



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2017

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.(MD)No.657 of 2014
and
M.P.(MD).No.2 of 2014

Gomathiammal

....Appellant/Appellant
/Plaintiff

Vs.

Chellappa

.

....Respondent/ Respondent /Defendant

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, against the Judgement and Decree, dated 12.08.2008, made in A.S.No.80 of 2006 on the file of the Subordinate Court, Sankarankovil, confirming the Judgement and Decree of the District Munsif Court, Sankarankovil, in O.S.No. 55 of 2005, dated 14.02.2006.

For appellant : Mr.P.Senthurpandian

For respondent : Mr.F.X.Eugene

JUDGMENT

The non-suited plaintiff before the Courts below has preferred the above appeal, challenging the Judgment and Decree refusing to grant the relief of declaration, recovery of possession and mandatory injunction.

2.According to the plaintiff, the suit property originally belonged to one Pooranathammal and she had sold the same under Ex.A1 to the plaintiff's father. The said property was gifted to the plaintiff by her father on 11.12.1995 under Ex.A2 and since then, the plaintiff has been in possession and enjoyment of the property. On the western side of the plaintiff's property, there is a small lane, measuring east-west 2-1/2 feet and north-south 36 feet, which is a 2nd Schedule property as per plaint and part of the 1st Schedule property. The plaintiff claimed that the said portion exclusively belonging to her and the defendant has no right over the same. As the defendant was attempting to encroach on the south-west end, the suit had been filed by the plaintiff for the above said reliefs.



3.The suit was resisted by the defendant stating that he had purchased two cents on the southern end in Survey No.15/10 through a registered sale deed, dated 24.04.1995. It is his case that both the plaintiff and the defendant had constructed their respective buildings leaving 1-1/2 feet each in between their houses. The plaintiff and the defendant had put up three windows on the north-south walls and they also put up rain water discharge pipes in the said lane. There is no merit in the plaintiff's case. Thus, the defendant had sought for dismissal of the suit.

4.Before the trial Court, on the side of the plaintiff, the plaintiff herself was examined as PW1 and one Mariappan was examined as P.W.2 and Exs.A1 to A5 were marked. On the side of the defendant, the defendant himself was examined as DW1 and another witness was examined as DW2 and Exs.B.1 to B.12 were marked. The Advocate Commissioner's report and plan and the surveyor plan were marked as Ex.C1 to C3 respectively.

5.After consideration of oral and documentary evidence, the Courts below have concurrently held that the plaintiff has not proved her case, and thus, dismissed the suit. Aggrieved by the same, the above appeal has been filed by the plaintiff.

6.At the time of admission, only notice was ordered to the respondent.

7.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

8. It is not in dispute that the plaintiff's father had purchased the first schedule property under Ex.A1 and the same was gifted to the plaintiff under Ex.A2. The southern boundary in the said document is shown as Pooranathammal lane. The defendant had also produced Ex.B2 in which it is stated that in the western boundary, there is a south-north pathway. The said pathway has been mentioned only in the parent document of both the plaintiff and the defendant. Whereas, in the subsequent documents, the said pathway is not mentioned.

9.In the suit, an Advocate Commissioner was appointed by the Trial Court. A perusal of the Commissioner Report would go to show that there is nothing mentioned about the alleged new construction by the defendant in the plaint 2nd schedule property. In the Commissioner Report, it is clearly stated that there is a lane measuring one metre, which is lying in between the eastern wall of the defendant and western wall of the plaintiff. It is also mentioned in the report about two windows which has been put up in the western wall of the plaintiff and two windows on the eastern wall of the defendant. It is further mentioned in the report that the drainage pipes run through the said lane. On going by the



statements of the parties along with the report of the Commissioner, it is clear that the north-south portion has been used as a common lane by both the plaintiff and the defendant, and maintained as a common lane only.

10. If it is the case of the plaintiff that the defendant had encroached upon his portion of the property, the entire property should have been measured to find out the exact measurement of the encroachment done by the defendant. Whereas no steps have been taken by the plaintiff nor she had objected to the report of the Commissioner. Excepting the title deeds viz., Exs.A1 and A2 and also Tax Receipt, no document has been filed by the plaintiff to show that there is encroachment on the south end of the suit property which marked as A,E,F and G in the plaint plan.

11. In the absence of any evidence or any question of law arising for consideration, in the above said of facts, this Second appeal is liable to be dismissed.

12. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the Courts below. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub-Assistant Registrar

To

1. The Subordinate Judge, Sankarankovil.
2. The District Munsif, Sankarankovil.

Copy to:- The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.P.Senthurpandian, Advocate, SR.No.77265
+One cc to M/s.F.X.Eugene, Advocate, SR.No.76901

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