

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

Second Appeal No.98 of 2016

Rathinam

... Appellant/Plaintiff

Vs.

Dhanabagiam

... Respondent/Defendant

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned Subordinate Judge, Namakkal dated 08.10.2015 made in A.S.No.10 of 2013 thereby confirming the judgment and decree of the learned Principal District Munsif, Namakkal in O.S.No.398 of 2006 dated 11.09.2012.

For Appellant : Mr. T.Dhanyakumar

For Respondent : No Appearance

J U D G M E N T

The appellant as the plaintiff sought the relief of mandatory injunction against the respondent/defendant to remove the East-West brick construction put up by the defendant above the asbestos roof of the plaintiff's premises just above the plaintiff's East-West South wall.

2.It is the case of the plaintiff that the defendant by encroaching upon the plaintiff's property put up the asbestos roof. The suit was resisted by the defendant by opposing the claim of the plaintiff specifically by contending that the plaintiff has put up the wall and extended the asbestos sheet protruding over the defendant's property and therefore, she filed a suit for injunction in O.S.No.94 of 2006 even before the present suit. Thus, it is the contention of the defendant that there is a dispute with regard to the title to the property over which the relief of mandatory injunction sought for by the plaintiff.

3.The trial court as well as the Appellate court by pointing out the self contradictory statement made by the plaintiff with regard to the disputed construction, observed that without filing a suit for declaration, mere filing suit for mandatory injunction does not arise.

4.A careful perusal of the reasoning rendered by the courts below would show that the plaintiff was not justified in filing the suit for mandatory injunction alone especially when the defendant has filed an earlier suit for injunction by claiming right over the disputed property. Therefore, I find no substantial question of law arising for consideration even to entertain the present second appeal. Accordingly, the second appeal fails and the same is dismissed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1.The Subordinate Judge,
Namakkal.

2.The Principal District Munsif,
Namakkal.

+1 cc to Mr.T.Dhanyakumar, advocate,SR.31498.

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