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S.A.No.224 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.224 of 2013
and M.P.No.1 of 2013

Haridoss

... Appellant/Appellant/Defendant

Vs.

R.Bharanidharan

...Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the Judgment and Decree dated 16.08.2012 in A.S.No.2 of 2011 on the file of the Sub-ordinate Judge, Ranipettai, Vellore District, confirming the Judgment and Decree dated 27.10.2010 in O.S.No.77 of 2001 on the file of the District Munsif, Arakkonam, Vellore District.

For Appellant : Mr.R.Bharanidharan
for Mr.R.Karthikeyan

For Respondent : No appearance

JUDGMENT

There lived in the town of Arakkonam, a wealthy person by name



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Mani Chettiyar. He had two children, one Rajasekar and other Lalithambal.

He also had a “Romantic relationship” with a lady by name – Raniammal.

He executed a ‘Will’ dated 17.10.1986. He passed away on 31.10.1988. As per the Will, he gave **A** Schedule property to Raniammal, **B** Schedule property to his grandsons through Lalithambal, his daughter, **C** and **D** Schedule relates to the property in Chennai, viz., Chindatripet, **E** Schedule property was given to his grandsons viz., Bharani, Saravanan and Yogalakshmi, through his son – Rajasekar, and **H** Schedule property was vacant land that ran between **A** and **E** Schedule.

2.The suit **A** Schedule property is the theatre and it corresponds to the Will **E** Schedule property and the suit **B** Schedule property is the vacant site set apart in the Will for common usage. The plaintiff is the grandson, through – Rajasekar, who obtained **E** Schedule property by way of the Will dated 17.10.1986. The defendant is the purchaser of the property from the grandsons, viz., Dillibabu and Baskaran, through the daughter’s sons.

3.The Cause of action for the present suit arose, when the defendant removed the barbed wire fencing with stone pillars in the suit **B** Schedule



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property. The 1st defendant attempted to raise walls in the **B** Schedule property, despite the objection of the plaintiff. In addition to removing the fencing that separated the properties, the defendant also put up a parapet wall in the open terrace of the **A** Schedule mentioned property. As stated above, **A** Schedule mentioned property corresponds to **E** Schedule property in the Will, which is a Theatre.

4.Before the Trial Court, the plaintiff examined 2 witnesses and marked **Exs.P-1 to 3**. On the side of the defendant, 2 witnesses were examined and **Exs.D-1 to 20** were marked. Apart from this, an Advocate Commissioner was appointed, who visited the suit schedule mentioned property and filed **Exs.C-1 and 2**.

5.The learned Trial Judge, after detailed discussion decreed the suit in and by way of a Judgment dated 27.10.2010.

6.Aggrieved by the same, an appeal was preferred before the Subordinate Judge, Ranipet in A.S.No.2 of 2011. The learned Appellate



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Judge re-appraised the entire evidence and the facts of the case and came to the conclusion that the Judgment and Decree of the Trial Court were correct and dismissed the appeal on 16.08.2012.

7. Against the concurrent finding of facts, the Second Appeal has been presented before this Court.

8. This Court did not admit the appeal, but had ordered notice regarding admission on 17.06.2013. The records were also called for from the file of the Courts below.

9. When the matter was taken up before me, it was brought to the notice by the learned counsel for the respondent that he has returned the papers to the party and therefore, as previously directed by this Court, name of the respondent was printed in the cause list. Even thereafter, the respondent is neither present before this Court, nor represented through any counsel, today.

10. Heard Mr. Bharanidharan, learned counsel representing



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Mr.R.Karthikeyan, learned counsel appearing for the appellant and I have gone through the records.

11.Narration of the facts set forth above would clearly show that the suit A Schedule mentioned property is a Theatre by name, Arakkonam Odion Mani Theatre. This was allotted specifically in favour of the plaintiff and his siblings Saravanan and Yogalakshmi. What was allotted to the vendor of the appellant is the Lodge which abuts the Theatre.

12.There has to be a counter, to issue tickets for persons who come to the Theatre. The defendant has been emboldened to put up a parapet wall over the counter which sells tickets to the gentlemen, who visit the Theatre. This is clear from the Advocate Commissioner's report filed under **Ex.C-1**. The Advocate Commissioner has specifically found in the report that the wall that has been constructed over the gents ticket counter is a new one. When the defendant does not have the right over the Theatre, making an attempt to put up a wall, is nothing but taking the law in his own hands. Such an act cannot be permitted and deserves to be brought down. The findings of the Trial Court and the 1st Appellate Court that the act is illegal and the same has been put up in brazen disregard to the law, deserves to be confirmed and



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accordingly it is confirmed. This deals with the first relief that the plaintiff sought for.

13.Insofar as the second relief of the plaintiff is concerned the defendant has erected a compound wall, which has been depicted as **ABCD** in the suit plan. By virtue of construction of this compound wall, the **H** Schedule, which was given in common to the owners of the Arakkonam Odion Mani Theatre and the Bharani Theatre stands totally excluded from usage by the plaintiff and persons who visit the theatre. As per the Will under **Ex.P-1**, the vacant site has to be enjoyed by the beneficiaries of **A** and **E** Schedule. **A** Schedule goes to Raniammal and **E** Schedule goes to the plaintiff. There is no dispute that the wall has come into existence soon after the filing of this suit. The principle which applies for construction of the parapet wall across the gents ticket counter, applies to this compound wall also.

14.It is vehemently contended by the learned counsel appearing for the appellant that the compound wall has been put up for the purpose of safety of those who visit the property. As seen from the Will dated 17.10.1986, the



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property was to be commonly enjoyed by the owners of **A** and **E** Schedule mentioned properties. Any person claiming through them, cannot on their own decide what is necessary or safe for the other. The property set apart in common has to be maintained as such unless and until the terms are varied by way of a contract or through a document to that effect. There being none in this case, the compound wall constructed by the defendant deserves to be demolished and as such the second portion of the prayer has been granted.

15.Insofar as the Will is concerned, the learned counsel for the appellant would strenuously contend that there is a difference between **Ex.P-2** – Will and the Will produced by the defendant under **Ex.D-20**. However, neither the plaintiff nor the defendant have ventured to produce the original Will before the Court.

16.In the facts of this case, it matters not because both the plaintiff and the defendant claim the property only through Mani Chettiyar. **A** and **B** schedule mentioned properties to the Will were allotted to the “Romantic partner” of the testator and to the vendor of the defendant. The defendant claims that he is the absolute owner of the suit **C** Schedule mentioned



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property. However, a perusal of the Will shows that the testator wanted the property to be enjoyed in common between the owners, which he had bequeathed to two branches of his family, one through that of the son and the other through his daughter. If he had wanted to set apart the C Schedule property exclusively for the grandsons, through the daughter, he would have said so. However, a reading of **Ex.P-1** makes it very clear that he wanted the property to be enjoyed by all his grandchildren, viz., Dillibabu, Baskaran, Bharanidharan, Saravanan and Yogalakshmi. That being the situation, the argument of the learned counsel for the appellant that there is insertion in the Will, does not make any difference in the facts and circumstances of the case. I do not find any substantial question in the appeal and I am not inclined to admit the appeal.

17. Accordingly, the present Second Appeal stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

05.01.2024

Index : Yes/No

Neutral Citation : Yes/No

Speaking order / Non-speaking order



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To

1.The Sub-Ordinate Judge
Ranipettai, Vellore District,

2.The District Munsif
Arakkonam, Vellore District.

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



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V.LAKSHMINARAYANAN, J.

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