



S.A.No.691 of 2003

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 13.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.691 of 2003

P.Muthukrishnan

...Appellant/Defendant/Respondent

-Vs-

S.Masanam

...Respondent/Plaintiff/Appellant

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, against the decree and judgment dated 06.03.2002 made in A.S.No.212 of 2001 on the file of the Principal District Court, Tirunelveli, reversing the judgment and decree dated 26.07.2001 made in O.S.No.570 of 1994 on the file of the II Additional District Munsif, Tirunelveli.

For Appellant : Mr.P.Thiagarajan
for Mr.T.R.Rajarman

For Respondent : Mr.S.Kumar
for Mr.Uma Ramanathan



S.A.No.691 of 2003

WEB COPY

JUDGMENT

The appellant is the defendant and the respondent is the plaintiff in O.S.No.570 of 1994, on the file of the II Additional District Munsif, Tirunelveli. The respondent has filed the suit against the appellant for the reason that the second schedule wall-western wall of the first schedule house is the exclusive wall of the plaintiff and the first schedule house is the exclusive property of the plaintiff and the defendant should not interfere with the peaceful possession and enjoyment of second schedule wall-western wall of first schedule house. The trial Court, after conducting trial, dismissed the suit holding that the wall was the common wall for both the plaintiff and the defendant. Challenging the same, the plaintiff filed the appeal before the Principal District Court, Tirunelveli in A.S.No.212 of 2001. On hearing the arguments and considering the materials available on record, the Appellate Court reversed the judgment and decree passed by the trial Court and allowed the appeal. Challenging the said judgment and decree of the First Appellate Court, the defendant has filed the present second appeal before this Court on the following substantial questions of law:

(i) When the documentary evidence coupled with the admission of P.W.1 to show that the suit wall being treated as a common wall by the plaintiff and the defendant respectively, is the



S.A.No.691 of 2003

WEB COPY

learned Principal District Judge right in reversing the trial court decree?

(ii) Is the learned Principal District Judge right in granting a decree for injunction when the disputed suit wall belongs to both the plaintiff and defendant?

2. The learned counsel appearing for the appellant would submit that T.S.No.586 belongs to the respondent and T.S.No.587 belongs to the appellant. The second schedule wall-western wall is a common wall to both the appellant and the respondent and there was no open on the wall. Subsequently, the respondent has put up a window which is without any right and title. The Advocate Commissioner has inspected the property and filed a report and plan. Even in the said report, the plan and oral and documentary evidence, the second schedule wall was shown as the common wall. Therefore, the respondent/plaintiff is not entitled to get any relief of declaration and injunction. The trial Court has rightly appreciated the oral and documentary evidence and dismissed the suit, whereas, the First Appellate Court failed to appreciate the oral and documentary evidence and the Advocate Commissioner's report and the plan and erroneously allowed the appeal. Since the respondent/plaintiff has not filed the suit to declare



S.A.No.691 of 2003

WEB COPY

that the wall is the exclusive wall of him, it is for him to establish the same by way of documents. The respondent/plaintiff has not produced any document to show that the suit wall was also included in the sale deed executed in favour of him or his vendor. The plaintiff has admitted the fact that the suit wall has been shown as common wall in the documents under which Alagamma and Lakshmanan purchased. A portion of the wall was decided to be treated as common wall by the plaintiff and the defendant's predecessor in title respectively. There is no documentary evidence filed in support of plea of the respondent/plaintiff that a suit wall is an exclusive wall. The decree cannot be granted on the basis of surmises. There is a clear admission on the part of the respondent/plaintiff that the suit wall was shown as common wall in the documents of his predecessor-in-title, namely, Alagammal and Lakshmanan. When one portion of the disputed wall admittedly is being a common wall, the onus is on the respondent/plaintiff to establish that the other portion is his exclusive wall. Merely because some portions of the house rest on the wall, it cannot be presumed that it is the absolute wall of the plaintiff. Unless the plaintiff establishes the fact that the portion of the wall was also included in the sale deed, a conclusion cannot be arrived at by holding that it is the exclusive wall of the



S.A.No.691 of 2003

WEB COPY

plaintiff. In Ex.A8, a reference has been made in the agreement regarding the existence of a common wall in T.S.Nos.585 and 586 belonging to the plaintiff and T.S.No.587 belonging to the defendant respectively. The Advocate Commissioner has clearly explained the overlapping of the wall in both the property of the respondent/plaintiff and the appellant/defendant respectively. The documentary evidence coupled with the oral evidence of P.W.1 clearly would show that the disputed wall is treated as the common wall between the plaintiff and the defendant. Though the trial Court has rightly appreciated and dismissed the suit, the First Appellate Court failed to consider the admission made by P.W.1 in oral evidence, and erroneously allowed the appeal. Therefore, the judgment and decree of the First Appellate Court is liable to be set aside.

3. The learned counsel for the respondent/plaintiff would submit that admittedly, T.S.No.586 belongs to the respondent/plaintiff and T.S.No.585 belongs to the defendant/appellant. Ex.A3 is a sale deed executed in favour of the respondent/plaintiff. He purchased the property on 22.10.1986 and in the sale deed, the wall was shown as exclusive wall. If at all it is a common wall, it should have been mentioned that the eastern property belongs to the respondent/plaintiff



S.A.No.691 of 2003

and the western property belongs to the appellant/defendant. In Ex.A3, the boundaries of T.S.No.586 have been clearly given, in which, the appellant's property was shown as the western property of T.S.No.586 which belongs to the respondent/plaintiff. Further, the Advocate Commissioner has also inspected the property and filed a report and the plan in which AB wall is only shown as exclusive wall of the respondent/plaintiff. The wall in south to this alone was treated as common wall and the oral and documentary evidence of the parties also would establish that the second schedule wall is the exclusive wall of the first schedule house. Though the trial Court failed to appreciate the same, the First Appellate Court found that the second schedule western wall of the first schedule house is the exclusive wall of the plaintiff. There are two windows on AB wall opening towards the west and the plaintiff has also rested his Gowtham on the western wall. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

4. It is the case of the respondent/plaintiff that he purchased the first schedule property on 22.10.1986 under a registered sale deed and is enjoying the house. The second schedule wall-western wall of the first schedule house is the



S.A.No.691 of 2003

exclusive wall of the plaintiff. There are two windows on AB wall opening towards the west and the plaintiff has also rested his Gowtham on the western wall. The appellant/defendant is the next adjacent owner on the west of first schedule house and has no manner of right or interest in the western wall. The respondent/plaintiff has proposed to put up upstairs above Door No.14, which was objected by the appellant/defendant. Hence, the respondent/plaintiff has filed the appeal against him.

5. It is a specific case of the appellant/defendant that the suit wall is the common wall of both the appellant/defendant and the respondent/plaintiff. Earlier, there was no window and subsequently, the respondent/plaintiff has put up the windows. There was an agreement entered into between the appellant/defendant and the respondent/plaintiff on 18.05.1990. The respondent/plaintiff suppressing the said agreement filed the suit and in Ex.B1 and Ex.B2, the entire structure of AB wall was found to be a common wall. Even in the Advocate Commissioner's report, a second schedule wall was shown as a common wall and the appellant/defendant has also admitted the same. Therefore, the trial Court, based on Ex.B1, Ex.B2 and Ex.A8, and also the admission made



S.A.No.691 of 2003

by P.W.1, has rightly found that the suit wall was a common wall and dismissed the suit. However, the First Appellate Court failed to appreciate the evidence and allowed the appeal which warrants interference of this Court.

6. The ownership of T.S.Nos.586 and 587 was not in dispute. T.S.No.587 belongs to the appellant/defendant and in T.S.No.586, there is a house bearing Door No.14, which belongs to the respondent/plaintiff and the same is also not in dispute. The only dispute is as to whether the western side wall of Door No.14 house is a common wall of both the plaintiff and the defendant or the exclusive wall of the plaintiff alone? According to the respondent/plaintiff, it is the exclusive wall and according to the appellant/defendant, it is a common wall. The respondent/plaintiff traced his title from Ex.A3, sale deed dated 22.10.1986. If at all, it is a common wall in the sale deed, it would have been mentioned about the western usage of the wall and since the document does not show anything about the wall, naturally, it can understand that it is only an exclusive wall. Further, in the Advocate Commissioner's report, the AB wall is shown as exclusive wall of the plaintiff and it does not refer anything about the common enjoyment of the wall and any right of the appellant/defendant in the said wall.



S.A.No.691 of 2003

Therefore, the Advocate Commissioner's report also clearly shows that there are two windows opening on the AB wall towards the west and the plaintiff had also rested his Gowtham on the western wall. Further, the appellant/defendant has not filed any suit for restraining the respondent/plaintiff from opening any window or declaring that the suit wall is the common wall. A reading of the physical features and the documents filed by the respondent/plaintiff and the Advocate Commissioner's report and the plan could prove that the second schedule wall of the first schedule house exclusively belongs to the respondent/plaintiff. Therefore, there is no merit in the appeal and the substantial questions of law are answered accordingly in favour of the respondent/plaintiff and against the appellant.

7. Accordingly, this Second Appeal is dismissed. No costs.

13.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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S.A.No.691 of 2003

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To

- 1.Principal District Court, Tirunelveli.
- 2.II Additional District Munsif, Tirunelveli.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.No.691 of 2003

P.VELMURUGAN, J.

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S.A.No.691 of 2003

13.04.2023