



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2017

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CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

S.A.(MD)No.35 of 2017

and

C.M.P.(MD)No.829 of 2017

1.Lawrance

2.Vincent

.. Appellants/Respondents 1&2/
Defendants 2 & 5

Vs.

Anushammal

.. Respondent/Appellant/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 11.06.2004 made in A.S.No.39 of 2001, on the file of the Subordinate Court, Padmanabhapuram, modifying the judgment and decree dated 29.07.1999 in O.S.No.784 of 1993, on the file of the Additional District Munsif Court, Padmanabhapuram.

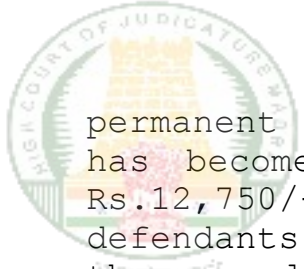
For Appellants : Mr.T.Arul

JUDGMENT

Challenging the judgment and decree passed in A.S.No.39 of 2001, on the file of the Subordinate Court, Padmanabhapuram, modifying the judgment and decree passed in O.S.No.784 of 1993, on the file of the Additional District Munsif Court, Padmanabhapuram, the defendants 2 and 5 have filed the above Second Appeal.

2. The plaintiff filed the suit in O.S.No.784 of 1993 for permanent injunction, mandatory injunction and for damages of Rs.12,750/-. The suit was contested by the defendants and the trial Court by its judgment and decree dated 29.07.1999 decreed the suit in respect of the permanent injunction and mandatory injunction and dismissed the suit for damages. Aggrieved over the judgment and decree of the trial Court, the plaintiff preferred an appeal in A.S.No.39 of 2001, challenging the dismissal of the suit with regard to the claim of damages of Rs.12,750/-.

3. It is pertinent to note that the defendants have not challenged the decree passed by the trial Court with regard to the



permanent injunction and mandatory injunction. Hence, the same has become final. So far as the payment of compensation of Rs.12,750/- is concerned, the plaintiff averred that the defendants 2 and 5 demolished the compound wall and therefore, they are liable to pay the sum of Rs.12,750/- as damages. Exs.A.6 and A.7 would also establish that a complaint was lodged with the police against the defendants 2 and 5 with regard to the demolition of compound wall. Since the plaintiff had established that the defendants 2 and 5 have demolished the compound wall, the lower Appellate Court rightly came to the conclusion that the defendants 2 and 5 are liable to pay a sum of Rs.12,750/- together with interest at the rate of 12% p.a. as damages to the plaintiff.

4. Though the lower Appellate Court modified the judgment and decree of the trial Court by its judgment dated 11.06.2004 and the Second Appeal was filed before this Court as early as on 19-April-2005, the appellants/defendants 2 and 5 got the Second Appeal numbered only in the year 2017 and the Second Appeal is being listed for admission today. Since the lower Appellate Court has rightly decreed the suit for a sum of Rs.12,750/- based on the oral and documentary evidences, I do not find any reason to interfere with the judgment and decree of the lower Appellate Court.

5. In these circumstances, I do not find any ground much less any substantial question of law to interfere with the judgment and decree of the lower Appellate Court. The Second Appeal is liable to be dismissed. Accordingly, the same is dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub Assistant Registrar

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To

1. The Subordinate Judge, Padmanabhapuram.
2. The Additional District Munsif ,
Padmanabhapuram.

JAM/09.02.17/CM-MSA/ 2p-3c

S.A. (MD) No.35 of 2017
31.01.2017