

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:01.08.2017

Coram

The Honourable Dr.Justice G.JAYACHANDRAN

Second Appeal No.553 of 2000

Durairaj .. Appellant/Respondent/Defendant

/versus/

Sambandam ... Respondent/Appellant/Plaintiff

Prayer: Second Appeal is filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 29.01.1999 passed in A.S.No.131 of 1998 on the file of the Principal Sub Court, Mailaduthurai reversing the judgment and decree dated 25.09.1998 passed in O.S.No.372 of 1996 on the file of District Munsif Court, Mailaduthurai.

For Appellant :Mr.Mohamed Rafi

For Respondent :Mr.S.Sounther

J U D G M E N T

This appeal is arising out of reversing judgment wherein, the case of the plaintiff though is not accepted by the trial Court, found in his favour by the lower appellate Court.

2. The case of the plaintiff, who is the respondent herein is that by Ex.A1, the suit property under S.No.208/4 measuring to an extent of 4 cents is owned by him. The appellant herein, who is the owner of the adjacent land on the southern side, attempted to cut the fence and encroached upon the land. Hence, the suit for injunction was resorted to.

3. The specific contention of the appellant/defendant in his written statement was that the plaintiff is not entitled for 4 cents but, only entitled for 3 cents and therefore, he cannot seek for injunction in respect of 4 cents of land as found in the suit schedule. However, after appreciating the title deeds of the plaintiff as well as the defendant, which were marked as Ex.A1 and B1 respectively, the lower appellate Court has rightly arrived at a conclusion that the title deed of the plaintiff has specifically described the property with its survey number and extent whereas, the title deed relied by the defendant, there is an ambiguity in the measurement of 11 ½ kuzhi which is described as equivalent to two cents. However, it is an admitted fact that the entire measurement under S.No.208/4 is 7.41 cents. While so, the case of the plaintiff is that under Ex.A1, they were entitled for 4

cents, the remaining 3.41 cents alone could have been purchased by the defendant under Ex.B1. Since there is an ambiguity in the measurement shown in the title deed, the defendant cannot take advantage of the defect in his title deed and reduce the entitlement of the plaintiff, which is borne out of the record.

4. Therefore, the contention of the appellant that the lower appellate Court failed to appreciate the sale deed-Ex.B1 is not correct and it is also incorrect to say that the lower appellate Court has shifted the burden of proof on the defendant. It is only after proper appreciation of Ex.A1, the lower appellate Court has found that the title deed relied by the appellant herein does not describe the measurement of the property properly and the ambiguity in the extent makes the case of the defendant doubtful. Furthermore, the lower appellate Court has relied upon the admission of the defendant, in his testimony before the Court, where he has specifically admitted that the four cents of land under S.No.208/4 belongs to the plaintiff and he is aware of the four boundaries of the said property. While so, when the plaintiff has proved his case beyond doubt that he is the title holder of four cents of land, the defendant, who is the adjacent land owner cannot try to encroach upon the plaintiff's land, taking advantage of mis-description of the measurement in his title deeds.

5. Hence, this Court finds no ground to interfere with the judgment of the lower appellate Court and also finds that lower appellate Court has not shifted the burden of proof on the defendant, but on a positive evidence let in by the plaintiff, has held in favour of the plaintiff.

6. Under Section 31 of the Indian Evidence Act, 1872, the admission made by the party is not conclusive proof, but it will operate as estoppel. Therefore, the very admission of the defendant on oath is suffice to grant the relief sought for by the plaintiff. Therefore, this Court finds that there is no error in the judgment passed by the lower appellate Court to interfere with.

7. In the result, this second appeal is dismissed. The judgment and decree of the lower appellate Court viz., The Principal Sub Court, Mailaduthurai in A.S.No.131 of 1998 dated 29.01.1999 are restored. The judgment and decree of the trial Court viz., District Munsif Court, Mailaduthurai in O.S.No.372 of 1996 dated 25.09.1998 are set aside. No costs.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sub Judge,  
Mailaduthurai.

2.The District Munsif,  
Mailaduthurai.

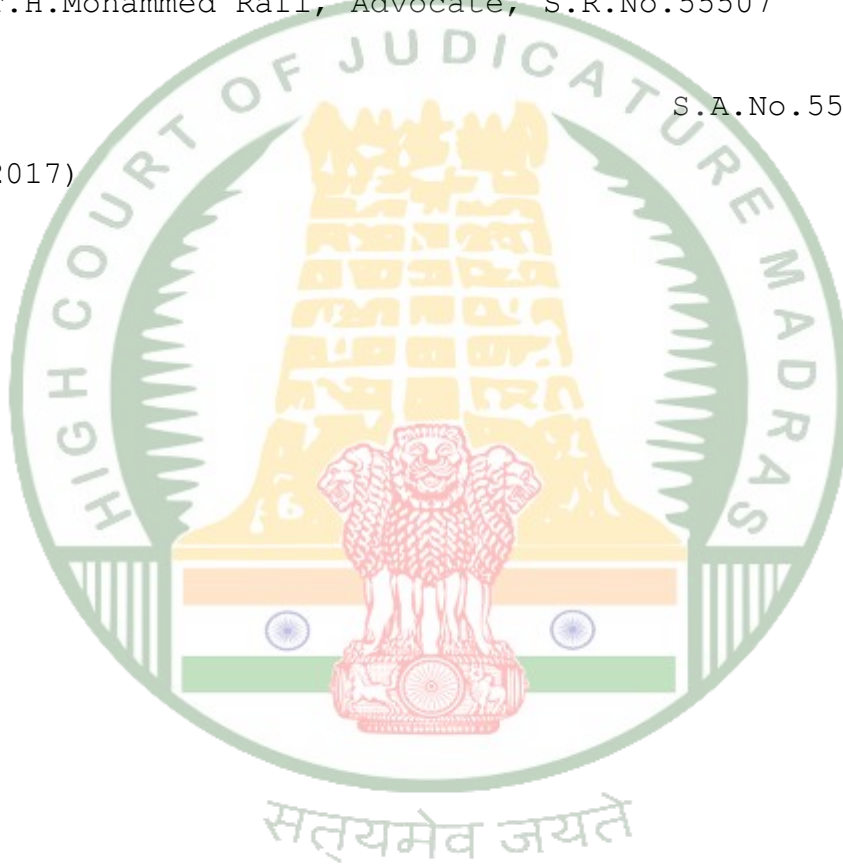
3.The Section Officer,  
VR Section, High Court, Madras.

+1cc to Mr.S.Sounthar, Advocate, S.R.No.54820

+1cc to Mr.H.Mohammed Rafi, Advocate, S.R.No.55507

S.A.No.553 of 2000

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