

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.10.2017**

CORAM

THE HONOURABLE MS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.425 of 2017
and
C.M.P.No.10437 of 2017

1. Perumal
2.P.Ganesh Babu
3.Lakshmi

Appellants

vs.

Sarasu

Respondent

Second Appeal filed under Section 100 C.P.C. against the Judgement and Decree of the learned Principal Subordinate Judge of Cuddalore dated 08.02.2016 and passed in A.S.No.58 of 2016 confirming the Judgment and Decree of the learned Additional District Munsif Court, Cuddalore dated 28.07.2016 and passed in O.S.No.186 of 2012.

For Appellants : Mr.Gururaj

JUDGMENT

The unsuccessful defendant having lost before the Courts below has preferred the above Second Appeal.

2. The Plaintiff has filed a suit for declaration of title to the suit 'B' Schedule property, for mandatory injunction directing the defendants to remove the unauthorised encroachment by projecting sun shade into 'B' schedule property and for permanent injunction restraining the defendants from putting up the construction in the schedule property.

3. The case of the Plaintiff is that 'B' Schedule property is a part of 'A' Schedule property, which belonged to one Muthal Masthiri as per Natham Patta dated 27.06.1995. After his death, his daughter sold the 'A' schedule property to the Plaintiff as per Ex.A3 dated 31.07.2002. Thereafter, the Plaintiff claimed to have put up a structure leaving 3 feet space in the southern side as the backyard of the house. The said Schedule is shown as 'B' Schedule property. The Plaintiff obtained patta on 17.04.2008. The defendants have been causing disturbances to the Plaintiff by projecting the sun shades into the Plaintiff's property. The Plaintiff has given a police complaint and the entire suit properties were also measured twice in the years 1995 and 2009 by competent authorities. As the Plaintiff is the owner of the entire 'A' and 'B' schedule property, the suit has been filed.

2. Resisting the suit, the defendants had contended that measurements of the suit schedule properties, as mentioned by the Plaintiff are not correct. The property measures east-west 23 feet x north-south 36 feet = 828 sq.ft. and when the defendants purchased the property it was a vacant site. According to the defendants, the Plaintiff is entitled to only 36 feet.

3. The Courts below on the above said pleading after consideration of the oral and documentary evidence decreed the suit in favour of the Plaintiff. Aggrieved by the same, the above appeal has been filed.

4. In order to prove the case, the Plaintiff had taken out an application for appointment of Commissioner and report has also been filed. The Plaintiff's house is on the north and the defendant's house is on the south. The claim of the Plaintiff is that he had left space of 3 feet between the house. Ex.A1-Patta Specifies the North-South measurement as 41.6 feet and 42 feet as East West. The report of the Commissioner also shows that further North of the Plaintiff's property, there is a road and the Plaintiff cannot encroach on the road. The measurement from the road of the defendant's property is North-

South - 41.6 feet and East-West 42 feet. The Commissioner also stated that there is no encroachment by the Plaintiff on the northern side. However, on the southern side, this defendant had encroached upon by projecting the sunshade over the property. After considering the objections filed by the defendant, the Lower Appellate Court also found that there is discrepancy in the report of the Commissioner. The Commissioner has found that the measurement of three feet North-South form part of the 'B' Schedule property is included in the total length of 42 feet. If the said 'B' schedule property is left out, then there would be a short fall in the measurement of the Plaintiff's property.

5. The learned counsel for the defendant contended that there was a admission by P.W.1 that the sunshade is without the boundaries of the defendant. However, the case of the Plaintiff throughout is that there is a encroachment by the defendant and the cause of action itself is that the defendant had removed the survey stones of the southern boundary of A schedule property and also encroached upon the 'B' schedule property by projecting the sunshades. The single sentence in the evidence cannot be taken as a whole evidence and therefore the Lower Appellate Court rejected the objections raised by the

defendants. The defendants have also not established better title over the suit property better than the Plaintiff. The defendants having failed to substantiate that they are only in possession of the property, as per Exs.B1 and B2, cannot claim that they are the owners of the 'B' schedule property and that there is no encroachment by them. On the other hand, the Plaintiff/respondent has categorically proved his title and measurement of the properties as per Exs.A1 and A3 which is also supported by the report of the Commissioner.

6. From the above finding, there is no substantial question of law arising for consideration. Hence, this Second Appeal stands dismissed.

23.10.2017

Index: Yes/No

Internet:Yes/No

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To

1. The Subordinate Judge,Cuddalore
2. The Additional District Munsif Court, Cuddalore

PUSHPA SATHYANARAYANA,J

arr



Pre-delivery Judgment
in

S.A.No.425 of 2017

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23.10.2017

PRE-DELIVERY JUDGMENT IN

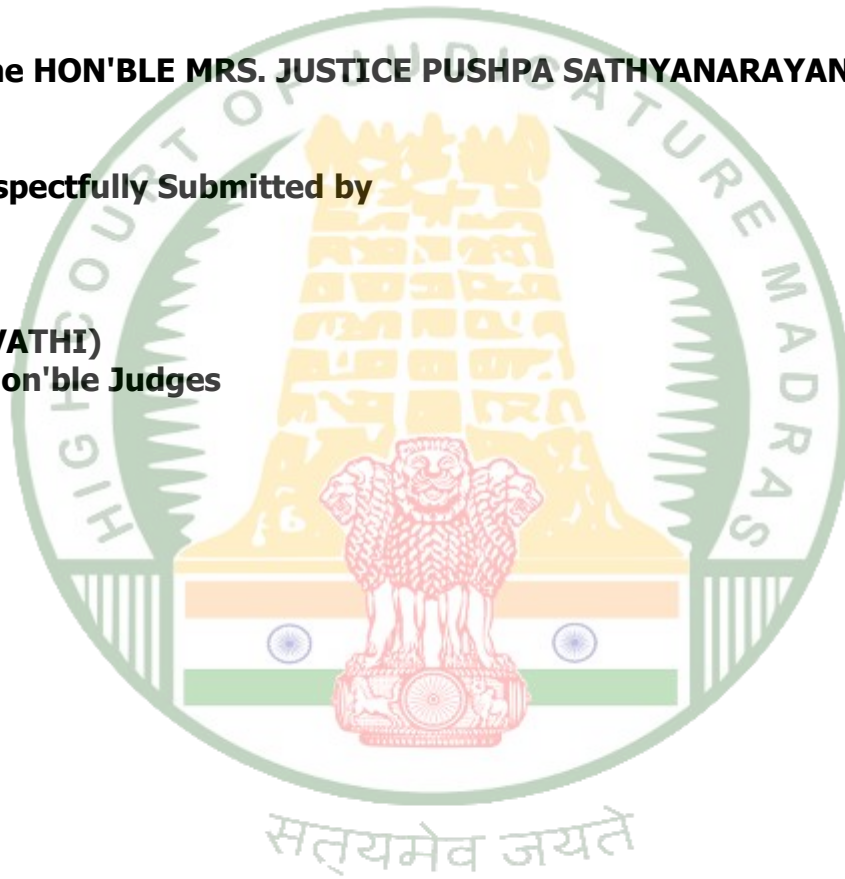
S.A.No.425 of 2017

To

The HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

Most Respectfully Submitted by

**(A.R.REVATHI)
P.A. to Hon'ble Judges**



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