



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2018

CORAM:

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.(MD)No.97 of 2018

P.Jeganathan : Appellant / Appellant / 2nd Plaintiff

-Vs-

1.S.S.Govindan : 1st Respondent / 1st Respondent
/Defendant

2.P.Mariyappan

3.Yasothai

4.Dhanasekara Pandiyan

5.Rajasekara Pandiyan

6.Gunasekara Pandiyan

7.Rajalakshmi : Respondents 3 to 7 / Respondents 3 to 7
/Legal Heirs of 2nd Respondents as 1st Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment passed by the Sub Court, Virudhunagar, in A.S.No.11 of 2013, dated 22.04.2016, by confirming the decree and judgment passed by the District Munsif Court, Virudhunagar, in O.S.No.263 of 2006, dated 09.10.2009.

For Appellant : No Appearance
For R1 : Mr.A.Arumugam
for M/s.Ajmal Associates

JUDGMENT

This second appeal has been preferred by the second plaintiff in the suit in O.S.No.263 of 2006, on the file of the District Munsif Court, Virudhunagar.

2.The appellant and the second respondent as plaintiffs filed the suit in O.S.No.263 of 2006, before the District Munsif Court, Virudhunagar, for declaration of title and for consequential permanent injunction restraining the defendant from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. The suit is also for a mandatory injunction to remove the construction put up by the defendant in the suit property.

3.It is not in dispute that the appellant and the second respondent had earlier filed a suit in O.S.No.281 of 2000, before the District Munsif Court, Virudhunagar, for a permanent injunction



restraining the first respondent herein from interfering with the peaceful possession and enjoyment of the suit pathway. The suit was also for an injunction restraining the defendant from in anyway altering or modifying the common wall by placing any window and also for a mandatory injunction directing the defendant to remove the drainage constructed in the plaintiffs' exclusive pathway. The suit property has been described in O.S.No.281 of 2000, as a common wall in T.S.No.166/19, measuring of 32x1.5 feet. The subject matter of the suit is also a pathway, which lies on the western side of the wall, measuring 3¼ feet of width.

4.The subject matter of the suit in O.S.No.263 of 2006, is also the subject matter of the suit in O.S.No.281 of 2000. It is not in dispute that the suit in O.S.No.281 of 2000, was dismissed by the District Munsif Court, Virudhunagar, by judgment and decree, dated 22.08.2003. Though an appeal was filed by the appellant as against the judgment and decree in O.S.No.281 of 2000, it is represented that the said appeal was also dismissed and hence the judgment and decree in O.S.No.281 of 2000, has become final. It is pointed out that the second suit filed by the same plaintiff / appellant in O.S.No.263 of 2006, is barred under Order 2 Rule 2 of CPC and Section 11 of CPC.

5.From a reading of the plaint in the two suits and the reliefs prayed for in the suits, this Court is able to see that the cause of action for both suits are one and the same and the same is not disputed. Order 2 Rule 2 CPC, bars the second suit, which is filed on the same cause of action. Before the Courts below, the only explanation offered by the plaintiff is that the earlier suit was for bare injunction and that the present suit is not barred as the relief is only for permanent injunction. This is not acceptable, having regard to the settled principles of law. It is submitted that the suit in O.S.No.281 of 2000, was dismissed earlier by holding that the appellant herein has not established the title to the suit property.

6.Going by the facts, this Court is able to see that the plaintiff / appellant herein has come forward with the second suit, even though it is specifically barred under Order 2 Rule 2 of CPC. However, the learned Counsel for the appellant is not present today, despite the matter is posted under the caption "for orders". Earlier the matter was posted on 04.04.2018 and this Court directed the Registry to post the matter "for dismissal" on 06.04.2018, since there was no representation for the appellant. Thereafter, when the matter was posted on 06.04.2018, at the request of Counsel for appellant, this Court directed the Registry to remove the caption and post the matter on 12.04.2018. However, today, there is no representation for the appellant. The conduct of the learned Counsel for the appellant cannot be condoned in view of the delaying tactics. It appears that the appellant is not showing any interest in prosecuting the case, as he is sure about the result. Since, there is no representation for the appellant, this Court has no other option, but to dismiss this petition.



7.As a result, this second appeal is dismissed for non prosecution. However, there is no order as to costs.

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Sd/-

Assistant Registrar (C.O)

Sub-Assistant Registrar

To

1.The Subordinate Judge, Virudhunagar

2.The District Munsif , Virudhunagar

3.The Section Officer, (2 copies)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A.Arumugam , Advocate, SR.No.61118

+1cc to M/s.R.Gowrishankar, Advocate, SR.No.61372

cmr

RL/7C/3P/KK/SAR1/25/4/2018

Judgment made in

S.A. (MD) No.97 of 2018

12.04.2018