

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Second Appeal No.266 of 2018
and C.M.P.No.6732 of 2018

M.Padmavathi

... Appellant/Plaintiff

Vs.

Janakiraman

... Respondent/Defendant

PRAYER:- Second Appeal has been filed under Section 100 of C.P.C against the judgment and decree dated 09.12.2016 made in A.S.No.37 of 2010 on the file of the Subordinate Court, Kanchipuram, confirming the judgment and decree dated 01.04.2010 made in O.S.No.1028 of 1993 on the file of the Additional District Munsif, Kanchipuram.

For Appellant : Mr.I.Abrar MD Abdullah

J U D G M E N T

This Second Appeal has been filed to set aside the judgment and decree dated 09.12.2016 made in A.S.No.37 of 2010 on the file of the Subordinate Court, Kanchipuram, confirming the judgment and decree dated 01.04.2010 made in O.S.No.1028 of 1993 on the file of the Additional District Munsif, Kanchipuram.

2.The appellant is plaintiff who lost in both the Courts below against the respondent/defendant. The appellant filed O.S.No.1028 of 1993 for declaration that she is absolute owner of the suit property and for permanent injunction restraining the respondent from interfering with her peaceful possession and enjoyment of the suit property by putting up any construction or doing any act inside the suit property. The suit property originally belonged to one Chinnappan and others. The appellant purchased the suit property by the sale deed dated 01.02.1984 for valuable consideration of Rs.5,000/-. From the date of purchase, she is in possession and enjoyment of the suit property. After purchase, she put up a thatched brick house on the western side of the suit, to an extent of 36 x 9 feet. Subsequently, on the east of her thatched construction, she constructed a storied building to an extent of 16 feet x 45 feet by encroaching the portion in the channel poromboke on the

southern side. The appellant left 1.2 feet on the northern side, 4.2 feet on the southern side, to a length of 48 feet on the eastern side and 45 feet on the western side described as ABCD in plaint plan. The respondent attempted to trespass the suit property and tried to forcefully enter into the open space left by the respondent. The respondent also stored bricks, sand, etc., and threatened the appellant to put up construction. Hence she filed the suit.

3.The respondent filed written statement and denied all the averments and contended that the Plot No.26 was assigned by the Government to one Chinnappan, who was the last grade employee in the Collectorate of Chengalpattu on condition that he should not alienate to any third party within 12 years from the date of allotment. According to the appellant, she purchased the property in the year 1984, within 12 years from the date of assignment and the sale deed is invalid. The Plot allotted to Chinnappan is Plot No.26 measuring 55 links on the north i.e., 36 feet and 54 links i.e., 35.25 feet on the south. The appellant constructed building in the entire land without leaving any open space. The respondent, also a last grade Government employee was allotted Plot No.27, measuring an extent of 66 links i.e., 44 feet on the north and 64 links i.e., 42 feet on the south. The appellant constructed house, leaving 3 feet open space. The sun shade put up by the appellant is protruding to the respondent's property in the first floor. The appellant has not constructed any sun shade in the ground floor. The appellant is not owner of ABCD portion. The respondent is absolute owner and the respondent is in possession and enjoyment of ABCD portion. The appellant has no title over the said portion and prayed for dismissal of the suit.

4.Based on the pleadings, the learned Trial Judge framed necessary issues. The learned Trial Judge considering the pleadings, oral and documentary evidence and judgments, held that appellant failed to file approved plan and patta and also failed to prove her case and dismissed the suit, holding that appellant failed to prove that she left open space and held that she is not entitled for any declaration as prayed for.

5.Against the said judgment and decree dated 01.04.2010 made in O.S.No.1028 of 1993, the appellant filed First Appeal, A.S.No.37 of 2010. The learned First Appellate Judge framed necessary points for consideration. In the appeal before the learned First Appellate Judge, the learned counsel for the appellant contended that Trial Court failed to consider the report of the Advocate Commissioner even though the same was marked as Exs.C1 and C2. The appellant filed application I.A.No.1234 of 1993 for appointment of an Advocate Commissioner. The learned First Appellate Court dismissed the said application. The appellant filed C.R.P(NPD).No.2183 of 2013.

This Court by the order dated 05.09.2013, dismissed the said Civil Revision Petition and directed the learned First Appellate Court to consider the Advocate Commissioner's report. The learned First Appellate Judge took note of the fact that appellant filed I.A.No.14 of 1997 to remit the warrant of commission and in the said application, Mr.N.Raghavan, Advocate was appointed as Advocate Commissioner and on his appointment, by the order dated 09.04.1997, earlier Commissioner's report was scrapped. Mr.N.Raghavan, Advocate Commissioner filed a memo stating that the appellant did not cooperate with the Advocate Commissioner to execute the warrant of commission.

6.The learned First Appellate Judge held that there is no such report of the Advocate Commissioner on record. The learned First Appellate Judge considering the pleadings, oral and documentary evidence and judgment of the Trial Court, dismissed the appeal, confirming the judgment of the Trial Court.

7.Against the judgment and decree dated 09.12.2016 made in A.S.No.37 of 2010, the present Second Appeal is filed by the appellant.

8.The learned counsel for the appellant contended that the learned First Appellate Judge failed to frame points for consideration and did not consider the grounds raised by the appellant in the appeal and also did not consider Exs.C1 and C2, the report of the Advocate Commissioner. Without independently considering the materials available on record, the learned First Appellate Judge confirmed the judgment of the Trial Court.

9.Heard the learned counsel for the appellant and perused the materials available on record.

10.The appellant has filed suit for declaration and for injunction. According to the appellant, she left open space on the eastern side of her property and respondent is trying to encroach the appellant's property. The appellant did not produce and mark approved plan, sketch and patta with sketch, inspite of her deposition in the cross examination that she is having the said documents. On the other hand, the respondent produced documents with regard to property, namely approved plan, patta with sketch and proved that he has left three feet open space. From the judgment of the Courts below, it is seen that based on the documents marked, the Courts below came to the conclusion that appellant has not left any open space in the property purchased by her and constructed in the entire property without leaving any open space. The learned First Appellate Judge dismissed the application filed for marking the additional documents on the ground that those documents issued by the Village Administrative Officer are not valid documents. The appellant has not initiated any further proceedings against the

said order and the said order has become final. The Courts below considering the pleadings, oral and documentary evidence and judgment relied on by the learned counsel for the respondent, held that appellant has not proved her case for declaration and injunction.

11.The said findings are concurrent findings of fact. There is no perversity and illegality in the said reasoning. There is no error of law warranting interference by this Court on the concurrent findings. No Substantial Question of Law arose.

12.In the result, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

gsa

To

1.The Subordinate Judge,
Kanchipuram.

2.The Additional District Munsif,
Kanchipuram.

3.The Section Officer,
V.R. Section,
High Court, Madras.

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KJI (CO)
SP(29/05/2018)

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