



S.A.(MD)No.1040 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.1040 of 2008

and

C.M.P.(MD)No.9559 of 2022

1.R.Balan

2.R.Loganathan

... Appellants

Vs

M.Vijayakumar

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed by the learned District Judge, Tiruchirapalli in A.S.No.107 of 2006 dated 26.03.2008 reversing the judgment and decree of learned Principal District Munsif, Tiruchirapalli made in O.S.No.875 of 1998 dated 20.09.2005.

For Appellants : Mr.M.Ashokkumar

For Respondent : Mr.H.Lakshmishankar



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JUDGMENT

The defendants are the appellants. The respondents herein filed a suit for bare injunction restraining the appellants / defendants from interfering with the right of the respondent over the suit property on the western portion of X-Y line shown in the plaint plan.

2. According to the respondent / plaintiff, the suit property was purchased by his father Muthupillai from its owner Vanajatchi Ammal, wife of P.Y.Krishnamoorthy Chettiar, by a sale deed dated 15.03.1980. From that date onwards, the plaintiff's father had been in possession and enjoyment of the suit property. After death of the plaintiff's father, there was a partition in the family on 11.08.1995 and the suit property was allotted to the share of the plaintiff. It is stated by the respondent that X-Y line in the plaint plan is the Eastern side wall of his house and the defendants are having their house on the East of X-Y line. As the defendants attempted to interfere with the plaintiff's right over the property on the West of X-Y line, he was constrained to file a suit for bare injunction.



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3. The appellants / defendants filed a written statement claiming that the respondent / plaintiff had no right whatsoever over the wall in X-Y line. It is the specific case of the appellants that respondent has not purchased portion of property which lies on X-Y line. It was also claimed by the appellants / defendants that the roof portion of their house rest on the wall in X-Y line and therefore, they have got right over the suit property.

4. The trial Court, on consideration of evidence available on record, came to the conclusion that the respondent failed to establish that the wall that situate in X-Y line fall within the property purchased by his father under Ex.A2 and consequently, dismissed the suit. Aggrieved by the same, the respondent preferred an appeal in A.S.No.107 of 2006 on the file of Principal District Court, Tiruhirapalli. The first appellate Court on re-appreciation of recitals and description of the property found in the title documents of respective parties, came to the conclusion that Eastern wall of the property purchased by the respondent, which lies on X-Y line was also purchased by the respondent's father under Ex.A2 and consequently, granted a decree for injunction as prayed for. Aggrieved



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by the same, the defendants are before this Court.

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5. At the time of admission, this Court formulated the following substantial questions of law, by order dated 20.10.2008:

“1. Whether the first appellate Court is correct in allowing the appeal after rendering a finding that the plaintiff is not entitled to the suit property in entirety?”

2. Whether the plaintiff is not estopped from claiming injunction after admitting that the defendant has not put up any construction west of the suit wall?

3. Whether the first appellate court is correct in decreeing the suit in entirety after rendering a finding that the trial Court ought to have given a decree in part if not as prayed for?”

6. The learned counsel appearing for the appellants by taking this Court to the evidence of P.W.1 submitted that the respondent as P.W.1 clearly admitted that the appellants have not constructed any building on the West of A-B line. Therefore, it is the submission of the learned counsel that it is not the case of the respondent /plaintiff that appellants making an attempt to disturb the possession of the respondent over portion of his property which lies on the West of A-B line. The learned



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counsel further submitted that when there is no evidence available on record to suggest that the appellants are making any attempt to interfere with the respondent's possession over the property on West of A-B line, the first appellate Court ought not to have granted a decree in respect of property which lies on West of A-B line.

7. The learned counsel appearing for the respondent by taking this Court to the report filed by the Advocate Commissioner submitted that though the appellants constructed the building on the Eastern side of A-B wall, some constructions are put up by the appellants so as to connect the new wall constructed by them with the old disputed wall in A-B line. The said act of the appellants would certainly prove their intention to disturb the right of the respondent over disputed wall which lies on X-Y line.

8. The respondent's / plaintiff's father purchased the property on the Western side under Ex.A2. A perusal of recital in Ex.A2 would suggest that the respondent's father purchased the property with Western wall in full and portion of Eastern wall. Further, it is not clear whether the disputed A-B portion which lies on X-Y line was part of the property



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purchased by the respondent under Ex.A2.

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9. Ex.B1 is the title document of the appellants. A perusal of the same would suggest that the appellants purchased a house site with a thatched house on the eastern side of Sivarajaiyyar's house and there is no reference about Western wall of the appellants in their title document. Therefore, it is clear that the appellants purchased only property which lies on the East of Sivarajaiyyar's house. The said Sivarajaiyyar is the respondent's father's vendor's vendor. He sold the property on the Western side in favour of respondent's father's vendor Vanajatchi Ammal under a document dated 09.11.1978, which was marked as Ex.A3. From the recital and boundary description found in the appellants' document, we can definitely come to the conclusion that the old wall that lies on X-Y portion was not purchased by the appellants' father under Ex.B1. The Western boundary of the property purchased by appellants' father was mentioned as Sivarajaiyyar's house. The said Sivarajaiyyar's house was purchased by the respondent's father under Ex.A2. Therefore, the Eastern wall of Sivarajaiyyar's house, which lies on X-Y line should have been purchased by the respondent's father under Ex.A2.



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10. In such circumstances, the appellants are not entitled to disturb the possession of respondent over the wall that situate in X-Y line.

However as rightly contended by the learned counsel for the appellant that there is no evidence available on record to suggest that the appellants are making an attempt to disturb the possession of the respondent over the property which lies on the western side of X-Y line. In fact, the first appellate Court referred about admission of plaintiff as P.W.1 that defendants have not encroached upon the property of the plaintiff. The first appellate Court also recorded a finding that there is no dispute with regard to the property which lies on West of disputed wall. When there is no evidence to show that the defendants are attempting to interfere with possession of plaintiff's property which lie on west of 'X-Y' wall, the first appellate Court ought not to have granted decree for entire suit property. The questions of law framed at the time of admission are answered accordingly. In such circumstances, the first appellate Court ought not to have granted decree in respect of the entire suit property including the portion of the property which lies on the West of X-Y line. Therefore, the judgment and decree passed by the first appellate Court is set aside in respect of suit property situates on Western side of X-Y line. In other respects, the decree passed by the first appellate Court is not



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interfered with and the second appeal is partly allowed accordingly.

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11. In nutshell,

(a) the second appeal is partly allowed by setting aside the judgment and decree passed by the first appellate Court in respect of the portion of suit property that lies on Western side of X-Y line shown in the plaint plan; and

b) The judgment and decree passed by the lower appellate Court is confirmed in respect of the wall that situate in X-Y line.

In the facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
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Note: Registry is directed to send the original records to the trial Court immediately.



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To

- 1.The District Judge, Tiruchirapalli.
- 2.The Principal District Munsif, Tiruchirapalli.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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