



S.A. No. 749 of 2013

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.09.2024
Pronounced on : 24.10.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

S.A. No.749 of 2013
and
M.P.No.1 of 2013

A.K. Subramanian

... Appellant

Versus

K.Anandaraj Sowcar

...Respondent

Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 17.08.2012 made in A.S.No.35 of 2011 on the file of the Subordinate Court, Madurantakam, by confirming the judgment and decree dated 06.04.2011 made in O.S.No.119 of 2004 on the file of the District Munsif Court, Madurantakam.

For Appellant : Mr. P. Manish,
for Mr. I. Abrar Mohammed Abdullah

For Respondent : Mr. N. Varadharajan



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J U D G M E N T

The plaintiff who lost before the Courts below has filed the present Second Appeal.

2.The plaintiff has filed the suit in O.S. No.119 of 2004 before the District Munsif Court, Madurantakam, seeking declaration of his title to 'B' and 'C' Schedule properties; mandatory injunction directing the defendant to remove the superstructure put up in the 'B' Schedule property and permanent injunction restraining the defendant, their men and agents from anyway putting up construction in 'C' Schedule property.

3.The detailed descriptions of the properties are as follows:-

(i) A-Schedule property:

- Location : Kancheepuram District, Madurantakam Taluk, Acharappakkam Town, Melandnai Madaveethi;
- Survey Number: S.No.260/2B;
- Dimensions : 23 feet (North to South) x 99 feet (East to West);
- Boundaries** : East by Site and Building owned by the defendant,
West by Street,



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North by Defendant's site and
South by Channel.

(ii) B-Schedule property:

□ Location : Northern side of 'A' Schedule property;

□ Dimensions: Site and Building measuring

42 feet (East to West) X 1 foot (North to South) together with
wall.

□ **Boundaries:**

East and West by Land and Building owned by defendant,
North by Defendant's house site,
South by remaining land and building in 'A' Schedule;

□ Marked in red colour in the plaint plan.

(iii) C-Schedule property:

□ Location : Northern side of 'A' Schedule property;

□ Dimensions : 12 feet (length) x 1 foot (breath)

□ **Boundaries:**

East and West by Plaintiff's 'A' Schedule property,
North by Defendant's site,
South by Remaining site of 'A' Schedule property.

□ Marked in Blue colour in the plaint plan.



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4. The plaintiff contended in the plaint that he is the absolute owner of the property described in Schedule 'A', having purchased it from descendants of Venugopala Reddiyar through a registered sale deed dated 14.09.1987 ad-measuring 99 feet (east to west) x 23 feet (north to south) as a ready built house. The said property was obtained by getting loan from Government as per Order in RC. No.102352/86/PBI dated 14.08.1987. The defendant's father purchased the adjacent property in the northern side, with the same measurements to the extent of 99 feet x 23 feet. The vendors of the plaintiff and the defendant are brothers and they have partitioned the property among themselves. The defendant's father put up a construction on the first floor wall by encroaching 3 inches in the plaintiff's property.

5. Thereafter, the defendant constructed first floor on the adjacent eastern side to an extent of 42 feet by trespassing 1 foot in the 'A' schedule property and the same is described as 'B' schedule property in the plaint. Despite the plaintiff's protests, the defendant continued the



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construction without obtaining permission from local authorities. Prior to filing the suit, mediation attempts were made by well-wishers to resolve the dispute. Therefore, the plaintiff did not file the suit immediately. The plaintiff had contended that the defendant attempted to put up a construction further east of the property, i.e., ground floor which is described as 'C' Schedule property in the plaint. For this reason, the plaintiff had filed the suit with the above said prayer.

6. The defendant filed his written statement stating that both the plaintiff's and defendant's house properties were constructed by way of madras tiled house with roof and rafters resting on the main common wall in the 'B' Schedule property. According to the defendant, the roof of the plaintiff's building and the defendant's building rest on the common wall even before the date of purchase of the 'A' schedule property by the plaintiff. More specifically, the defendant contended that the descriptions made in the plaint with regard to the 'B' & 'C' Schedule properties are incorrect and the plaintiff has no individual right over the said properties as



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claimed by the plaintiff in the plaint.

7. The said common wall is a cement-plastered mud wall on both sides. Any disturbance or alteration to this wall would cause both buildings to collapse entirely. The construction on the first floor by the defendant's father was done with the knowledge and consent of the plaintiff's vendor, who did not object to it as he was aware of the defendant's father's rights. Therefore, the plaintiff is estopped from claiming any individual right over the common wall due to their vendor's prior knowledge and acquiescence.

8. The Trial Court after examining the plaint and the written statement filed by the respective parties, had formulated the following issues:-

“(i) Whether the northern wall of the house of the plaintiff is within the limits of 'A' Schedule property?

(ii) Is the northern wall of plaintiff house is a common wall to both plaintiff and defendant?

(iii) Is the plaintiff has exclusive right and



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title over plaint 'B' Schedule of property?

(iv) Is the plaintiff entitled for the relief of declaration as to plaint 'B' Schedule property?

(v) Is the plaintiff entitled for the relief of mandatory injunction with regard to 'B' Schedule property?

(vi) Whether the plaintiff has right and title over plaint 'C' Schedule property?

(vii) Is the plaintiff entitled for the relief of declaration and Consequential relief of permanent injunction in respect of 'C' Schedule of property?

(viii) What are all the other reliefs and cost plaintiff is entitled for?"

9. Before the Trial Court, the plaintiff was examined as P.W.1, and marked Ex.A1 to Ex.A7. On the side of the defendant, the defendant was examined as D.W.1 and marked Ex.B1. Additionally, the surveyor and the Advocate Commissioner were examined as C.W.1 & C.W.2 and Ex.C1 and Ex.C1 were marked through them.

10. The Trial Court on appreciation of the oral and documentary evidence concluded that the dispute revolves around the common wall



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between the plaintiff's and defendant's houses. While answering Issue Nos. 1 and 2, the Trial Court has examined the certified copy of sale deed executed by Venugopal Reddiyar in favour of the plaintiff dated 14.09.1987 which is marked as Ex.A1 and the certified copy of sale deed dated 10.07.1967 executed by Narayanasamy Reddiyar in favour of Kachoorlal sowcar, the father of the defendant which is marked as Ex.B2.

11. The Trial Court noted that the exclusive right of the plaintiff to the northern wall is not mentioned in any of the documents. The Trial Court has considered that P.W.1, in which, the plaintiff has admitted that the 1st floor as well as the roof of the house of defendant were inserted in the northern wall prior to the purchase of 'A' Schedule property by the plaintiff. The Trial Court found that the vendor has not taken any initiative to remove the construction inserted in the northern wall through process of law. Therefore the northern wall appears to be a common wall and the plaintiff does not have exclusive right in the common wall.



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12. While addressing the issues 3 to 6, the Trial Court found that the the width of the common wall is not mentioned in the plaint. The area encroached by the defendant on the north to south direction is not specifically pleaded by the plaintiff. Trial Court has taken a view that the plaintiff has not proved that the defendant has put up construction by encroaching more than his half share in the total width of the common wall and that the surveyor who was examined as C.W.1 has not given a clear report on the encroachment alleged by the plaintiff. The Trial Court has come to the conclusion that the 'B' and 'C' schedule properties are not proved to be the one half portion of the share of plaintiff in the total width of the common wall. Therefore, the plaintiff does not have an exclusive right and title over the 'B' and 'C' schedule properties. Consequently, the Trial Court concluded that the plaintiff is not entitled to the mandatory injunction and permanent injunction with respect to the 'B' and 'C' schedule properties and as such the suit in O.S.No.119 of 2004 was dismissed.



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13. Aggrieved by the dismissal of the suit, the plaintiff preferred an appeal in A.S. No. 35 of 2011 before the Subordinate Court, Madurantakam.

14. During the pendency of the appeal before the First Appellate Court, the plaintiff/appellant filed an interlocutory application in I.A. No.44 of 2012 to receive the original sale deed dated 14.09.1987 executed by Venugopala Reddiyar in favour of the plaintiff, the original partition deed dated 22.06.1942, which was executed between one Appavu Reddiyar and his two sons and a letter dated 08.06.2011 written by the then District Collector as additional evidence. The First Appellate Court has observed that the said application ought to have been filed at the initial stage before conclusion of trial by the Trial Court and the appellant ought not to have filed the same at the appellate stage. However, considering the relief claimed in the application, the First Appellate Court allowed the application and marked the said documents as Ex. A8 to A10 while framing the following points for consideration:-



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“ (i) Whether the appellant is entitled for mandatory injunction and permanent injunction as sought for ?

(ii) Whether the appellant have exclusive right over the wall in the northern side of the appellant's house or it is a common wall?

(iii) Is the present appeal filed by the appellant is maintainable?

(iv) Whether the judgment and decree of the Trial Court be confirmed?

(v) To what other reliefs, the appellant is entitled? ”

15. Learned counsel for the appellant/plaintiff would contend that the plaintiff has purchased the properties from Venugopala Reddiyar and the defendant/respondent purchased his share of the property from the brother of Venugopala Reddiyar namely Narayana Reddiyar. From the



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date of execution of the sale deed, the plaintiff is in possession and enjoyment of the property and he got the absolute right over the property by way of Ex.A1, dated 14.09.1987. The disputed common wall is in the 'B' Schedule and 'C' Schedule properties, which is located at the centre of the properties of the appellant/plaintiff and the respondent/defendant. The courts below, without proper analysis of Ex.A1/sale deed has come to an erroneous conclusion that the plaintiff cannot assert any independent right over the said property and therefore he prayed for allowing this appeal.

16. Per contra, learned counsel appearing for the respondent/defendant would contend that the sale deed which was executed in favour of Kachoorlal Sowcar, the father of the defendant on 10.07.1967 was marked as Ex.B1. The plaintiff purchased the property only in the year 1987. The constructions put up by the plaintiff and the defendant rests on the common wall which is disputed in this case. Further, he contended that the plaintiff's vendor is well aware of the existence of the common wall in the suit properties and therefore, he consented for construction on the first



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floor wall by the defendant's father. Hence, the claim of the appellant/plaintiff is not maintainable.

17. The Advocate Commissioner's report dated 15.02.2008 marked as Ex. C1 and Surveyor's plan dt. 05.03.2008 marked as Ex. C2 also indicates that the properties of the appellant/plaintiff and the respondent/defendant rests on the common wall. Therefore, both of them cannot claim any exclusive right over the common wall in 'B' Schedule & 'C' Schedule properties. The learned counsel for the respondent submitted that the courts below, upon elaborate analysis of the oral and documentary evidence, refused to grant any relief to the plaintiff. Ultimately, he prayed for dismissal of the second appeal.

18. Heard the learned counsel for the appellant/plaintiff and the learned counsel appearing for the respondent/defendant and perused the materials available on record.



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19. The only point for consideration is whether the appellant/plaintiff has exclusive right over the 'B' & 'C' Schedule properties. The said fact has already been decided by the Courts below and the answer is not in favour of the appellant/plaintiff. The courts below have arrived at such a conclusion on the basis of the recitals in the sale deed, which was marked as Ex.A1 by the appellant/plaintiff and Ex. B1 marked by the Respondent/Defendant. Ex.A1 would clearly show that there is no mention about the exclusive right of the appellant over the wall in northern side of the 'A' schedule property.

20. The sale deed marked as Ex.B1 is executed in favour of the defendant's father on 10.07.1967. Therefore Ex.B1 is executed prior to the sale deed in Ex.A1, dated 14.09.1987. It is admitted by P.W.1 that the construction on the first floor wall was made by the defendant's father much prior to the execution of Ex.A1. Therefore, in the absence of any specific recital in Ex.A1, the appellant cannot claim an exclusive right over the common wall in 'B' and 'C' schedule properties.



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21. After examining the oral and documentary evidence and judgment of the Trial Court, the First Appellate Court concurred with the findings rendered by the Trial Court that the plaintiff as well as the defendant cannot assert an exclusive claim over the common wall by observing that as the vendors of the plaintiff and defendant are brothers who obtained the properties through partition, the wall in the northern side of the 'A' schedule property appears to be a common wall. The First Appellate Court has considered the partition deed dated 22.06.1942 marked as Ex. A9 which makes it clear that Appavu Reddiyar possessed the properties of the plaintiff and the defendant. The said northern wall was allotted to Appavu Reddiyar vide Ex.A9. The First Appellate Court considered that the vendors of the plaintiff and the defendant obtained the properties as descendants of the said Appavu Reddiyar and as such the evidence of P.W.1 and documents marked as Ex's.A1 and A9 show that the wall is used as a common wall. Therefore, the First Appellate Court has rightly taken a view on the strength of oral and documentary evidence that



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the vendors of the plaintiff and the defendant have used the wall as a common wall. Accordingly, the First Appellate Court rejected the appeal filed by the appellant/plaintiff and confirmed the decree and judgment of the Trial Court. Aggrieved by the same, the above second appeal has been filed.

22. Apart from the above documents, the Advocate Commissioner's report marked Ex.C1 indicates that the appellant and the respondent are commonly enjoying the wall to rest their respective buildings. In such factual scenario, this Court feels that the Courts below has rightly analysed and passed the concurrent judgment.

23. When this second appeal was listed for admission, notice was issued to the respondent. This Court has not admitted the second appeal on any substantial question of law. In the absence of any substantial question of law for consideration, this Court has carefully gone through the materials available before this Court and the judgments of the Courts



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below. This Court finds that no interference is required in the concurrent findings of the Courts below.

24. In view of the above, the Judgment and Decree in A.S. 35/2011 dated 17.08.2012 passed by the Subordinate Court, Madurantakam is hereby confirmed. The Second Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

24.10.2024

Index :Yes/No
Speaking/Non-Speaking Order
Neutral Case Citation : Yes/No

To:

1. The Subordinate Court, Madurantakam.
2. The District Munsif Court, Madurantakam.
3. The Section Officer, V.R.Section, High Court of Madras.

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N.SENTHILKUMAR, J.

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Pre-Delivery Judgment in

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