

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.202 of 2011

and

M.P.No.1 of 2011

1. Rani
2. Sekar
Navaneetham (Deceased)
3. Vedagiri
4. Rajendran
5. K.Uma
6. Panneer Selvam

... Appellants

Vs.

Arumuga Achary

... Respondent

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 03.07.2008 made in A.S.No.15 of 2004 on the file of the learned Additional District Judge cum Fast Track Court I, Poonamallee, confirming the judgment and decree dated 14.07.2003 made in O.S.No.990 of 1996 on the file of the District Munsif Court, Poonamallee.

For Appellants : Mr.K.Murali Krishnan
for M/s.Sai, Bharath and Ilan

For Respondents: Mr.M.Muruganantham
for Mr.V.Raghavachari

J U D G M E N T

The unsuccessful defendants before the Courts below in a suit for permanent injunction filed by the plaintiff have filed the above Second Appeal. The plaintiff claims that he owns the suit property measuring 25 feet East-West and 130 feet North-South, which is based on the sale deed under Exhibit A-1 and he claims to be in the possession and enjoyment of the same from the date of purchase. The defendants' property is situated on the Eastern side of the plaintiff's property, which measures 22 feet East-West and 130 feet North-South. The plaintiff tried to put up a compound wall on the Eastern side, which was disturbed by the defendants. Hence, the plaintiff has filed the

2. The defendants who are the appellants herein, denied all the allegations set out in the plaint and claimed that the plaintiff has encroached an extent of 6 feet into their land and was trying to put up the compound wall. Hence, the defendants prayed for dismissal of the suit.

3. Before the trial Court, the plaintiff examined himself as PW.1 and one more witness viz., Dharuman as P.W.2 and Exs.A1 to A4 were marked. On the side of the defendants, first defendant was examined as DW.1 and one more witness viz., Vedagiri Achari was examined as DW.2 and Exs.B1 to B5 were marked. Apart from these documents, Exs.C-1 to C-6 were marked as Court documents.

4. Both the Courts below concurrently held that the respondent/plaintiff has proved his possession and the act of disturbance by the defendants, and decreed the suit. Aggrieved by the same, the above Second Appeal has been filed by the defendants.

5. At the time of admission of this Second Appeal on 07.02.2012, the following substantial questions of law were formulated for consideration:-

1. "Whether order of injunction can be granted to an encroacher?
2. Whether injunction can be granted against true and lawful owner of the property? and
3. Whether the onus is on the defendants to prove the encroachment?."

6. The only question that has to be decided in this Second Appeal is as to whether the plaintiff has encroached the property of the defendants of an extent of 6 feet and put up a compound wall.

7. It is seen from the records that at the instance of the plaintiff, learned Advocate Commissioners were appointed and reports and sketch have been filed by them. It is admitted by D.W.1 that the plaintiff has been in possession of the property. It is also admitted that there was a compound wall even before filing of the suit. When the plaintiff tried to complete the compound wall on the Eastern side of his property, the defendants disturbed the plaintiff from proceeding with the same. The defendants have not constructed any compound wall around their property. While so, the Courts below held that the act of the defendants in disturbing the plaintiff from putting up a compound wall to safeguard his property is illegal. It is also held by the Courts below that the plaintiff has put up construction only in his property and there is no construction into the defendants' property, as alleged by the defendants. In view of the above findings rendered by the Courts below, the alleged act of encroachment by the plaintiff is not proved by the defendants. When the encroachment is not proved, the plaintiff is entitled to an order of injunction to complete the construction by putting up the compound wall. The plaintiff has also produced his title deed to show his possession of the property and also the existence of the compound wall in the property. As the plaintiff has established his case by proving the act of disturbance by the defendants, he is wrong to contend that the burden was shifted on the defendants to prove their case. In fact, the defendants have not filed

any document to establish their title or rebut the contention of the plaintiff that they have disturbed his possession.

8. In the result, the Second Appeal is dismissed by confirming the judgment and decree dated 03.07.2008 passed in A.S.No.15 of 2004 on the file of the Additional District Judge cum Fast Track Court I, Poonamallee, confirming the judgment and decree dated 14.07.2003 passed in O.S.No.990 of 1996 on the file of the District Munsif Court, Poonamallee. However, in the circumstances of the case, there shall be no order as to costs. Consequently, Connected Miscellaneous Petition is closed.

-Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge cum Fast Track Court I, Poonamallee
2. The District Munsif, Poonamallee
3. The Section Officer, V.R. Section, High Court, Madras.

+1 CC to Mr.Sai Bharath & Ilan Advocate. Sr.No.42207

+1 CC to Mr. V.Ragavachari Advocate. Sr.No.42282

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JD 09/10/2015