

SUPREME COURT OF INDIA

Padikal Madappa

Vs.

C. B. Kariapa

C.A.No.843 of 2001

(S. Rajendra Babu and S. N. Variava JJ.)

18.01.2001

ORDER

1. Leave granted.

2. The first respondent filed a suit seeking relief of declaration to use the suit path; to have free passage of light and air; to have privacy without any obstruction; for permanent injunction restraining the appellant from obstructing the suit path or free passage of light and air and right of privacy of the first respondent; and for mandatory injunction directing the appellant to remove the construction put up obstructing the said suit path.

3. The claim put forth by the first respondent is that the plaint 'A' schedule property belongs to him and the appellant is owner of the Plaint 'B' schedule property. The old house and other structures which were existing in 'B' schedule property were demolished some time back and a new construction is sought to be brought. Building or structure in 'A' schedule property is situated 3 feet interior to the eastern boundary of the land in which it is situated and similarly the structures in 'B' schedule property were also situated at least 3 feet interior to the western boundary of the land. The first respondent and the appellant had left a way or passage each devoting 3 feet vacant space and the said passage is described in plaint 'C' schedule and is referred to as suit path.

4. The first respondent claimed that he and his predecessors have in actual, open peaceful and uninterrupted enjoyment of suit path as an easement for over 50 years and have acquired a right of way by prescription.

5. It is also claimed that in order to use the land situated in 'A' schedule property one had to reach the rear side of the land and to repair the eastern wall of 'A' schedule property which consists of ground floor and first floor in the front side and only ground floor in the rear portion. The first floor has access through a stair case from one of the rooms and also from the suit path through a ladder fixed on a stone platform touching the eastern wall of 'A' schedule property. There is a door and a window opening to the eastern side from eastern wall of 'A' schedule property and the first respondent used to go to first floor through the suit

path independently without any obstruction. There is a glazed enclosure from north-eastern side of the first floor of 'A' schedule property receiving free light and air from the eastern side to the stair case connecting the first floor with the ground floor. It is claimed that the suit path and vacant space are the sole access of light and air of 'A' schedule property from eastern side. Any structure put up on the eastern side would block such light and air and take away the right of privacy of the first respondent. Even rain water from the gabled roof and eaves of plaint 'A' schedule property would fall on the suit path. After demolition of old structure of 'B' schedule property long back no new construction had come up till 1988. In September, 1988 the first respondent came to know that the appellant was laying foundation for the proposed building close to eastern wall of the 'A' schedule property.

6. On this basis he made a claim for the reliefs in the suit. He also inter alia contended that the licence and the building plan sanctioned are bad for the suit building and subsequent renewals of licence or plan are illegal and invalid.

7. The appellant before us stoutly denied the allegations made by the first respondent and contended that the first respondent has no right of easement as claimed by him either to the passage or light and air much less to privacy. He further contended that the licence and plan obtained by him for construction of the building on his property are perfectly valid.

8. The trial Court on examination of the pleadings and evidence as well as legal contentions put-forth before the Court answered all the issues in favour of the appellant and concluded that the suit claim deserved to be dismissed. However, on the material before it the trial Court reached a conclusion as follows :

"However, in view of the fact that the eastern portion of the plaintiff's building is a residential building and as the new building constructed by the 1st defendant is a commercial building, where the 1st defendant is intending to start a hotel and lodging it would be necessary to issue certain directions to the 1st defendant to protect the plaintiff from any possible harassment and nuisance from the 1st defendant. Therefore, the 1st defendant is hereby directed not to make any projections in his new building towards west i.e. towards the plaintiff's building to any extent beyond the R.C.C. columns already put up by him either by way of chajja or slab. The 1st defendant shall also not open any window or door opening towards the plaintiff's building in the western wall of his new building. The 1st defendant shall also not allow or permit either rain water or any water including sullage water to flow towards the plaintiff's building or in the open space now existing in between his new building and the plaintiff's building. The 1st defendant shall not also lay or permit to lay water-line or electricity line or sewerage line or drain in the open space left in between the two buildings. These directions shall be strictly complied with by the 1st defendant and the plaintiff shall be at liberty to enforce this requirement and directions as obligation imposed upon the 1st defendant."

9. Against the decree made by the trial Court, an appeal was preferred unsuccessfully by the first respondent. The cross objections filed by the appellant were, however, allowed deleting

the portion in respect of which the trial Court had given directions in regard to the use of the property which we have extracted above. On further appeal to the High Court under Section 100 of the Civil Procedure Code two questions were formulated (1) whether the construction put up by the appellant on 'B' schedule property is illegal; (2) whether the first appellate Court was not right in setting aside the directions given by the trial Court.

10. The High Court after setting out the questions did not consider the findings recorded by the Courts below but on the arguments advanced before it came to the conclusion that the licence obtained by the appellant herein was not granted by the Mandal Panchayat but by the Municipal Council and, therefore, the same was invalid. On the question whether appropriate set-backs have been given the High Court took the view the same was not proper and, therefore, the plan was held to be violative of Bye-Law 19(2) of the Karnataka Town Municipalities Buildings Model Bye-laws, 1981 and on this basis allowed the appeal and decreed the suit in the following terms :

"In the result, the appeal is allowed setting aside the Judgment decree of the Courts below and the suit of the plaintiff is decreed granting the prayer-I and 3(a) of the plaint namely :-

The plaintiff has got a right to use the suit path and to have free passage of light and air and to have privacy without any obstructions whatsoever.

The licence No. 28/83-84, dated 17-7-83 issued and renewed on 15-12-1987 by the Town Municipal Council. Gonicoppal and again renewed by the 2nd defendant on 7-9-1988 in favour of the 1st defendant is bad in law. Injunction is issued against the 1st defendant from interfering or to obstruct the suit path and free passage of air and light; the mandatory injunction be issued directing the 1st defendant to remove the construction made on schedule' property which obstructing the suit path and the free passage of light and air and the right of privacy.

Mandatory injunction be issued directing the 1st defendant to demolish the construction put up by the 1st defendant on the plaint 'B' schedule property within a specified period in so far as there is a violation of the plan earlier sanctioned on 17-7-1983. Though normally the entire building on 'B' schedule should be directed to be demolished as the same has been made admittedly without any plan. But taking into consideration, the building is already come up to a great height the major portion of the building can be saved provided that building is kept convenient to and in confirmation of the building rules and building bye-laws in particular two meter open space area as per the bye-law No. 19(2) should be maintained."

11. Learned counsel for the appellant pointed out that neither of the two questions formulated by the High Court could be characterised as questions of law and he further contended that the High Court had not considered the effect of the findings recorded by the Courts below which were concurrent and further finding recorded by the first appellate Court that the suit itself had been barred by limitation was also not considered. In those circumstances, the

appeal has got to be allowed. On behalf of the respondents it was urged that questions raised before the High Court are definitely of law and though a more detailed consideration could have been made by the High Court after adverting to the findings recorded by the Courts below still the conclusion reached by it is proper.

12. We have been taken through the various provisions of the 'The Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (Act No. 20 of 1985) which was in force at the relevant time. Section 64 of the Act enables the Zilla Panchayat to grant a licence and in the present case it was Mandal Panchayat which could have granted the licence for construction. On this aspect of the matter, the trial Court on examination of the evidence before it came to the conclusion that one Sri Balasubramanya who was the Chief Officer of the Town Municipal Council was also Secretary of interim Mandal Panchayat of Gonicoppal. Though he had given the licence under the seal of the Chief Officer of the Town Municipal Council but what it meant to say was it was really a licence issued by the Municipal Panchayat at the time when the seals were not available in the Mandal Panchayat having been newly formed and thus he came to a definite finding that even in the absence of seal a conclusion had to be drawn that the licence had been issued by him on behalf of the Mandal Panchayat and not on behalf of the Municipal Council. This finding of fact stood affirmed by the first Appellate Court. The High Court did not examine this aspect of the matter at all, therefore, it was not justified in holding that the licence granted to the appellant was in any way bad.

13. We are not impressed with the reasoning adopted by the High Court in regard to the set backs. Again on this aspect of the matter the High Court did not proceed to consider the findings of the Courts below but relied on Karnataka Town Municipalities (Building) (Model) Bye-Laws, 1981 which were not at all applicable because at the relevant time Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 had come into force and Karnataka Mandal Panchayat Building Rules, 1986 were applicable. The applicability of these rules has not been examined by the High Court and therefore findings recorded by the High Court one way or the other on building bye-laws framed under the Municipalities Act are irrelevant. In that view we do not think the High Court proceeded on right lines to give reliefs to the first respondent. Thus the concurrent findings of the Courts below stand affirmed. That is not the end of the matter.

14. Having heard learned counsel on both sides and having considered the nature of the dispute before us that the two parties who are neighbours and should have good neighbourly relations, we think the view taken by the trial Court, as extracted earlier in the course of this order should be maintained subject to the condition that the water-line or electricity line or sewerage line that may have been laid underground shall remain intact though not in compliance with the directions contained in the portion of the order extracted above by us. It is also made clear that the passage of 3 feet from A to B in the suit sketch running in length of about 105 feet and no more in the front portion of the building shall be used as a common passage by the parties concerned and if necessary by putting a common gate with a common lock having duplicate keys.

15. In order to bring the building constructed by the appellant in conformity with the directions given by us, learned counsel seeks time. Let there be compliance of this part of the order within a period of six months from today. Subject to this modification and in reversal of the decree made by the High Court, the decree made by the trial Court as affirmed by the lower Appellate Court stands restored. The appeal is allowed accordingly. There will be no order as to costs.

Appeal allowed.