

(2013) 04 MAD CK 0023

In the Madras High Court

Case No : S.A. No. 248 of 2013 and M.P. No's. 1 and 2 of 2013

Kannan

APPELLANT

Vs

Thirumaran

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 4 MLJ 297

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : G. Devi, for the Appellant;

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This second appeal is focussed by the plaintiff, animadverting upon the judgment and decree dated 27.8.2012 passed by

the learned Principal Subordinate Judge, Mayiladuthurai in A.S. No. 111 of 2011 in reversing the judgment and decree dated 19.9.2011 passed

by the learned Principal District Munsif, Mayiladuthurai in O.S. No. 283 of 2009. The parties are referred to here under according to their litigative

status and ranking before the trial Court.

2. A resume of facts, absolutely necessary and germane for the disposal of this Second Appeal would run thus:

(a) The plaintiff-Kannan filed the suit as against Thirumaran-the defendant, seeking the following reliefs:

To pass a judgment and decree in favour of the plaintiff and as against the defendant -

(i) restraining the defendants and their men from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property by

a decree of permanent injunction.

(ii) directing the defendants to pay the cost of the suit.

(extracted as such)

on the main ground that the defendant is owning a plot to the west of the plaintiff's house. While so, the defendant holus bolus attempted to dig

deep so as to raise pillars for putting up construction in such a manner so as to endanger the safety and security of the plaintiff's western side wall

of his house.

(b) Per contra, the defendant filed the written statement resisting the suit by contending that no such dangerous attempt was made for the purpose

of endangering the western wall of the plaintiff.

(c) The trial Court framed the relevant issues.

(d) Up went the trial, during which the plaintiff examined himself as P.W. 1 along with P.W. 2 and marked Exhibit A1 and the defendant examined

himself as DW1 and marked Exhibit B-1.

3. Ultimately the trial Court decreed the suit as against which, the defendant preferred the appeal. Whereupon, the first appellate Court after

hearing both sides, reversed the findings of the trial Court and dismissed the original suit.

4. Challenging and impugning the judgment and decree of the first appellate Court, the plaintiff has preferred this second appeal on various

grounds, suggesting the following substantial questions of law:

(i) Whether the first appellate Court is correct in interpreting Exhibit B-1?

(ii) Whether the first appellate Court is correct in not considering that the pits will damage the eaves of the appellant's tiled house and the western

wall?

(iii) Whether the first appellate Court is correct in not considering that the appellant is entitled for permanent injunction to protect his property?

(extracted as such)

5. The learned counsel for the appellant/plaintiff would pyramid her argument, which could succinctly and precisely be set out thus:

Exhibit B-1 dated 8.6.1946, the agreement between Asubathi Achi and Rajamanicka Muthaliyar was not considered by the first appellate Court

properly and the conduct of the defendant in digging pits for raising pillars would certainly affect the wall of the plaintiff.

6. A bare perusal of the judgment of the first appellate Court would reveal that it referred to the recitals in Exhibit B-1 and also the boundaries of

the plaintiffs property. Whereupon, the Court held that there is nothing to indicate that the defendant is trying to interfere with the plaintiff's area or his wall.

7. The contention of the plaintiff precisely is that even though the defendant was digging pits in his own property, yet it would affect the western

wall of the plaintiff. Though before the trial Court, it was contended on the side of the plaintiff that an extent of a foot and a half (1 1/2) space was

available to the west of the western wall of the plaintiff, the first appellate Court correctly with reference to the boundaries as well as Exhibit B-1

the agreement would point out that no such reference regarding such space could be seen in any document or in Exhibit B-1 and that the trial Court

was wrong in decreeing the suit. The first appellate Court referring to Exhibit B-1 would correctly hold that as per Exhibit B-1, the defendant's

vendor, who happened to be the earlier owner of the said plot situated to the west of the plaintiff's property, agreed to pull out the beam of her

house from the wall of the plaintiff and in such a case, absolutely, there is nothing to indicate that the plaintiff is in any way prejudiced by the

conduct of the defendant in presently raising his construction in his own plot and there could not have been any space on ground to an extent of

1 1/2 feet to the west of the western wall of the plaintiff's property.

8. Right to support is one thing but, interfering with another man's right to raise construction is entirely different. I recollect the maxim- "Sic utere

tuo ut alienum non laedas-Enjoy your own property in such a manner as not to injure that of another person (BROOM'S LEGAL MAXIM (Tenth

Edition). Accordingly, the parties should conduct themselves. Over and above that the maxim *cujus est solum, ejus est usque ad coelum* (The

person who owns the soil owns up to the sky) would display and demonstrate that the owner of a land is entitled to use his land from nadir to

Zenith, which was correctly adopted by the first appellate Court, which happens to be the last Court of facts. Absolutely, there is no miniscule or

molecular extent of evidence to exemplify that the construction that would be

raised by the defendant would in any way affect the right of the plaintiff. Hence, in these circumstances, I am of the considered view that no substantial question of law is involved in this matter for consideration and accordingly, this second appeal is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.