

(2013) 07 KAR CK 0191

In the Karnataka High Court

Case No : Regular First Appeal No. 289 of 2010

Sri. K.N. Sundara Rama Reddy

APPELLANT

Vs

Mr. Kishore Hegde, The Commissioner and The Assistant
Executive Engineer

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0191

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : T.V. Vijay Raghavan, for the Appellant; B.A. Belliappa, Advocate for Respondent No. 1 and Shri Rangaswamy, Advocate for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Disposed Off

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the appellant and the learned counsel for the respondents. The plaintiff is in appeal. The suit was one for mandatory injunction. The appellant herein and the first respondent are neighbours. They have purchased readily built houses which were said to have been constructed uniformly according to the sanctioned plan of the Bangalore Development Authority (hereinafter referred to as "the BDA" for brevity). It is later that certain modifications have been made to their respective premises. It was the case of the plaintiff-appellant that Respondent No. 1 herein had totally violated the building bye-laws of the BDA and had constructed in such a fashion that it interfered with the light and air that was available to the building from inception. It was further alleged that the building was constructed 20 years prior to the suit and hence, any such construction which interfered with the light and air, was certainly an easement which was obstructed and hence, sought for appropriate reliefs in the alternative, while also contending that since the Respondent No. 1 had constructed in violation of the building bye-laws and in violation of the sanctioned plan, the second respondent was required to take

appropriate action by removing such illegal construction and such part of the construction which interfered with the light and air of the appellant.

2. It is brought out in evidence before the court below that there was no sanctioned plan according to which Respondent No. 1 had put up construction. It was the allegation of the appellant that it was only after filing the suit and issuing notice to Respondent No. 2 that Respondent No. 2 had woken up to the violation and had inspected the property. But however, had sanctioned the plan in line with the illegal construction that was put up and therefore, the appellant was aggrieved. However, it transpires that the respondent having tendered evidence and having sought to rely upon the sanctioned plan which according to him was legitimately issued to him and that the construction was in accordance with the same and that the appellant-plaintiff was used to giving frivolous complaints and this was yet another, and having tendered evidence in that regard, the appellant-plaintiff had not chosen to cross-examine him and challenge him on the statements so made as well as the sanctioned plan that was produced. Hence, it is now contended that it is not open for the plaintiff to contend that either there was construction which was in violation of the sanctioned plan or that there has been any construction which interfered with the light and air available to the plaintiff's building and that it would not be open for the plaintiff to make a complaint of the alleged construction when there is no challenge to the evidence tendered by the first respondent.

3. The learned counsel for the appellant-plaintiff has put forth an explanation for the reason as to why the first respondent was not cross-examined at the trial, that it was on account of an inadvertent-error committed by the counsel in recording the date to which the case was posted. When the case was posted on 5.12.2009, it had been noted down by the counsel as 5.1.2010, by which time the judgment itself had been rendered as on 2.1.2010 and that it is only on 5.1.2010 that the appellant found that the judgment had been delivered and the effort on his part to restore the case to file was futile and hence, the appeal.

4. The learned counsel for the respondent would however point out that even if it is accepted that there was inadvertence committed in recording the date of hearing as 5.1.2010, when it was actually on 5.12.2009, it is pointed out that there were two dates of hearing between the said periods and there is no explanation forthcoming insofar as the appellant being totally unaware of the further adjournments of the case. In any event, he would seek to urge that the appeal is without merit and be dismissed in the absence of any challenge to the defendant's evidence.

5. While the learned counsel for the appellant would plead that if the only ground on which the appeal has to be rejected is that there was no challenge to the first respondent-defendant's evidence, the matter could be remanded to the Trial Court affording an opportunity to the plaintiff, on such terms that this court may impose, to enable the plaintiff to question the same. In the alternative, the learned counsel would submit that since primarily it is the violation of the

building bye-laws in respect of which the second respondent-defendant BBMP ought to have taken action in the first instance, which would have served the purpose of not only removing the illegal constructions, but also enabling easement of light and air which the plaintiff was denied, the appellant be given the opportunity of invoking the writ jurisdiction of this court to seek appropriate directions to the second respondent in respect of the illegal construction, which even today, violates the law. While it is not for this court to grant licence to the appellant to approach this court in its writ jurisdiction, if such a right is available and if the appellant is in a position to satisfy the writ court that he was justified in pursuing a legal remedy that was available to him by way of a suit and if for any reason that the suit was dismissed and there was continued violation of the law, there was no reason as to why the appellant ought not to be in a position to satisfy the writ court of his grievance and seek relief. In any event, it is not for this court to foreclose any such remedy that may be available to him. It is for the appellant to approach the writ court and test the remedy that may yet be available to him. With that observation, given the fact that there was no challenge to the evidence of the respondent herein, the appeal is disposed of without prejudice to any remedy that may be available in the alternative, to the appellant.