

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 19.03.2018****CORAM****THE HONOURABLE MR.JUSTICE M.DHANDAPANI****S.A.No.97 of 1998**

1.Radhakrishnan (died)
 2.R.Jayalakshmi
 3.Ravindran

(Appellants 2 and 3 impleaded as per
 the order of this Court dated 19.03.2018
 made in C.M.P.Nos.2961 to 2963 of 2007
 in S.A.No.97 of 1998)

... Appellants

Vs.

Shahul Hameed

... Respondent

Prayer:

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 04.03.1997 in A.S.No.43 of 1996 on the file of the learned Additional District Judge, Pondicherry at Karaikal confirming the judgment and decree dated 12.04.1996 in O.S.No.296 of 1994 on the file of the learned Principal District Munsif, Karaikal.

For Appellant : Mr.A.Muthukumar
 For Respondent : M/s.S.Rajendran

J U D G M E N T

The first appellant/ plaintiff filed the suit in O.S.No.296 of 1994

for declaration declaring that the plaintiff is the absolute owner of the suit property and for permanent injunction. The lower Court dismissed the suit. Aggrieved by the same, the plaintiff filed appeal before the lower Appellate Court. The lower Appellate Court dismissed the appeal and confirmed the judgment and decree passed by the lower Court. Hence, the plaintiff who lost his case before the Courts below has filed this second appeal.

2.The first appellant herein is the sole plaintiff and the respondent herein is the sole defendant in the suit in O.S.No.296 of 1994. The appellants 2 and 3 being the legal heirs of the first appellant are impleaded in the second appeal. For the sake of convenience, the parties are hereinafter referred to as per their rank in the suit.

3.The sum and substance of the plaint averments are as follows:
The plaintiff is the owner of the large extent of the suit property which was originally held by one Pachaiaammal. The suit property is a wall of the shop which is situated at Thirunallar road having a link with the manai cut and the house annexed to it and it is having its entrance

from the road. The shop is situated at Thirunallar road bearing number 144. Initially the property was leased out to the plaintiff who is running a sweet stall there. The said Western wall is having the breadth of 33 cm and it is running up to the tip of the other end of the manicut of the plaintiff. Infact, the wall was constructed by the predecessor of the plaintiff and the building is aged about 60 years.

4.The plaintiff would further aver that there was a small wall on the Eastern side of the shop of the plaintiff of which the roof of the plaintiff's property is resting. The defendant seems to have purchased the shop and other properties which are lying on the Western side of the suit property and he is arranging to demolish and construct a portion of the property situated on the Western side of his shop. The defendant has managed to create revenue records for the purpose of showing that he is entitled to the Western wall of the plaintiff and he has also attempted to give a complaint to the local police station as against the plaintiff. If the defendant demolishes the Western wall of the shop in the building, the entire building will collapse and irreparable injury will be caused to the plaintiff. Hence, the plaintiff filed the suit.

5.The sum and substance of the written statement filed by the defendant is as follows: According to the defendant, the shop building bearing Nos.146 and 157 originally belonged to one Sheik Ismail. The plaintiff is the owner of the shop bearing nos.146 and 144. Different persons including the defendant had purchased the shop buildings from Sheik Ismail and the shop nos.148, 149 and 146 are exclusively belonging to the defendant and shop no.147 is jointly owned by the defendant and his brother. The respective owners of these shops are also owners of the Eastern walls of their property.

6.The defendant would further contend that the suit wall over which the plaintiff is claiming right is exclusively owned by the defendant herein and the plaintiff has no right or interest over the same and it is not true that the roof of the building is resting on the wall. The defendant started reconstruction and demolition in the suit wall and by the act of the plaintiff the work is kept pending, as a result of which, the defendant is suffering loss day by day. Infact the plaintiff has no title over the suit property and only to give trouble to the defendant, the vexatious suit has been filed by the plaintiff.

7. During trial, the plaintiff examined himself as P.W.1 and marked seven documents as Exhibits. The defendant examined himself as D.W.1 and examined his neighbour one Ramasamy as D.W.2, however no document was marked on the side of the defendant.

8. After elaborate discussions and after framing issues, the lower Court dismissed the suit on the ground that the plaintiff failed to prove his title, as against which, the plaintiff filed appeal before the lower Appellate Court and the lower Appellate Court dismissed the appeal and confirmed the decree passed by the lower Court. As against the concurrent findings of the Courts below, the present second appeal is filed.

9. At the time of admission of the second appeal, this Court framed the following substantial question of law:

"(1) Whether the Courts below erred in law and misdirected themselves in assuming that the suit wall lies within T.S.No.148, when the defendant is entitled to 2.15 meters east-west while he

has been now given an extent of 2.50 meters including the suit wall?"

10. Heard the arguments advanced on either side and perused the materials placed on record.

11. The plaintiff in order to establish his case has marked seven documents as exhibits of which, Ex.A1 is the settlement deed and Ex.A7 is the copy of French document. Perusal of Ex.A7 discloses that the settler has no title over the suit property. When the settler himself do not have title over the suit property, the plaintiff is not entitled to claim title over the suit property. On a perusal of Ex.A1, it is known that there is no reference in respect of the suit wall and even in Ex.A7, there is no reference available with regard to the suit property. Apart from the above, the lower Court has appointed Advocate Commissioner to identify and locate the suit property, however, the Advocate Commissioner filed a report stating that the suit wall is situated in T.S.No.148, whereas, the plaintiff has no title over the said property and the plaintiff's property is situated in T.S.No.149.

12. In view of the above discussions, I do not find any error in the well considered findings of the Courts below. Accordingly, the substantial question of law is answered against the appellants and the second appeal is dismissed.

13. In the result, the second appeal is dismissed. The judgment and decree dated 04.03.1997 in A.S.No.43 of 1996 on the file of the learned Additional District Judge, Pondicherry at Karaikal, is confirmed. No costs.

19.03.2018

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1. The Additional District Judge,
Pondicherry at Karaikal.

2. The Principal District Munsif,
Karaikal.

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M.DHANDAPANI,J.
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