

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1280 of 2014
and M.P.No.1 of 2014

Kaliamurthi

... Appellant/Respondent/Plaintiff

-Versus-

Brahmanathan

... Respondent/Appellant/Defendant

This second appeal is filed against the judgment and decree dated 23.09.2014 made in A.S.No.46 of 2014 by the learned II Additional Subordinate Judge, Cuddalore, reversing the judgment and decree dated 14.02.2014 made in O.S.No.262 of 2011 by the learned Additional District Munsif, Cuddalore.

For Appellant : Mrs.Hema Sampath,
Senior Counsel for Mr.R.Meenal

JUDGMENT

The appellant is the plaintiff in O.S.No.262 of 2011 on the file of the learned Additional District Munsif, Cuddalore. The respondent is the sole defendant in the said suit. The suit has been filed in respect of suit properties one comprised in T.S.No.3514 (old T.S.No.4025) and the other property in T.S.No.3513/2 (old T.S.No.4026) at Brookispet. The trial court decreed the said suit in full as prayed for. As against the same, the defendant filed an appeal in A.S.No.46 of 2011 before the learned II Additional Subordinate Judge, Cuddalore. The first appellate court, by judgement and decree dated 23.09.2014, modified the decree and judgement of the trial court thereby granting permanent injunction only in respect of 9 ½ feet East-West and 140 feet North-South in T.S.No.3514. In respect of the remaining extent in the said Town Survey Number, the first appellate court has set aside the decree and judgement of the trial court. Aggrieved over the same, the defendant is now before this court with this second appeal.

2. This second appeal has come up today for admission. I have heard the learned senior counsel for the appellant and also perused the records carefully.

3. The learned senior counsel for the appellant made her arguments at length and at one point of time, she offered to not press this second appeal, however, with a request to clarify that the decree in the present suit shall not operate as res judicata for the plaintiff to file a comprehensive suit for declaration of title and for appropriate consequential reliefs.

4. In this regard, I am of the view that no such specific clarification is required inasmuch as it is the settled law that a decree for permanent injunction granted based on possession will not operate as res judicata for filing a fresh suit for declaration of title and for other appropriate consequential reliefs. Therefore, I make it clear that such liberty is always available for the plaintiff to do so.

5. In view of the above, the second appeal is dismissed as not pressed, however, with a clarification as stated above. Consequently, connected MP is closed.

Sd/-
Asst.Registrar

/True Copy/

Sub Asst. Registrar

kmk

To

- 1.The II Additional Subordinate Judge, Cuddalore.
- 2.The Additional District Munsif, Cuddalore.

+1 CC to M/S.R.Meenal, Advocate Sr 5082

BR(CO)
PKS
21/02/2015

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