit schedule property together with this passage.

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7.The learned Judge has also observed that there was no construction being put over the passage and that the defendant had no right over the passage as well as the constructed first floor passage. The Advocate Commissioner has also observed that only essential and necessary repair work was being carried out and that there is no construction being put up on the passage. He had reported that it was only a window that was opened in the parent wall of the defendant's property. The suit was therefore dismissed.

8.This judgment and decree was taken on appeal to the learned VII Additional Judge, City Civil Court, Chennai in A.S.No.551 of 2010. The learned Judge, on considering the evidence dismissed the appeal, against which, the present second appeal is filed.

9.It is the contention of Mr.S.R.Sundar, learned counsel appearing for the plaintiffs' that the defendants' are inserting pillars, undertaking drilling work on the parent wall and attempting to rest



pillars to reconstruct the first floor on the wall, thereby violating the terms of the agreement. He would draw the attention of the Court to Clause 4 of the agreement dated 29.10.1987 in support of the above contention. He would also draw the attention of the Court to the fact that D.W.1, in his cross-examination, has admitted that he has changed the door and window panels on account of the same being damaged by white ants and that the plaintiffs had lodged a police complaint against them. It is the case of the plaintiffs that by opening a window into the passage, the defendants were violating the agreement and therefore, the Courts below have failed to consider the above.

10.Heard the learned counsel for the appellants and perused the materials available on record.

11.The plaintiffs have come forward with the suit for bare injunction and the only cause of action that has been pleaded is as follows:



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“The plaintiffs state that the defendant herein is putting up some construction over the retained portion, which is situated adjacent to my exclusive passage and front to my house property. The plaintiffs understand that there cannot be any planning permission for the said construction, since it is a small piece of land measuring about only 415 sq.ft. The defendant is attempting to trespass in to their property by cutting and drilling the compound wall of their passage. The defendant has attempted to put pillar columns over my passage to built upstairs on 02.07.2009.”

12.However, a perusal of the judgements of the Courts below would show that the plaintiffs have themselves admitted that there is no compound wall. The plaintiff, as P.W.1, has clearly admitted as follows:



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“காம்பவுண்ட் சுவர் கிடையாது”

Therefore, the contention that the defendants are drilling into the compound wall is incorrect. That apart, the defendants have in very clear terms stated that they are not putting up any construction in the passage and the plaint would also reflect the same. The advocate Commissioner has also submitted a report on these lines. The plaintiffs have only stated that they apprehend that the construction would be put up. Ex.A.5-Agreement, which is the agreement under which the passage has been allotted, would contain the following recitals:

“4.The passage leading to the property purchased by the party of the third part and lying on the South eastern side having a width of 5' and length of 37'-9” will be used by the party of the Third part absolutely. The first floor construction lying on the said passage will be used by the parties of the second part with usage right. They would use the same till they sell to any third party or make any re-construction. In the event of demolition or



reconstruction of the building in the B schedule or in the event of sale of the B schedule property, the usage right of the constructed area in the first floor over the passage automatically lapses and the passages including the constructed first floor portion over the passage automatically becomes the absolute property of the party of the third part or his successors-in-title. The parties of the second part or their successors-in-title will not have any right, claim or title over the said portion in the event of the reconstruction or sale. Even if they sell, the purchaser, namely, the successors of the parties of the second part will not have any right or title over the same. Their title relates to only the property measuring 415 sq.ft., or thereabouts and more fully marked in Green colour and more fully marked as 'B' in the attached plan."



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13.A mere reading of the above would show that in the event of the defendants' putting up the construction in the first floor over the passage, then such construction and the passage would become the absolute property of the plaintiffs' predecessor-in-title. The Courts below have rightly concluded that the plaintiffs have not made out any cause of action for the grant of injunction, particularly when the defendants have themselves admitted the right of the plaintiffs to the passage and contended that they have not put up any construction in this passage. To disprove this statement, the plaintiffs have not let in any evidence. The plaintiffs have not made out any questions of law much less a substantial question of law.

14. In the result, the Second Appeal is dismissed confirming the judgment and decree of the lower appellate Court. Consequently, C.M.P.No.22320 of 2023 is closed. No costs.

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Speaking order/non-speaking order
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To

- 1.The VII Additional Judge, City Civil Court, Chennai
2. The VIII Assistant Judge, City Civil Court, Chennai
3. The Section Officer, V.R.Section, High Court, Madras



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P.T.ASHA, J.,

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