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AS.No.556 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2025

CORAM

THE HONOURABLE MR.JUSTICE M. JOTHIRAMAN

AS.No.556 of 2019

1.V.N.Devadoss

2.D.Padma

... appellants / plaintiffs

V.

1.M/s.Ben Foundations Pvt Ltd
Rep by its Managing Director
Mr.Rajan Dev

2.Mr.Rajan Dev

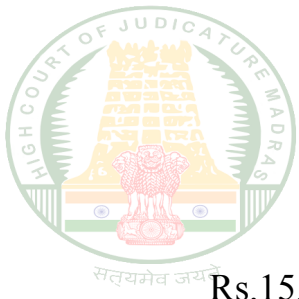
... respondents / defendants

Prayer : This First Appeal is filed under Section 96 r/w.Order 41
Rule 1 of Code of Civil Procedure 1908 against the judgment and decree
dated 28.08.2018 passed in OS.No.350 of 2007 on the file of the II
Additional District Judge, Thiruvallur at Poonamallee.

For Appellants : Mr.R.Bharath Kumar
For Respondents : Mr.R.Syed Mustafa

J U D G M E N T

Unsuccessful plaintiffs have preferred the appeal. Suit is filed for
claiming compensation for damaging the compound wall for a sum of



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Rs.15,00,000/- with interest at 18% per annum. The trial Court dismissed the suit. The parties are herein after referred to as per their litigative status before the trial Court.

2. The brief case of the plaintiffs is as follows :-

The plaintiffs are the absolute owners of the vacant land of the suit schedule property. The defendants are carrying on business in real estate promoting residential flats. The defendants had constructed the compound wall with RCC columns and beams surrounding their property. The foundation for the compound wall was 1 foot diameter with reamed piles for a depth of 13 feet from the plaintiffs premises having an average ground level i.e., 98.00m and the center to center of pile is 8 feet and 9 inch thick brickwork was filled in between the beams and the expansion joint is filled with mastic pad. The plaintiffs constructed the compound wall before two years. The defendants constructed the compound wall in their premises abutting plaintiffs compound wall. The compound wall constructed by the plaintiff has been designed and provided only for its self weight and cannot withstand any lateral road i.e., road pressure. The defendants have dumped the



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earth, sand and gravel in the land belonging to them and also applied pressure on the compound by providing car driveway near the compound wall. The defendants and their men had not taken proper precaution while putting the load on the compound wall belonging to the plaintiffs. As a result, the compound wall collapsed and fell down for a length of 227 feet besides damaging compound wall for a length of 84 feet from south and for a length of 122 feet on the east side and 163 feet on the west side on 28.10.2006.

2(i). The plaintiffs called upon the defendants on 29.10.2006 to rectify the damages, but they have not chosen to do so. The plaintiff issued notice to the defendants on 22.11.2006 calling upon them to rectify the damages. The said notice was returned unserved and again a notice was issued on 09.12.2006 which was also returned with an endorsement “left”. The plaintiff had incurred a cost of Rs.15,00,000/- for construction of the compound wall which the defendants are liable to pay the compensation for damaging the compound wall and to restore the compound wall to its original condition. Hence, the suit.



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3. The brief case of the defendants is as follows : -

Suit is filed only based on assumptions and presumptions and also imaginations without any material evidence which cannot be sustainable in the eye of law. The defendants is carrying on their business of construction and promoting residential flats in and around Chennai and as such they have also undertaken one of the projects at Padikuppam Road at Nolambur village and the project has been completed in the year 2005 itself and the possession of the residential flats have also been handed over to the owners who have purchased their respective flats. The defendants are not aware of the quality of the alleged damaged compound wall. The defendants never constructed the compound wall by abetting the plaintiffs compound wall as alleged in the plaint. None of the adjacent property owners are affected in this regard and none preferred any complaint to the defendants nor to the police. No legal notice has been sent by the plaintiffs claiming compensation, the defendants also not aware of any legal notice sent by the plaintiffs and the same was returned.

3(i) In the month of October 2006, due to heavy rain and flood, the



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rain water has entered in all low lying areas and fully surrounded. As such, the plaintiff's area is one among low lying areas and surrounded by 5ft rain water. Due to heavy rain and flood, number of trees fell down and few building walls have been collapsed, as such, in the said area where the plaintiff property situated number of trees and compound walls of the buildings were affected. Due to the flood and rain and because of the poor quality construction the compound wall of the plaintiff got collapsed and fell down. The defendant is no way concerned with the said incident. Regarding the allegations of negligence, no complaint has been filed against the defendants. Hence, prays to dismiss the suit.

4. Based on the above pleadings, the trial Court has framed the following issues :-

- (i) Whether the plaintiffs are entitled to suit claim as prayed for in the plaint?
- (ii) to what relief?

5. On the side of the plaintiffs, one Mr.Venkatesan was examined as PW1 and one Natarajan was examined as PW2 and Ex.A1 to Ex.A9 were marked. On the side of the defendants, one Mr.Rajan Dev was



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examined as DW1 and no documents were marked.

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6. The findings of the trial Court

The plaintiffs have failed to prove their case that the compound wall was damaged due to reasons that the defendants have failed to take precaution, as per prevailing constructions parameters before dumped earth. The evidence of PW2 cannot be taken into consideration as he is not competent person to give evidence of geographical issues.

7. The Points for determination arises in this appeal is that,

- (i) whether the defendant and their men had not taken proper precaution while putting the load on the compound wall belonging to the plaintiffs and
- (ii) Whether the plaintiff is entitled to claim damages as claimed in the plaint?

8. The learned counsel appearing for the appellants/plaintiffs would submit that the compound wall was damaged because, the

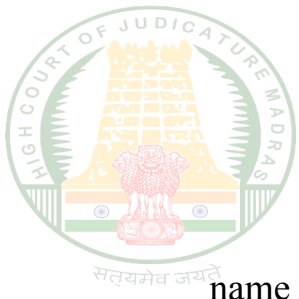


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defendants have failed to take precaution as per prevailing construction parameters before dumped earth, sand and gravel in their land and also applied pressure on the compound wall belonging to the plaintiffs by providing car drive way near the compound wall. The evidence of PW2 and Ex.A9 has not been considered in a proper perspective manner. PW2 has categorically stated in his report that failure of compound wall would be attributed to the lateral earth pressure and surcharge credit by the construction of elevated black top road on massive earth and gravel filling by the first defendant/M/s.Ben Foundation Pvt Ltd., The defendants have not filed any objection to Ex.A9 report, under such circumstances, the rejection of PW2 evidence is totally unwarranted and against law. The defendants has not taken any precautionary measure in retaining the compound wall. The undisputable report under Ex.A9, thereby proved their case beyond reasonable doubt.

9. Per contra, the learned counsel appearing for the respondents/defendants would submit that PW2 is a Civil Engineer and he is not a competent person to speak about the geographical issue. The defendants have done a project nearby site belonging the plaintiff. The



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name of the project is LEORCHARD which is a residential complex, consisting of 160 flats and the project was carried out by the defendants company with joint venture basis on contract with the land owners. The said project was commenced in the year 2004 and the construction has been properly carried out by the defendants as per statutory rules and norms and finally the same was completed in the year 2006.

10. The learned counsel would further submit that in the month of October 2006, due to heavy rain and flood, the rain water has entered in all low lying areas and fully surrounded, as such where the plaintiff property is situated, number of trees and compound wall of the building was also affected. Due to the flood and rain and because of poor quality constructions of the plaintiffs compound wall, the same got collapsed and fell down. The defendant is no way concerned with the said incident, no complaint has been filed against the defendants and even the alleged legal notice has been sent only after more than a month from the date of incident and no police complaint has been given alleging the negligence or tort alleged to be committed by the defendants.



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11. This Court has considered the submissions made on either side and perused the records.

12. It is the specific case of the plaintiff is that they are absolute owner of the vacant land comprised in S.No.230/2, 235(part), 234/2, 236/1, 235(part) and 236/2 situate in Padikuppam Road, Nolambur Village, Chennai. They had constructed a compound wall with RCC columns and beams surrounding their property. The said compound wall is constructed before two years. The defendants constructed a compound wall in their premises abutting the plaintiffs compound wall. The defendants and their men had not taken proper precautions while putting the load on the compound wall belonging to the plaintiffs, as a result the compound wall collapsed and fell on the ground for a length of 227 feet, besides damaging compound wall for a length of 84 feet from south and for a length of 122 feet on the east and 163 feet on the west side on 28.10.2006.

13. PW1/Venkatesan/General Manager Civil, (working under the plaintiffs) in his cross examination deposed that he did not know when



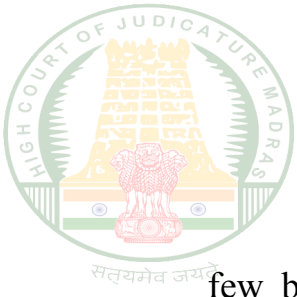
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the compound wall collapsed and he did not know after collapse of compound wall, within how many days the notice was sent to the defendants. He did not know, who are all present, at the time of inspection conducted by the Advocate Commissioner in the suit schedule property.

14. PW2/Natarajan in his chief examination deposed that he is a registered valuer. The Advocate Commissioner Mr.K.Pannerselvam sought his assistance to value the damage caused to the compound wall in the suit schedule property. Accordingly, he visited the property on 03.07.2010 along with the Advocate Commissioner and he measured the collapsed compound wall and estimated the value and he has given his estimate value report to the Advocate Commissioner. PW2 in his cross examination stated that he was not mentioned about that when the compound wall was collapsed and did not know about when the compound wall was collapsed.

15. According to the defendants, there was heavy rain and flood in the year 2006 in the month of October, number of trees falls down and



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few building wall has been collapsed, as such in the area where the plaintiff's property was situated number of trees and compound wall was also affected. In order to prove the above said facts, the defendants have not chosen to file any document to that effect and also not examined any witness.

16. It is seen from the records, the trial Court vide IA.No.1587 of 2009 in OS.No.350 of 2007 appointed one Mr.Pannerselvam as Advocate Commissioner to ascertain the damages with the help of Civil Engineer and to submit a report. Accordingly, the said Advocate Commissioner inspected the suit schedule property with the assistance of PW2 and report filed in Ex.A8. As per inspection report under Ex.A8 wherein it has been stated the reasons for failure, which reads as follows:-

“REASONS FOR FAILURE:

Normally compound walls are designed to take care of self weight only unless situation warrants designing for extra load. From the design drawing of the Compound wall furnished by the Plaintiffs the compound wall constructed by The Plaintiffs for self weight only. Hence the failure of



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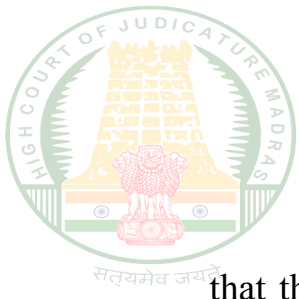


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compound Wall can attributed to the lateral earth pressure and surcharge created by the construction of elevated black top road on massive earth and gravel filling by M/S.Ben Foundations.”

17. It is to be noted that in the plaint, the plaintiffs themselves admitted that the compound wall is constructed by putting column and beam and then the compound wall has been covered by bricks. Hence, if any damage has been occurred due to earth pressure by way of construction, the particular area in between the column alone could be affected. But in the instant case on hand, the entire compound wall of all four sides were collapsed, which is not adjacent to the defendants construction area. Therefore, the contention of the appellants/plaintiffs is not acceptable one.

18. The plaintiffs have not chosen to file any documents to show that the quality of the alleged damaged compound wall was constructed. It is also admitted fact that none of the adjacent property owners are affected, none preferred any complaint to the defendants nor to the police. It is pertinent to mention that the plaint in Para No.6, it is stated



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that they have been repeatedly warning the defendants men and staff to take proper precautions but the defendants men did not bother to take instructions, as a result of which, the damages has occurred on 28.10.2006.

19. Ex.A1 is the compound wall failure report dated 18.11.2006, issued by one S.Ramachandran, Engineer wherein it has been stated he had inspected the compound wall and his observation are as follows :-

“The western side compound wall adjacent to Bin Foundation Housing Complex is about 599 feet. In this length, 227 feet of compound wall have fallen inside the VGN premises First 84' from south and 288 feet after the failed length of compound wall is in brim condition and this may also fall at any time.

VGN has constructed compound wall with RCC columns and beams. The foundation for the compound wall is 1 foot diameter under reamed piles for a depth of 13 feet from VGN premises average ground level i.e.,



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98.00 m. The centre to centre of pile is 8 feet. At every 50 feet interval expansion joint has been provide. All the piles are connected by capping beam of size 1-1.5" x 0"-9" 9" x 9" column has been provided on the top of the capping above the pile Two columns are provided at the expansion joint. Considering the site condition another beam of size 1-1.5" x 0"-9" is provided at 100.00m level. In between the two beams, it is filled with 1-1.5" thick brick wall. Then 9" x 9" top beam is provided at 101.80 m level. Here 9" thick brick work was filled in between the beams. The expansion joint is filled with mastic pad. The above compound wall is said to be constructed before two years.

Before two months Bin Foundation has constructed compound wall in their premises abutting the VGN compound wall. It seems that the foundation provided is of isolated footing at higher level with grade beam. Over that 0'-4" thick beam concrete block



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masonry is constructed abutting the VGN compound wall. The entire area is filled with clayey soil. Top area is filled with about 20 cm thick gravel and block topping is done over that.

The compound wall has been designed and provided only for its self weight by VGN. It has not been designed for lateral load, ie., earth pressure. The Bin Foundation should have designed their compound wall for saturated Earth pressure condition and provided it before their earth filling and formation of road. For 10 feet saturated earth pressure, pucca retaining wall is required. Hence the compound wall has failed in the middle part. At the starting of south side, it may fail at any time. Since filling has not been done in north side, the compound wall has not failed.”

20. In order to prove the above said facts, the said Ramachandran has not been examined by the plaintiff. The plaintiffs have not



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mentioned when did the compound wall was constructed with estimate plan and also as to the quality of construction materials have been used for construction of the said compound wall, also not examined any witnesses to that effect. Though the PW2 is having experience relating to the construction and allied activities, the evidence of PW2 alone is not sufficient to prove the case of the plaintiffs and he is not competent person to give evidence on geographical issues. As per plaint, the compound wall collapsed in the year 2006, whereas, PW2 had inspected the suit schedule property in the year 2010. The burden of proof heavily lies on the plaintiff side, but the same was not discharged by the plaintiffs. This Court is of the view that there is no reasons to interfere with the impugned judgment and decree of the trial Court. The points are answered accordingly.

21. In the result, the first appeal is dismissed and the judgment and decree passed in OS.No.350 of 2007 dated 28.08.2018 on the file of the II Additional District Judge, Thiruvallur at Poonamallee is hereby confirmed. No costs.



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To

The II Additional District Judge, Thiruvallur at Poonamallee.



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M.JOTHIRAMAN, J

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