

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 30.11.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR**S.A(MD)No.83 of 2013****and****M.P. (MD) No.1 of 2013**

Dhanalakshmi Ammal

... Appellant/Appellant/Defendant

-Vs-

Veeraputhiran

...Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 28.09.2011 passed in A.S.No.117 of 2008 by the Sub Court, Thoothukudi confirming the Judgment and Decree dated 09.08.2008 passed in O.S.No.485 of 2007 by the Principal District Munsif, Thoothukudi.

For Appellant : Mr.G.Prabhu Rajadurai

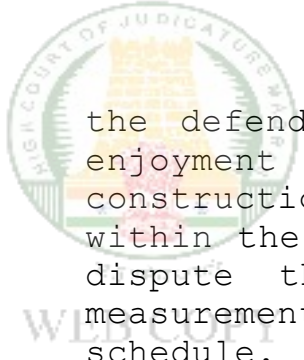
For Respondent : Mr.S.Muthalraj

JUDGMENT

The defendant in the suit in O.S.No.485 of 2007 on the file of the Principal District Munsif Court, Thoothukudi, is the appellant in this Second Appeal.

2.The case of the respondent as plaintiff in the suit are as follows:

2.1.The suit property which is referred to in the plaint plan as "ABCDFGA" belong to the plaintiff under two sale deeds dated 18.06.1987. The portion which is shown as "CD" is a common wall belongs to the plaintiff and one Kaliappa Nadar who is having his property on the eastern side of the suit property. The wall which is shown as "BE" in the plaint plan is the exclusive wall of the plaintiff. There are three windows and sunshades which were fixed in the mother wall of the plaintiff. On the western side of the suit first schedule, the plaintiff has constructed a compound wall which is also shown as "FG" in the plaint plan. The plaintiff is entitled to the small portion measuring an extent of 1¼ feet x 60 feet which lies on the western side of the "BE" mother wall as shown in the plaint plan. Hence, the plaintiff is entitled to a declaration of title in respect of the plaint second schedule and for consequential permanent injunction restraining



the defendant from interfering with his peaceful possession and enjoyment of the suit property. The suit is also for removal of construction put up by the defendant from the suit second schedule within the portion shown as "AB" in the plaint plan. There is no dispute that the plaintiff has purchased the property with measurements tallying with the plaint description of the first schedule. The second schedule is only a small portion on the western side of the suit property which extends only upto 60 feet from the north. According to him, this small portion shown as second schedule in the property is part of the property conveyed under the sale deeds which are marked as Ex.A1 and A2. According to the plaintiff, the suit second schedule is required for maintaining the mother wall of the plaintiff's house which is shown as "BE" in the plaint plan.

3.The suit was contested by the defendant disputing the title of the plaintiff over the suit second schedule property. It was the contention of the defendant that the defendant is using only the suit property for the purpose of maintaining her western wall and for whitewashing her western wall. The defendant also filed an additional written statement stating that the relief of mandatory injunction is barred by limitation as the construction was put up even in 1999 and the suit was filed only in 2006. The defendant in the additional written statement disputed the measurements given by the plaintiff in the plaint and the plaintiff was put to strict proof of the averments with regard to the measurement that was shown in the plaint for the suit second schedule.

4.The trial Court decreed the suit as prayed for and the defendant filed an appeal in A.S.No.117 of 2008 on the file of the Sub Court, Thoothukudi. The appellate Court also fell in line with the trial Court and dismissed the appeal. Aggrieved by the concurrent judgments of the Courts below, the above Second Appeal has been filed by the defendant.

5.At the time of admitting the Second Appeal, the following substantial questions of law have been framed by this Court:

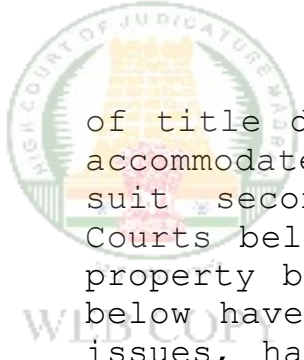
(1) Whether the Courts below are correct in law in granting a decree declaring the plaintiff's title to the suit second schedule property merely on the strength of Exs.A1 and A2, the title documents in which admittedly the defendant is not a party?

(2) Whether the Courts below are correct in law in overlooking the fact that plaintiff failed to prove his case by not taking any steps to measure the suit property on ground with the help of the surveyor?

<https://hcservices.ecourts.gov.in/hcserv/cs/> (3) Whether the Courts below are correct in law in their observation that the defendant had not proved her title of the suit property overlooking the title

document Ex.P2 under which the plaintiff purchased his property?

6. The plaintiff has produced the plaint plan as an annexure to the plaint. Though the plan attached to the plaint was described as a false one in the written statement, the defendant has not let in any evidence about the wall or as to the non-existence of suit second schedule as part of the first schedule. It is only the case of the defendant that the suit property is enjoyed by the defendant for the purpose of maintaining her exclusive wall on the western side of the suit property. In such circumstances, the following aspects would clearly show that the plaintiff's claim is probable. As per the plaint plan, the suit property excluding the disputed area is narrower on the northern side and wider on the southern side. The suit property has been purchased under two different documents namely Ex.A1 and Ex.A2 dated 18.06.1987. The measurement of the suit property as described in the plaint plan is found to be tallying with the title deeds of plaintiff. The plaintiff's property is covered by a compound wall which is shown as "GF" in the plaint plan. It is also admitted that there was no wall between A and G as shown in the plaint plan. In other words, the defendant has no permanent construction on the western side of the suit property on the boundary line of the plaintiff's property. "BE" portion as found in the plaint plan refers to the mother wall of the plaintiff's on the western side of his house. Hence, the contention of the defendant that it is a common wall between the plaintiff and defendant cannot be true. The contention of the defendant that she has been using the suit second schedule exclusively for the purpose of maintaining her exclusive wall on the eastern side of her house cannot be accepted unless the defendant has produced her documents of title and establish her case. Despite the fact that the plaintiff has produced his title deeds and given evidence, the defendant has not produced any document to prove her title to the suit property. However, the document namely the sale deed dated 28.08.1998 obtained by the defendant was marked as Ex.B2 through the defendant at the appellate stage. The trial Court has given a specific finding that the plaintiff proved title to the suit property and that the defendant has not let in evidence to show that she had acquired the property including the suit property. The appellate Court considered the document Ex.B2 and found that the "ABEG" portion as per the plaint plan belong to the plaintiff. As a matter of fact, the appellate Court has found that the appellant has admitted the title of the plaintiff in respect of "ABEG" portion as per the plaint plan. The document produced by the defendant under Ex.B2 shows that the defendant had purchased an extent of $24\frac{1}{2}$ feet x $23\frac{3}{4}$ feet. After considering the measurements found in the document Ex.B2 and the sketch that was produced along with the plaint, the Court came to the conclusion that the defendant has not proved her case of title in respect of the suit second schedule. Having regard to the measurements given in the documents



of title deed even the appellate Court was not in a position to accommodate the property purchased by the defendant within the suit second schedule. In such circumstances, the findings of the Courts below on the questions of title and enjoyment of the suit property by the plaintiff cannot be interfered with. The Courts below have analysed the evidence and after framing the necessary issues, have decided in favour of the respondent considering the documents by both sides. The reasonings of the Courts below to give a finding in favour of the respondent regarding his title and enjoyment are convincing and supported by materials. In such circumstances, the questions of law framed by this Court are answered against the appellant and the Second Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1.The Sub Court, Thoothukudi.

2.The Principal District Munsif, Thoothukudi.

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate, SR No.74831

+1 CC to Mr.MUTHALRAJ, Advocate, SR No.74394

S.A(MD)No.83 of 2013

30.11.2016

SRM

SH/RR-ME:24.01.2017:4P/5C