

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.06.2015

Coram:

THE HONOURABLE MS. JUSTICE R.MALA

Second Appeal No.470 of 2015

and

M.P.No.1 of 2015

Jayalakshmi

... Appellant/plaintiff

.vs.

1.Radha

Munusamy (Died)

2.Chinnakulanthai

3.Kannammal

4.Manjula

5.Tamilarasan

6.Panchatcharam

7.Ramani

8.Dhanapathi

9.Chinnaponnu

10.Suseela

11.Pabitha

12.Manikandan

... Respondents/defendants

The Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment passed in A.S.No.2 of 2014 dated 27.02.2015 on the file of the Subordinate Judge, Vellore confirming the decree and judgment passed in O.S.No.265 of 2001 dated 25.11.2013 on the file of the Principal District Munsif at Vellore District.

For Appellant : Mrs.D.Malarvizhi for
Mr.R.Margabandhu

JUDGMENT

The Second Appeal is filed against the decree and judgment passed in A.S.No.2 of 2014 dated 27.02.2015 on the file of the Subordinate Judge, Vellore confirming the decree and judgment passed in O.S.No.265 of 2001 dated 25.11.2013 on the file of the Principal District Munsif at Vellore District.

2.The learned counsel appearing for the appellant would submit that the appellant as a plaintiff filed a suit for mandatory injunction, which was dismissed by the trial Court, against which, he preferred an appeal in A.No.2 of 2014 which was also dismissed stating that the property has not been specifically mentioned. Even though the Advocate Commissioner was appointed during the appellate stage, he has not measured the property. Therefore, he prayed for admission of the second appeal.

3.At the time of admission, argument of the learned counsel for the appellant is heard in length.

4.As per the dictum of the Hon'ble Supreme Court, the plaintiff must prove the case by way of marking oral and documentary evidence and he cannot take the loopholes of the defendants' case and sought for remedy. In the case on hand, the property has not been specifically mentioned as per Order 7 Rule 3 of the Civil Procedure Code.

5.On perusing Para 5 of the plaint reveals that it was not stated which portion of the property was allotted to the plaintiff/appellant or encroached by the defendants/respondents and the measurement of the property was also not specifically mentioned. Both the Courts below have correctly considered the above aspects. Furthermore, the first appellate Court is the last fact finding Court and after perusing the oral and documentary evidence, the first appellate Court came to the correct conclusion that it is only fact finding Court. In such circumstances, I am of the view that no substantial question of law will arise in the second appeal. Therefore, the second appeal deserves to be dismissed and it is hereby dismissed.

6.In the result, Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ari

To

1.The Principal District Munsif Court,
Vellore.

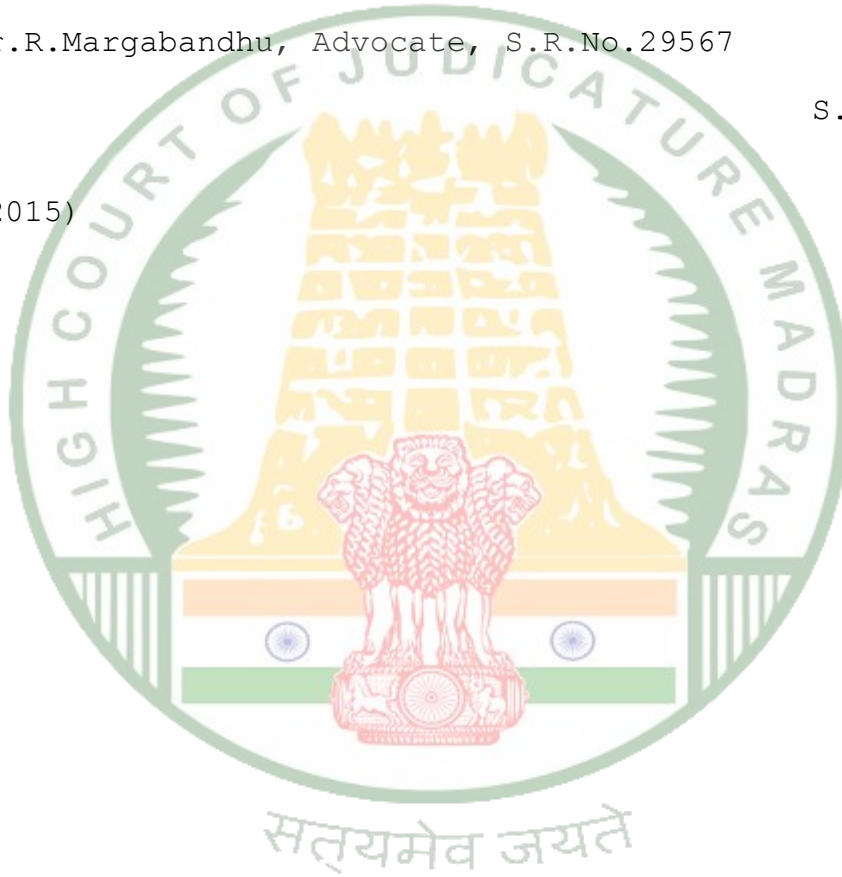
2.The Sub Court,
Vellore.

3.The Record Keeper,
V.R. Section,
High Court, Madras.

+lcc to Mr.R.Margabandhu, Advocate, S.R.No.29567

S.A.No.470 of 2015

CNR(CO)
CA(09/07/2015)



WEB COPY