

P.Krishnamoorthy Vs. Lakshmi

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Court : Chennai

Decided On : Mar-05-2013

Judge : G.Rajasuria

Appellant : P.Krishnamoorthy

Respondent : Lakshmi

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

05. 3.2013 Coram: THE HONOURABLE MR.JUSTICE G.RAJASURIA S.A.No.845
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1. P.Krishnamoorthy 2.Mythili Krishnamoorthy ... Appellants Vs. Lakshmi repby her Power Agent Kumar ... Respondent This second appeal is filed against the judgement and decree dated 22.3.2012 passed by the Sub Court, Gobichettipalayam, in A.S.No.6 of 2010 confirming the judgement and decree dated 12.11.2009 passed by the District Munsif, Gobichettipalayam, in O.S.No.85 of 2004. For Appellant : Mr.I.C.Vasudevan For Respondents : Mr.M.Srinivasan for M/s.C & K Law firm JUDGMENT This second appeal is focussed by the defendants, inveighing the judgement and decree dated 22.3.2012 passed by the Sub Court, Gobichettipalayam, in A.S.No.6 of 2010 confirming the judgement and decree dated 12.11.2009 passed by the District Munsif, Gobichettipalayam, in O.S.No.85 of 2004, which is one for declaration and mandatory and permanent injunctions.

2. The parties, for the sake of convenience, are referred to here under according to their litigative status and ranking before the trial Court. 3.A summation and summarisation of the relevant facts absolutely necessary and germane for the disposal of this second appeal would run thus: (i)The respondent/plaintiff filed the suit seeking the following reliefs: VERNACULAR (TAMIL) PORTION DELETED (extracted as such) (ii)The second appellants/defendants resisted the suit by filing the written statement. (iii)Whereupon issues were framed. Up went the trial, during which, on the plaintiff's side one Kumar was examined as P.W.1 and Exs.A1 to A7 were marked. On the defendants' side, the first defendant examined himself as D.W.1 and no document was marked on their side. Exs.C1 to C3 were marked as Court documents. (iv)Ultimately, the trial Court decreed the suit in toto, as against which, the appeal was filed by the defendants for nothing but to be dismissed by the first appellate Court, confirming the judgement and decree of the trial Court. 4.Challenging and impugning the judgements and decrees of both the fora below, this second appeal has been filed by the defendants on various grounds and also suggesting the following substantial questions of law: "1.Whether the power agent of the plaintiff could be a competent witness to speak about the facts which is in the exclusive knowledge of the plaintiff. 2.Whether the adverse inference could be drawn against the plaintiff for her wilful abstinent from giving evidence. 3.Wheher the courts below were correct in granting the relief of mandatory injunction without giving specific measurement of the portion protruding into the plaintiff's property, which is to be removed." (extracted as such) 5.Heard both sides. 6.Indubitably and indisputably, the germane facts would run thus: (a)The respondent herein/plaintiff is owning her house property to the East of the defendants' house. There is a wall in between the two houses. According to the plaintiff, the said wall of one foot and a half(1=) width is the common wall for both. While so, the defendants demolished the said common wall on the Southern side and raised a new wall of four inches width, whereby they trespassed into the plaintiff's property. (b)However, the defendants would contend that the wall was not a common wall and it is their exclusive wall and that they demolished a portion of it and raised a new one. 7.The learned counsel for the respondent herein/plaintiff would pyramid his arguements which could succinctly and precisely be set out thus: The Courts below consistently and correctly, placing reliance on the evidence adduced, held that the

wall is a common wall of the plaintiff and the defendants based on Ex.A1-the sale deed dated 15.5.1987, and the partition deed-A2,dated 3.12.1997. The Commissioner's report also clearly detailed and delineated, portrayed and parodied, exemplified and demonstrated the physical features and also the fact as to how a portion of the common wall on the Southern side was demolished and a small wall was constructed in the portion belonging to the plaintiff. 8.Even though the matter was contested in both the fora below by the defendants, the learned counsel for the defendants in all fairness, before this Court, has put forth and set forth his submissions, the warp and woof them would be to the effect that the defendants are having no objection for treating the entire wall as a common wall of a width of one foot and a half (1=) and the defendants are also having no objection for the plaintiff to take the newly constructed wall of four inches width, which is virtually situated in the area which forms the plaintiff's portion in the common wall area. 9.Whereupon, I would like to formulate the following substantial questions of law. i)Whether the Courts below were justified in decreeing the suit as such, based on Ex.A1-the sale deed dated 15.5.1987, Ex.B2-the partition deed dated 3.12.1997, the Commissioner's report and the oral evidence adduced, ordering demolition of the newly constructed wall by the defendants? ii)Whether there is any perversity or illegality in the judgements and decrees passed by the fora below? 10.At the outset itself, I would like to observe and remark that the plaint prayer is not a wholesome and comprehensive one. Trite the proposition of law is that a suit should not lead to multiplicity of proceedings. I recollect the following maxim-'Boni judicis est lites dirimere, ne lis ex lite oriatur' It is the role of a good judge to dispose of litigations so that one suit should not grow from another. 11.With this in mind, if the prayers of the plaintiff and the judgements rendered by both the Courts below are considered, it is glaringly and clearly, pellucidly and palpably axiomatic that by virtue of the prayer in the plaint and the judgements passed, no doubt, the newly constructed wall would be demolished. Then what remains is only an open space without any barrier supporting the plaintiff's house with that of the defendants' house. Such sort of impasse should not occur. 12.Barring such defect in plaint, but understanding the defect in the plea of the defendants, the learned counsel for the defendants in all fairness made submissions as set out supra agreeing to treat the wall as the common wall and

also agreeing to the fact that the newly constructed thin wall is situated in the portion belonging to the plaintiff's portion in the common wall area, so to say, that common wall is admittedly having a width of a foot and half, which means 18 inches, out of that, the Eastern half portion of a width measuring 9 inch belongs to the plaintiff and the Western remaining nine inch width portion belongs to the defendants. 13. Here as per the Commissioner's report it is clear that the four inches width wall was constructed by the defendants in a part of the half portion of the area belonging to the plaintiff in the common area of the wall. As such, the submission made by the defendants' counsel is fair and acceptable for achieving harmony. 14. The learned counsel for the plaintiff would hasten to add that the defendants should not simply expect that the plaintiff should be satisfied with the four inch thickness wall; Over and above the four inch wall, to the West of it, the plaintiff is also entitled to an area of five inch width more, so to say, adjacent to the newly constructed wall, which is readily acceptable. 15. On balance, the net result would be to the following effect: The existing common wall measuring 1½ feet (one foot and a half) width from 'D' to 'B' portion in the commissioner's report and sketch and also the additional Commissioner's report is the common wall of both the plaintiff and the defendants. The newly constructed four inch width wall from 'A' to 'B', which is situated in a part of the nine inch portion belonging to the plaintiff in the common wall area, shall belong to the plaintiff. The plaintiff also is entitled to the remaining five inch width in the AB portion to the West of the newly constructed wall. The parties shall have to deal with their common wall with all incidents attached to a common wall, legally. 16. Accordingly, the aforesaid substantial questions of law are answered and the second appeal is partly allowed, modifying the judgements and decrees of both the Courts below. However, there is no order as to costs. Msk To 1. The Sub Court, Gobichettipalayam 2. The District Munsif Gobichettipalayam

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