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S.A.No.499 of 2017 and
C.M.P.No.12065 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.No.499 of 2017
and
C.M.P.No.12065 of 2017

1.S.Saraswathi

2.K.Subbaiyan

3.S.Thirumugam @ Senthilkumaran

4.S.Gopalakrishnan

5.P.Sampoornam

6.K.Palanisamy

7.P.Vijay Anandh

... Appellants/Appellants/Defendants

Vs.

1.G.Lakshmi

2.K.Govindasamy

3.G.Mohan Balaji

... Respondents/Respondents/Plaintiffs

Prayer: Second Appeal filed under Section 100 of the Code of Civil
Procedure against the Judgment and decree dated 15.02.2017 made



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in A.S.No.10 of 2016 on the file of the I Additional Sub Court, Erode confirming the Judgment and decree dated 29.01.2016 made in O.S.No.472 of 2013 on the file of the I Additional District Munsif Court, Erode.

For Appellants : Mr.T.Murugamanickam
Senior Counsel for
Mr.C.S.Saravanan

For Respondents : Mr.M.N.Kathir for
Mr.G.Pavendhan

JUDGMENT

After hearing Mr.T.Murugamanickam, the learned Senior Counsel for the appellants and Mr.M.N.Kathir, the learned counsel for the respondents and on going through the pleadings and judgment of the Trial Court as well as the first Appellate Court, I admit the second appeal on the following substantial question of law:-

“Whether the claim of the plaintiffs that the open area of the suit property is common for all parties, being denied by the appellants, would entitle the plaintiff to seek for relief of a bare injunction, without a relief of declaration that the open areas were common to all the parties?”

2. I have heard Mr.T.Murugamanickam, the learned Senior



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Counsel for the appellants and Mr.Kathir, the learned counsel for the respondents finally.

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3. The suit has been filed for a bare injunction viz., a relief of permanent injunction to restrain the defendants from in any manner interfering with item 2 of the suit property, which is described in the plaint as common area namely, the lands surrounding buildings constructed in portions “A”, “B” and “C”.

4. The case of the plaintiffs is that the defendants are trying to interfere with their enjoyment of the land held in common, in pursuance of the agreement between the co-owners and therefore, the cause of action for the suit arose.

5. However, the defendants filed a written statement contending that the properties were purchased under 3 individual sale deeds and thereafter, the respective owners who have purchased the 3 different portions have put up construction. It is fairly admitted by the defendants in the written statement that, for convenience the



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constructions have even extended into the adjoining portions and the same was only with the consent of the other co-owners. In fact, in the written statement, the defendants have also stated that on the North of the house described as “A” in the suit schedule as well as in plaint plan, the pipelines for drainage and tap water have been laid and a space measuring 1½ feet between houses “A” and “B” has been used in common for both the houses for the purpose of maintenance like painting, etc. Similarly, a common space with same measurement of 1½ feet has been left between the house “B” and “C” as well.

6. However, it is the categorical case of the defendants that there is no agreement for common enjoyment of the item 2 land as claimed by the plaintiffs.

7. The trial Court, after assessing the pleadings, the oral and documentary evidence decreed the suit as prayed for. The defendants preferred an appeal in A.S.No.10 of 2016. The appellate Court also confirmed the findings of the trial Court and dismissed the appeal filed by the defendants.



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8. Aggrieved by the concurrent findings recorded by the Courts below, the defendants are on Second Appeal.

9. Mr.T.Murugamanickam, the learned Senior Counsel, would take me through the findings of the trial Court as well as the first appellate Court and in the light of the pleadings namely the written statement of the defendants, he would first and foremost contend that a suit for bare injunction would not be maintainable without a prayer for declaration as the defendants had specifically denied the right of the plaintiffs in the land surrounding buildings “A”, “B” & “C”. Further, he would contend that the properties were purchased as definite shares within four stated boundaries and no land was left to be enjoyed in common in the form of un-divided shares. Therefore, he would pray for the concurrent findings to be set aside and the second appeal being allowed.

10. Per contra, Mr.Kathir, the learned counsel for the respondents would take me through the written statement of the defendants where at paragraph 8, the defendants themselves agreed that



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the parties were in cordial relationship and therefore, they allowed the construction of the buildings to extend into the adjoining lands belonging to the defendants. According to the plaintiffs, inspite of such an arrangement, since the defendants were going back, it necessitated the plaintiffs to file the suit for permanent injunction and as the Courts below have rightly found that the plaintiffs are entitled to the relief of injunction and granted the decree as prayed for. Therefore, he prayed for the second appeal being dismissed.

11. I have carefully considered the rival submissions advanced by the learned Senior Counsel, Mr.T.Murugamanickam and Mr.Kathir.

12. At the outset, there is no dispute that the plaintiffs have purchased the portion “B” in the plaint plan. Similarly, the defendants 1 to 4 have purchased portion A and the defendants 5 to 7 have purchased the portion “C”. This is an admitted position all round. It is also an admitted fact that the construction of the plaintiffs' property has extended into both, portion “A” and portion “C”. Similarly, the construction of the defendants 1 to 4 has extended into portion “B” and construction of



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portion “C” by the defendants 5 to 7 has extended into portion “B” belonging to the plaintiffs. There is no dispute with regard to the ownership or enjoyment of the respective building of the parties. The only dispute is with regard to the enjoyment of the vacant lands in and around, with 3 buildings namely “A”, “B” & “C” which has been set out as item 2 in the plaint schedule.

13. Though the plaintiffs have come up with a categorical case that there exists an agreement of common enjoyment of entire lands set out in the item 2 of the plaint schedule, they have not been able to produce any documentary evidence to establish the said agreement. Moreover, when the defendants had specifically denied such an entitlement of the plaintiffs even in the written statement, at the earliest instance, the plaintiffs were obliged to amend the plaint and such the relief of declaration and instead they have proceeded with the suit for permanent injunction alone.

14. As rightly contended by the learned Senior Counsel Mr.T.Murugamanickam, in the light of the specific denial raised by the



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defendants, by way of written statement, the plaintiffs' suit for bare injunction was not maintainable, especially when the sale deeds under which the plaintiffs purchased the property did not indicate that the lands surrounding all the buildings “A”, “B” & “C” were to be held in common or enjoyed in common by all the 3 purchasers.

15. The Courts below have unfortunately been carried away by the admissions of the defendants in the written statement regarding the common enjoyment of 1½ feet passage between “A” & “B” buildings as well “B” & “C” buildings.

16. I do not find the admission of the defendants in the written statement amounting to admission of the agreement between the parties to have any common enjoyment/rights in all the vacant lands surrounding the buildings “A”, “B” & “C”. At the same time, it has to be clarified that the defendants have themselves come forward in the written statement that the passage between the buildings “A” & “B” and “B” & “C” are left for common enjoyment, specifically for the purpose of maintenance, painting, repair, etc and also in view of the fact that the



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service lands are running in such passages. Thus, the plaintiffs are entitled to permanent injunction insofar as item 1 is concerned.

However, insofar as item 2, it is clarified that excepting the 1½ feet passage between the buildings “A” & “B” and “B” & “C” that has been provided to maintain the service lines and also for the purposes of painting etc, the other vacant lands in and around buildings “A”, “B” & “C” cannot be available for common enjoyment of all the parties. The plaintiffs' entitlement is only restricted to the property purchased by him which is shown as portion “B” and similarly, the portions purchased by the defendants in “A” & “C” belong to them, along with the appurtenant land in front of their respective buildings and rear side of their respective buildings alone and there cannot be any injunction restraining the defendants from interfering from the plaintiffs' alleged enjoyment of the vacant land in and around all buildings “A”, “B” & “C”.

17. The second appeal is partly allowed and the permanent injunction granted insofar as item 1 is confirmed and insofar as item 2, it is clarified that it is restricted to the portions which is shown as portion “B” alone, along with the 1½ feet passage provided between the



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buildings “A” & “B” and “B” & “C” respectively, and in other aspects

the relief of injunction granted by the Courts below is set aside.

Consequently, the connected miscellaneous petition is closed. No costs.

06.03.2024

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

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To:

1.The I Additional Sub Court, Erode.

2.The I Additional District Munsif Court, Erode.

3.The Section Officer,
Vernacular Section,
High Court of Madras.



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