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Thambi Cherian Vs. Babu

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Court : Kerala

Decided On : Jun-26-2015

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Thambi Cherian

Respondent : Babu

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD FRIDAY,THE26H DAY OF JUNE20155TH ASHADHA, 1937 RSA.No. 786 of 2011 ( ) ---------- AGAINST THE

JUDGMENT
AND DECREE IN AS82007 of ADDL.DISTRICT COURT, THRISSUR DATED1201-2011. AGAINST THE

JUDGMENT
AND DECREE IN OS2472005 of MUNSIFF'S COURT, WADAKKANCHERRY DATED3110-2006. APPELLANT/APPELLANT/DEFENDANT: ---------- THAMBI CHERIYAN,S/O.CHIRIYAKKUNNY, KOLLANNUR HOUSE, MANGAD DESOM VILLAGE, THALAPPILLY TALUK, THRISSUR DISTRICT. BY ADVS.SRI.K.RAMACHANDRAN SRI.P.RAMACHANDRAN SMT.S.JAYASREE.

RESPONDENT/RESPONDENT/PLAINTIFF:

---------- BABU,S/O.THOMAS, PUTHUKKARA VEEDU, MANGALAM DESOM, WADAKKANCHERY VILLAGE, THALAPPILLY TALUK, WADAKKANCHERY POST - 680 582. BY ADV. SRI.T.N.MANOJ.

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON2606-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: amk 'C.R' A.HARIPRASAD, J.

---------- R.S.A No.786 of 2011 ---------- Dated this the 26th day of June, 2015.

JUDGMENT

This regular second appeal raises important questions of law. Does the law permit a person to claim unhindered or unobstructed prospect or view to any building (here a commercial building) as a matter of right Can a person claim a decree for permanent prohibitory injunction based on the alleged violation of such a right 2. Heard Sri.K.Ramachandran, learned counsel for the appellant and Sri.T.N.Manoj, learned counsel for the respondent.

3. The defendant in a suit for such a relief is the appellant and the plaintiff, the respondent. Parties are hereinafter referred to as the plaintiff and defendant. Decree passed by the trial court, which was confirmed in appeal, reads R.S.A No.786 of 2011 2 thus : " That the defendant and his men are restrained by permanent prohibitory injunction from installing any new fixtures or stair case infront of the plaintiff's plaint schedule shop room causing any hindrance or obstructions to the view, vicinity or access to the plaint schedule shop room." 4. Even though in the plaint a right to have an unhindered or unobstructed vicinity is also claimed and the same was allowed by the courts below, the learned counsel for the plaintiff fairly conceded that there is no legal foundation for that claim. Further, the claim for a permanent prohibitory injunction based on a right called unhindered vicinity is not legally recognizable one and too vague to be granted by a court of law either under the provisions of the Specific Relief Act, 1963 or otherwise. Therefore, what is remaining as a bone of contention R.S.A No.786 of

2011 3 is the legality and propriety of a legal right called the right to prospect (view) to the plaintiff's building.

5. Relevant pleadings, in nutshell, are as follows : Plaint schedule shop room was purchased by father of the plaintiff from the defendant as per Ext.A1 assignment deed in the year 1996. Plaintiff's father died and the property devolved on his legal heirs, including the plaintiff. He is conducting jewellery business in the plaint schedule shop room. The defendant is the owner of a building complex in which the plaint schedule shop room is also a part. From the descriptions in the schedule to the plaint, it can be seen that on the western boundary of the plaint schedule shop room, a main road and an open space are situated. On the southern boundary, an open space and a way through the building exist. It is an admitted case that a staircase is in existence on the north-western corner of the building for facilitating access to the upper stairs. The R.S.A No.786 of 2011 4 plaintiff alleged that the PWD authorities had taken steps to widen the road on the west. It is the contention of the plaintiff that on taking measurements, the authorities found that the staircase built by the defendant on the north-western side of the room was projecting into the government puramboke. Plaintiff reliably learnt that the authorities had issued notice to the defendant directing him to demolish the staircase encroaching onto the puramboke. Plaintiff's jewellery is facing a main thoroughfare. His father purchased the room considering various factors like the road frontage, unhindered view from the road, easy access from the road etc. Plaintiff contended that the defendant was taking hectic steps to install some fixtures and a staircase infront of the shop room of the plaintiff causing obstruction to the view to his jewellery from the main road. Acts intended by the defendant may even adversely affect the access to jewellery. R.S.A No.786 of 2011 5 6. The defendant filed a written statement stating that he did not receive any notice from the PWD authorities demanding demolition of the staircase. Defendant further contended that he has not trespassed into the government puramboke. The staircase is well within the limits of his property. Defendant also disputed the claim of the plaintiff based on a right to prospect. According to the defendant there is no cause of action for the suit.

7. The trial court, after considering the oral and documentary evidence produced by parties and also the Commissioner's report and sketch, decreed the suit. In the appeal by the defendant, lower appellate court confirmed the decree passed by the trial court.

8. Sri.K.Ramachandran contended that the decree passed by the court below is legally unsustainable. According to him, the suit itself is a preposterous action. He vehemently R.S.A No.786 of 2011 6 contended that the court below should not have granted a decree for injunction as claimed.

9. Per contra, the learned counsel for the plaintiff contended that the defendant is bound to respect the rights derived by the former as per Ext.A1 assignment deed. Ext.A1 is an admitted document. Terms in Ext.A1 would show that one room described in the plaint schedule was assigned by the defendant to father of the plaintiff for valuable consideration. It further shows that the plaintiff's father was conducting a jewellery in the premises as a tenant prior to the assignment. Preponderance of probabilities would certainly indicate that the predecessor-in-title of the plaintiff, at the time of Ext.A1 assignment deed, was having enough reasons for purchasing the shop room. On a reading of Ext.A1 assignment deed, it can be seen that sufficient safeguards had been taken by the parties to protect the rights of the assignor and assignee. In Ext.A1, it is R.S.A No.786 of 2011 7 specifically mentioned that the buyer (plaintiff's father) was entitled to have right of access through the open space on the western and southern sides of the building. Ext.A1 further shows that the defendant could not claim any right blocking the access to the shop room of the plaintiff through the areas mentioned therein. The defendant in his written statement has stated clearly that there was no attempt on his part to invade or obstruct the plaintiff's right of access to the building. However, there can be no doubt that the plaintiff will be entitled to restrain the defendant by a decree of permanent prohibitory injunction, if it is established that his right under Ext.A1 is in jeopardy.

10. The core issue is about the legality of the claim of plaintiff for a permanent prohibitory injunction on the basis of a right of view or prospect, as it legally understood. Let me initially examine the nature of such a right. As mentioned

earlier, the claim to have an unhindered vicinity is not pressed at the R.S.A No.786 of 2011 8 hearing.

11. For obtaining a decree for permanent prohibitory injunction, the plaintiff should establish a threat to or the possibility of infringement of his legal right. Of course,the Specific Relief Act, 1963 contains no list or catalogue of legal rights on the breach of which a decree for permanent prohibitory injunction can be granted. In Part III of the said Act, one can find the rules regarding grant of injunction decrees, both in mandatory and prohibitory forms. Decree for permanent prohibitory injunction can be granted only on establishment of an attempt to invade any statutory right or other rights based on common law principles. That too, being an equitable relief, only if it is not prohibited by the provisions in Section 41 of the Act. Now, let me examine whether the plaintiff has any legal right to maintain such a claim.

12. Section 7 of the Easements Act, 1882 deals with R.S.A No.786 of 2011 9 natural rights. It says that easements are restrictions on one or other of the two rights mentioned therein. Section 7 (a) of the Act recognizes the exclusive right of every owner of immovable property to enjoy and dispose of the same and all products thereof and accessions thereto. Section 7(b) of the Act deals with the right of every owner of immovable property to enjoy without disturbance by another the natural advantages arising from its situation. The illustrations added to the Section clarifies the nature and extend of the natural rights. Natural rights are those incidents and advantages, which are provided by nature for the use and enjoyment of a man's property. It is to be distinguished from an act of man or some artificial cause. So, the only deduction possible is that the rights enumerated in Section 7 of the Easements Act are claimable only in respect of immovable properties in its natural situation. All these rights cannot be extended to man made constructions. It is well settled that R.S.A No.786 of 2011 10 natural rights are rights in rem and are inherent in land ex jure naturae and they are not to be acquired by immemorial user. Their continuous enjoyment is not essential for their continued existence, though they are capable of being lost by adverse enjoyment. (See, Subbarayudu v. Secretary of State (AIR1927 Mad. 988) and Secretary of State v. Subbarayudu (AIR1932P.C46.) 13. If the right to prospect or view is not a

natural right, then the next question probable is whether it can be acquired as an easement It can never be acquired as an easement for the primary reason that such a right does not fit in the definition of easement in Section 4 of the Act. The requirement in the Section for having dominant and survient heritages may not be fulfilled in such a claim.

14. Learned counsel for the defendant placed reliance on a decision of the King's Bench Division in Campbell v. Mayor R.S.A No.786 of 2011 11 (1911(1) K.B869. In that case, the plaintiff sued the municipal authorities alleging that certain constructions made by them caused an invasion on his legal right to have an uninterrupted view to Edgware Road, a main thoroughfare, through which a public procession was expected to pass. On facts, it was found that when the stand intended to be constructed by the authorities if allowed to be completed, it would have caused obstruction to the plaintiff's view to the road. After considering the legal authorities on the point and the principles threadbare, it was laid down that a view or prospect from the windows of a house is not an easement or right in the nature of an easement. It was further held that the law does not recognize a view or prospect from a house as a right in the nature of an easement, which can belong to anybody as of right, and that no period of enjoyment will give a person a right of action against another, who on his own land erects a structure or plants trees which obstruct the view or R.S.A No.786 of 2011 12 prospect.

15. My view that such a right is not claimable is fortified by an observation in Halsbury's Laws of England. In the treatise, on the discussion of the topic "Nuisance" (Volume 78 paragraph 128), the following observations are made :

"28. Interference with prospect, view or television reception. Where there is no infringement of a right to light, and where the act complained of is otherwise lawful, no action lies for the invasion of privacy by the opening of windows, or for the obstruction of a view or prospect, even though the value of a house or premises may be diminished thereby." So, there is no legal reason for recognizing the right to prospect as a natural right or as an easement. What is claimable as a natural right under Section 7 of the Act is a right to light or air passing vertically to the property. Even light or air received R.S.A No.786 of 2011 13 horizontally is not a

natural right. In Re Penny and South Eastern Rly Co (1857) 7 E & B660 it has been held that no easement can exist in relation to the enjoyment by a land owner of the prospect or view from his property or in relation to the privacy of the property. Learned Author N.D.Basu on a Law of Injunctions (Fifth Edition), based on certain English authorities has stated that erection of a building will not be restrained because it injures the plaintiff by obstructing the view of his place of business.

16. Upshot of the discussion is that the claim of a right to view or prospect to one's building cannot be recognized as a legal right enforceable by a court of law. Therefore, that part of the decree is legally unsustainable.

17. Insofar as the apprehension of the plaintiff regarding interference of his rights conferred by Ext.A1 is concerned, it has to be found that there is sufficient cause of action for R.S.A No.786 of 2011 14 maintaining an action. Commissioner's report and oral evidence show that there was an attempt to interfere with the plaintiff's use of the open space on the western side of the building, which was used for entry to the shop room. Learned counsel harping on Section 38(3)(c) of the Specific Relief Act contended that the evidence collectively probablize the case pleaded by the plaintiff. It is true that there is a challenge raised by the defendant against the rights conferred on the plaintiff as per Ext.A1. Therefore, I am of the view that the decree can be limited to the rights conferred by Ext.A1 on the plaintiff. The appeal is partly allowed. The decree passed by the trial court and confirmed by the appellate court is modified as follows : The appellant (defendant) is restrained by a permanent prohibitory injunction from causing any obstruction to the respondent's (plaintiff's) enjoyment of the plaint schedule R.S.A No.786 of 2011 15 property in terms of the recitals in Ext.A1 assignment deed. No costs. All pending interlocutory applications will stand dismissed. Sd/- A.HARIPRASAD, amk JUDGE. //True copy// P.A to Judge

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