

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.821 of 2016

Gunavathy

... Appellant/ Plaintiff

vs.

Hussain Sahib

... Respondent/ Defendant

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 17.11.2015 in A.S.No.89 of 2012 on the file of Subordinate Judge, Kanchipuram, confirming the judgment and decree dated 28.07.2011 made in O.S.No.138 of 2008 on the file of District Munsif cum Judicial Magistrate, Uthiramerur.

For Appellant

: Mr.Balachander

for Mrs.K.Bhawatharini

J U D G M E N T

The unsuccessful plaintiff before the Courts below in a suit for mandatory injunction is the appellant. She sought the relief of mandatory injunction against the defendant, who is the respondent herein, to remove the iron gate put up in the suit property. Her case before the Courts below is that the defendant has put up the disputed iron gate in a lane lying in between the property of the plaintiff and the defendant and that the said lane belongs to the plaintiff exclusively, over which, the defendant has no right or title. In other words, the case of the plaintiff is that the defendant has put up the iron gate in the property belonging to the plaintiff. Such claim was disputed and denied by the defendant. The trial Court and Appellate Court, considering the respective pleadings of the parties and the evidence let in by them, dismissed the suit by holding that the plaintiff is not entitled to the relief of mandatory injunction. Challenging such concurrent finding, the present Second Appeal is filed before this Court.

2. Heard the learned counsel for the appellant and perused the materials placed before this Court.

3. It is seen that the plaintiff is seeking for the relief of mandatory injunction by claiming exclusive right over the lane in which the disputed iron gate is put up by the defendant. The defendant is disputing the title of the plaintiff over the lane. When there is a dispute between the parties in respect of the title over the said lane, I am of the view that the present suit filed by the plaintiff seeking for mandatory injunction without seeking for declaratory relief is not maintainable. Both the Courts below rejected the claim of the plaintiff by way of concurrent finding, in which, I do not find any infirmity or irregularity to interfere, as I also find no substantial question of law arises for consideration in this appeal. Accordingly, the Second Appeal fails and the same is dismissed. No costs. However, it is open to the plaintiff to work out her remedy by way of filing a separate suit with appropriate relief in a manner known to law. If any such suit is filed, the same shall be considered and decided on its own merits and in accordance with law.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vsi

To

1. The Subordinate Judge, Kanchipuram.
2. The District Munsif cum Judicial Magistrate, Uthiramerur.

Second Appeal No.821 of 2016

SAI (CO)
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