



S.A.No.24 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.24 of 2023
and CMP.No.663 of 2023

Kulothungan
Rep. by his Power of Attorney
T.Rajendran

.. Appellant

Vs.

G.Ramachandran

.. Respondent

Prayer: Second Appeal filed under Section 100 of Code of Civil Procedure, praying to set aside the judgment and decree dated 27.06.2022 passed in A.S.No.17 of 2020 on the file of the II Additional District Court, Chidambaram, confirming the decree and judgment dated 19.04.2017 passed in O.S.No.206 of 2008 on the file of the Additional District Munsif, Chidambaram.

For Appellant : Mr.V.M.Venkatramana

For Respondent : Ms.P.Srividhya

JUDGMENT

This second appeal is directed as against the judgment and decree dated 27.06.2022 passed in A.S.No.17 of 2020 on the file of the II Additional District



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Court, Chidambaram, confirming the decree and judgment dated 19.04.2017

passed in O.S.No.206 of 2008 on the file of the Additional District Munsif, Chidambaram, thereby dismissing the suit for permanent injunction.

2. The appellant is the plaintiff and the respondent is the defendant. The appellant filed a suit for permanent injunction in respect of the suit schedule property. The case of the appellant is that the appellant and the respondent are owners of the adjacent properties. The respondent had started demolition of his property and as such, the appellant requested the respondent not to demolish the party wall upon which the roof of the tiled house would entirely rests. Hence the suit.

3. The case of the respondent is that the suit wall does not belong to the appellant herein and it belongs to the defendant and it is a portion wall of his house. Therefore, the appellant has no right over the suit wall and he has no right to interfere with the demolition of the suit wall by the respondent. The Trial Court, on the basis of pleadings, framed issues and had examined PWs1 to 3 and marked EXs.A1 to A12 and on the side of the respondent DWs1 to 3 were examined and EXs.D1 to D7 were marked. The Advocate Commissioners' reports and rough sketch were marked as Exs.C1 to 4.



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4. On perusal of oral and documentary evidence, the Trial Court dismissed the suit. Aggrieved by the same, the appellant preferred an appeal suit and the same was dismissed and confirmed the judgment and decree passed by the Trial Court. Hence the second appeal.

5. The following substantial questions of law are raised in the present second appeal which reads as follows:-

- “ 1. Whether the first appellate Court was right in determining that the appellant/plaintiff is not entitled to any right in the suit “ABCD” party wall, when the roof of the appellant/plaintiff's house rests on the “ABCD” party wall?
2. Whether the first appellate Court was right in determining the ownership of the party wall based on the sale deeds Ex.B1 and Ex.B2 alone without ascertaining the Ex.C4?
3. Whether the first appellate Court and the Trial Court were right in proceeding with the suit without considering the fact that the suit “ABCD” is a party wall?
4. Whether the first Appellate Court was right in relying on the Advocate Commissioner's report



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Ex.C4 issued without the support of an expert/structural engineer or a qualified person?”

6. The learned counsel for the appellant would submit that the entire house of the appellant is raised on the party wall and if it is demolished the entire house would fell down. Therefore, it is necessary to protect the common party wall from the hands of the respondent.

7. A perusal of records revealed that after dismissal of the suit, the suit wall was demolished by the respondent as early as on 18.05.2017. In fact, it is also seen from the grounds raised by the appellant before the first Appellate Court, that the appellant filed injunction application restraining the respondent from putting up any further construction in the suit property. Therefore, the main prayer sought for in the suit itself has become infructuous. That apart, the appellant also had put up a separate wall. Therefore, no substantial questions of law are involved in this second appeal and it is liable to be dismissed.

8. Accordingly, the second appeal stands dismissed. However, it is made clear that the respondent shall not disturb the new wall if any put up by the appellant.

25.01.2023

Speaking/Non-speaking order

Index : Yes/No

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G.K.ILANTHIRAIYAN.J.



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To

1. The II Additional District Court,
Chidambaram.
- 2.The Additional District Munsif,
Chidambaram.

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