

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2015

Coram

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

SA.No.872 of 2015

and

MP.No.1 of 2015

Krishnamoorthy (died)

... Plaintiff

1.K.Santha

2.Arumugam

3.Venkatesan

4.Palani Dhandayuthabani

5.S.Narayani

6.Sournavalli

... Appellants/Appellants in AS

.Vs.

Madhavi

... Respondent/Defendant

Prayer : This Second Appeal is filed under Section 100 CPC against the judgment and decree dated 07.08.2014 made in AS.No.65 of 2011 on the file of Principal Sub Judge, Tindivanam confirming the judgment and decree dated 31.10.2011 made in OS.No.520 of 2008 on the file of the Additional District Munsif, Tindivanam.

For Appellants : M/s.R.Sunil Kumar

JUDGMENT

The Plaintiffs have preferred the second appeal, aggrieved by the concurrent findings of the courts below in dismissing the suit filed by them for declaration of three feet lane and for permanent injunction restraining the defendant from using the passage.

2.The lane is three feet on the western side and two feet on the eastern side. According to the plaintiffs, the defendant had encroached one foot in excess of what he is entitled to as per the document and put up the compound wall, making it inconvenient for the plaintiffs to have easy ingress and egress. There is also an earlier suit between the same set of parties. It is admitted case of the plaintiffs that the narrowing down of

the lane happened only in his presence and he had acquiesced to the said act of the defendant. The said fact is also admitted by him in the earlier suit in OS.No.61 of 1989. The present suit came to be filed when the defendant had demolished the old structure and was trying to put up new building. The learned Advocate Commissioner appointed by the Trial Court had also filed his report and plan stating that AB point is only two feet. The claim of the plaintiff is to have uniform width of three feet length from East to West. Even on the date of filing of the suit, the defendant had taken away one foot to his side. But the plaintiffs without asking for restoration or recovery of possession of one foot, filed the suit only for declaration and for permanent injunction, as if the plaintiffs are having three feet at AB point.

3.Both the Courts below have rightly dismissed the suit holding that without the relief for recovery of possession, the claim of the plaintiffs to have three feet land from East to West is not possible. This Court finds no reason to interfere with the said unanimous judgments of the Courts below.

4.In the result, the second appeal is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

tsh

To

1.The Principal Subordinate Judge,
Tindivanam.

2.The Additional District Munsif,
Tindivanam.

+1cc to M/s.R.Sunil Kumar, Advocate, S.R.No.55782

SA.No.872 of 2015

VD(CO)
CA(02/02/2016)