

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.206 of 2015

1.Kuppammal
2.Vijayakumar

... Appellants/Appellants/plaintiffs

Vs.

1.Mohideen Pitchai
2.Mohideen Bathu ... Respondents/Respondents/Defendants

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.11.2014 passed in A.S.No.131 of 2013 on the file of the learned II Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 04.06.2012 made in O.S.No.7650 of 2005 on the file of the learned XVII Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.S.Gunaselan

J U D G M E N T

The plaintiffs who lost their case before both the Courts below, has filed this Second Appeal against the judgment and decree dated 28.11.2014 passed in A.S.No.131 of 2013 on the file of the learned II Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 04.06.2012 made in O.S.No.7650 of 2005 on the file of the learned XVII Assistant Judge, City Civil Court, Chennai.

2.The brief facts of the case is as follows:

a.The plaintiffs who are the appellants had filed the suit for mandatory injunction, directing the defendants to remove the encroachment from the "B" schedule property. The plaintiffs claimed to have purchased the property measuring to an extent of 3616 ½ sq.ft by virtue of Sale Deed dated 11.12.1967 in the joint names of herself and her husband. Subsequently, there was a release deed of half share of the husband in favour of the first plaintiff. According to the first plaintiff, she is the owner of the "A" schedule property. The plaintiff stated that on the western side of "A" schedule property, there is a common lane which was used as conservancy land for removing the garbage and cleaning the drainage. The plaintiff

had also filed the suit in O.S.No.3618 of 2000 and obtained an ex-parte decree. The defendants are the owners of the "C" schedule property having purchased the same on 03.02.2005. According to the plaintiffs, while defendants were constructing the "C" schedule property, they have encroached 3 ½ feet of land in the common passage from the "B" schedule property. Hence, the suit has been filed by the plaintiffs.

b.The suit was resisted by the defendants before the trial Court contending that the plaintiff had not produced any parent document relating to the "B" schedule property to establish that there was a common passage provided in the parent document. The plaintiffs were facing their claim on Ex.A7 which came into existence after institution of the suit. Ex.A7 is the Settlement Deed dated 29.11.2006, which is not binding on the defendants. The decree in O.S.No.3618 of 2000 also being an ex-parte decree, wherein the defendants were not parties which is also not binding on the defendants. Reliance was also placed on the Commissioner's report to claim exclusive right over the passage. However, report of the Commissioner cannot confer any title to the party. Admittedly, there was no acceptable documents of title filed by the plaintiffs to establish their right over the suit property.

3.On the pleadings of both the parties, necessary issues were framed by the Trial Court. Before the Trial Court, the Plaintiff had marked Exs.A1 to A8 and plaintiffs examined themselves as PW.1 and P.W.2. D.W.1 was examined on the side of the Defendants and Ex.B1 was marked on the defendants' side. The report and plan of the Advocate Commissioner were marked as Ex.C1 and C2.

4.The Trial Court, after considering both the oral and documentary evidence, dismissed the suit and the first appeal filed as against the Judgment and Decree of the Trial Court was also dismissed by the lower Appellate Court. Hence, this second appeal has been filed by the plaintiffs.

5.This court heard the submissions of the learned counsel for the Appellants and also perused the material records placed.

6.Both the Courts below which are the final fact finding Courts have concurrently held that in the absence of any document relating to the title of the plaintiff, a decree cannot be granted in favour of the plaintiff. As there is no material document in support of the plaintiff's right, the plaintiff had failed to establish their claim in the suit. In the above factual matrix, there is no question of law that arise for consideration in the above Second Appeal. Hence, this Court finds that there is no illegality or infirmity in the findings of the Courts below and the same are confirmed.

7. Accordingly, the Second Appeal is dismissed and the judgment and decree dated 04.06.2012 passed in O.S.No.7650 of 2005 by the learned XVII Assistant Judge, City Civil Court, Chennai, as confirmed by the judgment and decree dated 28.11.2014 passed in A.S.No.131 of 2013 by the learned II Additional Judge, City Civil Court, Chennai are affirmed. No costs.

DP

-s/d-

Assistant Registrar (CS-II)

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Sub-Assistant Registrar

To

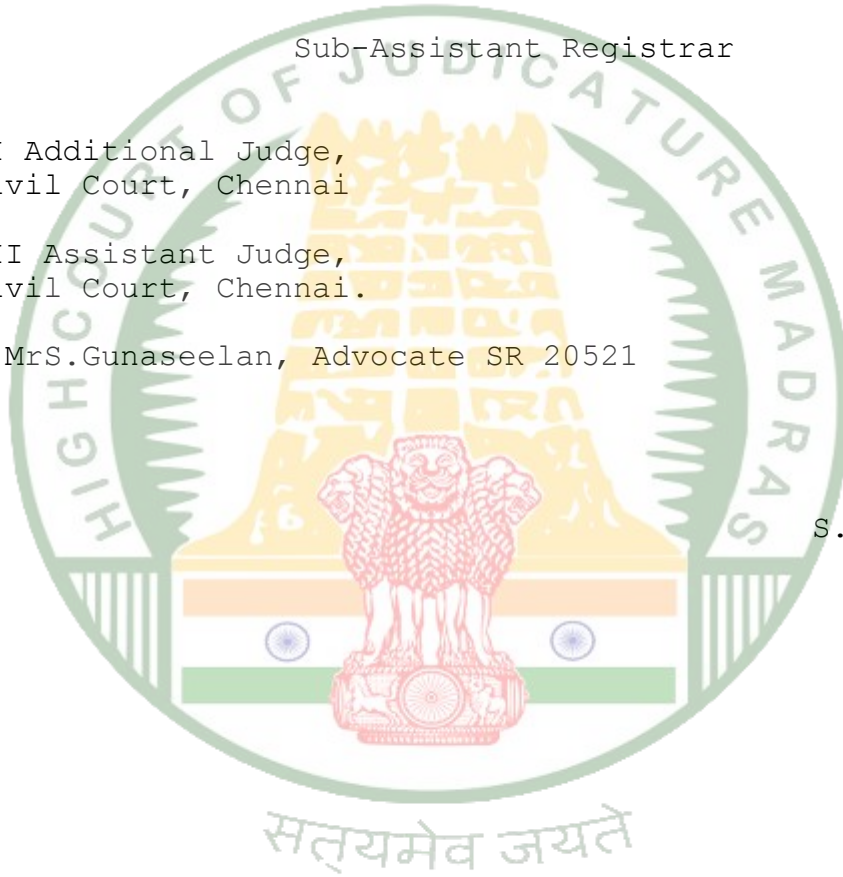
1. The II Additional Judge,
City Civil Court, Chennai

2. The XVII Assistant Judge,
City Civil Court, Chennai.

+ 1 cc to Mr S. Gunaseelan, Advocate SR 20521

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Judgment made in
S.A.No.206 of 2015



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