

(1992) 04 MAD CK 0010
In the Madras High Court
Case No : S.A. No. 1649 of 1991

Ranganayaki Ammal and 3 others

APPELLANT

Vs

P. Sivasubramaniam and another

RESPONDENT

Date of Decision : 30-04-1992

Acts Referred:

Citation : (1992) 04 MAD CK 0010

Hon'ble Judges : Bellie, J

Bench : Single Bench

Advocate : G. Rajan, for the Appellant; S.P. Subramaniam, for the Respondent

Judgement

Bellie, J.—The suit for permanent injunction having been only partly decreed and no change having been made in the appeal, the plaintiffs,

aggrieved, have come up with this second appeal. The subject matter of the suit is a wall. The plaintiffs' house in Purasawalkam bearing Door No.

49 is on the north while the defendants house bearing Door No. 50 is on the south. The case of the plaintiffs is that the construction of a portion of

the ground floor and a portion of the First floor of their house was put up by their grand-father. Subsequent to that, in 1929, the defendants'

ancestors constructed the defendants' building. In paragraph 7 of the plaint the plaintiffs seem to say that in 1949 the plaintiffs' father and the

"defendants" father agreed to treat the southern wall as common wall, but it is not stated whose is that northern wall whether it is the plaintiffs' wall

or the defendants' wall. And then it is stated that acting on the said agreement the plaintiffs' father put up further construction.

The further case of the plaintiffs is that while so the defendants started demolishing their building and while doing so they are demolishing the said

common wall alone without any notice or information to the plaintiffs. They would not heed to any protest by the plaintiffs. The defendants may dig the earth to a depth of 10 feet adjacent to the plaintiffs' building and this may lead to developing cracks in the plaintiffs building. The defendants have no right to demolish the common wall which was being enjoyed by both parties for more than 40 years, and if it is demolished it will cause damage to the southern side of the plaintiffs' building, and the plaintiffs will also lose safety and privacy in the use of the building. On these grounds the plaintiffs have prayed for injunction restraining the defendants from demolishing the said common wall.

2. The defendants in their written statement would contend that the defendants' father never agreed to treat any wall in their building as common wall in 1949 as alleged by the plaintiffs' and the defendants' northern wall has always been their exclusive property. The defendants also denied that the plaintiffs' father put up further construction treating the defendants' wall as common wall. They also denied that any part of the plaintiffs' building is resting on the defendants' wall. They contended that the plaintiffs' building is standing on its own foundation without any support from the defendants' property. It is also contended that there are two separate walls, one belonging to the plaintiffs and the other belonging to the defendants forming part of their respective buildings. The defendants further contended that they are demolishing their building without causing any damage to the plaintiffs' property and they are not digging up the earth to a depth of 10 feet adjacent to the plaintiffs' property as alleged. They are not going to dig below the ground level. The plaintiffs' property has walls on all sides. There is no cause of action for the plaintiffs to file the suit and the plaintiffs are only causing unnecessary obstruction to the defendants. Therefore the suit is liable to be dismissed.

3. The trial court on consideration of the issues framed for trial held that the defendants never agreed to have any of their walls as common wall as alleged by the plaintiffs. The wall in question belongs to the defendants. Considering the fact that the defendants have submitted that they are not going to dig below the ground level and therefore the apprehension of the plaintiffs that if the earth is dug to a depth of 10 feet below it will cause damage to the plaintiffs' building is unnecessary, the trial court granted a decree of injunction restraining the defendants from digging below the

ground level. In other respects the trial court dismissed the suit.

4. The appellate court concurred with the findings of the trial court. It appears in the appellate court it was argued on behalf of the appellants-

plaintiffs that the wall in question is a party wall, but that was rejected by the appellate court. Hence the appeal was dismissed. Now the plaintiffs

have come up with this second appeal. It may be mentioned here that the plaint averments are so unintelligible that it is very difficult to understand

what is the real case of the plaintiffs. Admittedly it was the plaintiffs who put up their house first and naturally there should have been a southern

wall of their house; and it appears to be their case that subsequently the defendants put up their house and they had their northern wall. The

plaintiffs would state that it was agreed that the existing northern wall running in between the houses shall be treated as common wall. It is not at all

clear what the plaintiffs meant by saying "the existing northern wall, whether they meant their own wall or the defendants" wall or both their walls. It

appears that the defendants have put up their northern wall alongside and adjoining the plaintiffs" southern wall.

Both the Courts below have concurrently held that there was no agreement between the parties that any wall was to be treated as common wall as

alleged by the plaintiffs. From the evidence it is clear, as pointed out by the Courts below, that according to the plaintiffs the wall in question is

defendants. The plaintiffs" case appears to be that they have put up further constructions in their house in 1949 and a portion of such construction

is resting on the defendants" wall. It is the definite case of the defendants that no such construction of the plaintiffs is resting on their wall. It may be

stated here that it is not at all clear from the plaint averments that any part of the plaintiffs" building is resting on the defendants" wall.

The fourth, plaintiff as P.W. I has deposed that the roof of the plaintiffs" house is not resting on the defendants" construction

and he has further stated that there are pillars and beams to hold their southern roof

It is argued on behalf of the appellants-plaintiffs that the commissioner"s report shows that the steps of the plaintiffs" staircase are imbedded in the

wall in question. The question that arises is whether the defendants ever agreed to the plaintiffs imbedding their steps in the defendants" wall or they

had any knowledge of such imbedding of the steps. When the plaintiffs have done something from inside their own house the defendants might not have been aware of it at all. Therefore even if it is true that some steps are resting on or imbedded in the defendants' wall that will not give the plaintiffs any right against the defendants in respect of their own wall. If the plaintiffs have done some construction in their property making use of the defendants' wall without their (defendants) consent or knowledge they have done so at their own risk because in case the defendants would like to pull down their wall or make alteration thereto that may affect the plaintiffs' construction.

As stated above, there is no evidence whatsoever as to the defendants giving consent to the plaintiffs for making use of their wall by the plaintiffs.

We have already seen that there is a concurrent finding by both the courts below that there is no agreement that the defendants' wall should be used as common wall is alleged by the plaintiffs. In these circumstances no question of any easementary right to the plaintiffs arises at all as it is now during the arguments tried to make out. May be if with the consent or knowledge of the defendants the plaintiffs have made use of the defendants' wall for their further construction they might acquire some easementary right, but, to repeat, there is no such consent or knowledge by the defendants.

Then it is also stated that if the defendants' wall is pulled down the plaintiffs' privacy will be affected. There is no substance in this submission. The plaintiffs cannot expect the defendants to maintain plaintiffs' privacy. If by the demolition of the defendants' wall plaintiffs' privacy is affected they can have protection by erecting their own walls.

Thus I find no merit in the second appeal. Accordingly it is dismissed, but in the circumstances no costs.