



S.A.No.298 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 04.03.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.298 of 2018
& C.M.P.No.8303 of 2018

1. C.Muralidharan.
2. Mahalakshmi. ... Plaintiffs/Appellants/Respondents 1 & 2
/versus/

1. Geetha.
2. E.Rajarajeshwari.
3. S.Kavitha.
4. S.Nithya. ... Defendants 2 to 4/Respondents 3 to 5/
Respondents 2 to 4

Prayer: Second Appeal has been filed under Section 100 of C.P.C., pleaded to set aside the Judgment and decree dated 14.12.2017 in A.S.No.60 of 2016 on the file of First Additional District Court, Salem and confirm the judgment and decree dated 19.01.2016 in O.S.No.262 of 2011 on the file of the Principal Subordinate Court, Salem.

For Appellants : Mr.T.R.Rajaraman,
for Ms.P.Veena Suresh

For Respondents : Mr.P.Jagadeesan



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J U D G M E N T

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The plaintiffs are the appellants. The plaintiffs have approached the trial Court with a suit to declare the suit property to be belonging to them absolutely and for a permanent injunction to restrain the defendants from in any way alienating or encumbering the suit property. The suit property is the entire 1st floor, 2nd floor and right to construct a third floor, together with 50% undivided share in the land.

2. The 1st defendant resisted the suit stating that according to the 1st defendant, the suit is an abuse of process of law and the plaintiffs have not put up any construction in the suit property as alleged and also stated that they have $\frac{1}{2}$ right in the over head tank. According to the 1st defendant, the plaintiffs were eyeing the entire ground floor together with the remaining $\frac{1}{2}$ share in the land and therefore, in order to harass the defendants, the suit has been filed. According to the defendants, the entire ground floor measuring 783 sq.ft along with 50% in the common area belongs to the defendants and the defendants also have a common $\frac{1}{2}$ right in the overhead tank.

3. The trial Court decreed the suit. Aggrieved by the findings of the



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trial Court, the 1st defendant preferred an appeal in A.S.No.60 of 2016, the First Appellate Court reversed the judgment and decree of the trial Court and dismissed the suit.

4. Aggrieved by the reversal finding rendered by the First Appellate Court, the plaintiffs have come up by way of present Second Appeal.

5. The Second Appeal was admitted by this Court on 05.06.2018, on the following substantial questions of law:

“(a). Whether the first Appellate Court erred in allowing the appeal on the ground that the appellant has prayed for declaration in respect of constructed portion in the ground floor?”

“(b). Whether the first Appellate Court erred in not considering that the appellant is claiming the over the undivided half share in the land measuring 391 ½ sq.ft constructed in the first and second floor and staircase to go to the first and second floor and not in the constructed portion in the ground floor?”

6. I have heard Mr.T.R.Rajaraman, Learned Counsel for the appellants



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and Mr.P.Jagadeesan, Learned Counsel for the respondents.

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7. Mr.T.R.Rajaraman, Learned Counsel for the appellants would submit that the First Appellate Court, on a misreading of the pleadings, has proceeded to dismiss the suit as if the plaintiffs are taking a claim to a share in the constructed ground floor portion. The Learned Counsel would further state that the plaintiffs' categorical case is only pertaining to the 1st floor, 2nd floor and right to construct a third floor, together with undivided $\frac{1}{2}$ share in the land to an extent of 391 $\frac{1}{2}$ sq.ft and plaintiffs never made a claim in respect of the constructed ground floor portion at any point of time.

8. Mr.P.Jagadeesan, Learned Counsel for the respondents would submit that the specific defence raised in the written statement was regarding the attempt made by the plaintiffs to put up a dividing wall in the ground floor to which the plaintiffs are not entitled to any right and he would take me through the written statement filed before the trial Court. The Learned Counsel for the respondents would also take me through the findings of the First Appellate Court and to the memorandum of ground of First Appeal, seeking to defend the findings



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of the First Appellate Court, reversing the findings of the trial Court.

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9. I have carefully considered the rival submissions advanced by the Learned Counsel on either side.

10. I have gone through the plaint and also the plaint schedule and I have also gone through the sale deed dated 26.05.1997 under which the plaintiffs have purchased the suit property. It is clear that the plaintiffs have purchased only the 1st and 2nd floors, together with a right to put up construction in the 3rd floor and together with undivided $\frac{1}{2}$ share in the land namely, 391.5 sq.ft and the plaintiffs have not purchased any right in respect of the ground floor superstructure, together with the other undivided $\frac{1}{2}$ share. Therefore, the Learned Counsel for the appellants has rightly stated that it is not the case of the plaintiffs that they have any subsisting right or interest in the constructed ground floor portion which has been incorrectly presumed by the First Appellate Court, in proceeding to dismiss the suit.

11. At the same time, the Learned Counsel for the



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respondents/defendants contended that since the defendants were enjoying the other undivided $\frac{1}{2}$ share in the land together with the ground floor portion and the suit was being filed in order to arm-twist the defendants to come forward to sell the said property to the plaintiffs, the rights of the defendants should be protected.

12. I do not find that there is an actual and real dispute on ground. The categorical case of the plaintiffs is that they wanted declaration of the property purchased by them under Ex.A.2 sale deed dated 26.05.1997, which is actually only the 1st floor, 2nd floor and right to construct 3rd floor, together with undivided $\frac{1}{2}$ share in the total land available. The plaintiffs have admitted the ownership of the entire ground floor constructed portion, together with the remaining undivided $\frac{1}{2}$ share to be with the defendants. In fact, it is seen that the plaintiffs themselves have purchased the property from the husband of the 1st defendant under Ex.A.2 sale deed. I also do not find any averments in the plaint in the nature of even staking or attempting to stake a claim in respect of the constructed ground floor portion. However, the problem has arisen only because of statements in the plaint at paragraph No.5 which are extracted hereunder:-

“5. The said Sampath with her daughters, the defendants 2 to 4 herein has sold half of the land in the ground floor, that is 391



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½ sq.ft of lands, the entire 1st floor and 2nd floor with right to construct building in third floor with ½ right in the over head water tank, entire electric links in the 1st floor and second floor and ½ right in the ground floor and half of the drinking water service with staircases from ground floor to 1st floor and from 1st floor to 2nd floor under the registered sale deed dated 26.05.1997 for valid consideration of Rs.1,95,000/- (One Lakh and Ninety Five Thousands). The said Sampath and defendants have surrendered possession of the property. With respect to ground floor, the dividing wall has to be put up. The relationship of plaintiff and Sampath was very cordial. The plaintiffs are paying property tax, electric service charges and drinking water charges.”

13. “In respect of ground floor, a dividing wall has to be up” - This one line in the plaint has prompted the First Appellate Court to dismiss the suit since, the plaintiffs have no iota of right in the ground floor portion.

14. As rightly pointed by the Learned Counsel for the appellants, the prayer in the suit is only declaration that the suit property is that of the plaintiffs and for a permanent injunction to restrain the defendants from interfering with the enjoyment of the suit property. On going through the description of the property in the plaint, I do not find that there is any inclusion of the ground floor constructed



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portion. Therefore, the statement in the plaint with absolutely no relevance to the suit property cannot form basis of the judgment of the Court to dismiss the suit, declining the reliefs to which the plaintiffs are otherwise entitled to.

15. Considering that the plaintiffs had chosen to make such an averment in the plaint, I deem it fit to clarify the respective rights of the parties. In the result, the Second Appeal is allowed and the plaintiffs are declared to be absolute owners of the suit property, namely, the constructed 1st floor, 2nd floor, with a right to put up third floor, together with undivided $\frac{1}{2}$ share in the land, namely 391.5 sq.ft (50% of the total extent of 783sq.ft), inclusive of a right to use the staircase to reach to the upper floors. It is however made clear that the overhead tank is common to both the plaintiffs and the defendants. It is also made clear that the entire constructed ground floor portion, together with remaining 50% undivided share also belongs to the defendants and the common area shall be enjoyed by both the plaintiffs and the defendants in a cordial manner without impeding the rights of the other. It goes without saying that the parties shall not be entitled to put up any dividing wall in the ground floor. The above clarification regarding ownership and enjoyment of the respective floors would bind the parties.



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16. Accordingly, the substantial questions of law are answered in favour of the Appellant and this *Second Appeal is Allowed*. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :Yes/No.
Internet :Yes/No.
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Copy to:-

1. The First Additional District Court, Salem.
2. The Principal Subordinate Court, Salem.

P.B.BALAJI,J.

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