

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.10.2015

Coram

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

SA.No.894 of 2015
and MP.No.1 of 2015

K.Nagaiyah

.. Plaintiff/Appellant

.v.

S.Kumar

.. Defendant/Respondent

Prayer : This Second Appeal is filed under Section 100 CPC against the judgment and decree dated 28.01.2015 made in AS.No.10 of 2014 on the file of Subordinate Judge, Poonamallee confirming the judgment and decree dated 22.04.2013 made in OS.No.248 of 2008 on the file of the Additional District Munsif, Poonamallee.

For Appellant : M/s.R.Kumaravel
For respondent : M/s.M.Chidambaram

JUDGMENT

Heard both sides.

2.Aggrrieved by the concurrent findings of the courts below in dismissing the suit filed by the plaintiff, the present second appeal has been filed by the appellant.

3.The disputed property is an extent of 1 ½ feet passage for which the plaintiff claims his right. The plaintiff claims it under the partition deed dated 01.02.1991, he also claims to have built up pucca structure in the suit property. Though it is contended that there is 1½ feet channel on the passage, it is denied by the defendant who contended that it was left out by him for the purpose of washing and maintenance.

4.The lower appellate court also found that there is no documentary evidence produced by the plaintiff to substantiate his claim for 1½ feet passage. The plaintiff himself had admitted that he had constructed on the entire land without leaving any passage.

5. There is also an earlier suit filed by the defendant in OS.No.1027 of 2005 against the plaintiff/appellant herein. The suit property in the earlier suit is also one and the same. The suit was decreed on 25.07.2008, though the plaintiff herein remained exparte. The present suit is only a counter blast to the earlier suit filed by the defendant.

6. The plaintiff has also not whispered anything about the earlier suit, wherein he had suffered the order of decree. Both the Courts below concurrently found that the plaintiff had not produced any documentary evidence to establish his right or taken any other steps to prove his entitlement for 1½ feet passage by appointing an Advocate Commissioner. The plaintiff had also deliberately suppressed the decree in the earlier suit filed by the defendant. In the absence of any substantial evidence from the plaintiff with respect to his claim over the suit property, both the Courts below had rightly dismissed the suit.

7. This Court finds no reason to interfere with the concurrent findings of the Courts below. Hence, there is no question of law much less substantial questions of law arise for consideration in the given facts.

8. In the result, the second appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Sub Judge, Poonamallee.

The Additional District Munsif, Poonamallee.

+1 cc to Mr.M.chidambaram Advocate sr.57877

+1 cc to M/S.R.Kumaravel Advocate sr.57898

SA.No.894 of 2015.

aa17/11/2015