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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Second Appeal No.306 of 2019
and
C.M.P.No.4591 of 2019

M.Chandra

... Appellant

Vs.

S.P.Saraswathi

... Respondent

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree of the learned Principal Subordinate Judge, Krishnagiri, dated 31.10.2018 in A.S.No.30 of 2014 confirming the judgment and decree of the learned District Munsif of Krishnagiri dated 31.07.2018 in O.S.No.37 of 2011.

For Appellant : Mr. V.Nicholas

For respondent : No appearance

JUDGEMENT

The defendant, who suffered a decree concurrently before the Courts below, has filed the present Second Appeal.

2. The respondent/plaintiff has filed a suit in O.S.No.37 of 2011 on the file of the District Munsif Court, Krishnagiri, for declaration declaring the title of the plaintiff in respect the "C" schedule property and also for mandatory injunction directing the defendant to remove the illegal compound wall put up in the "C" schedule property.

3. The case of the plaintiff is that he has purchased the "A" schedule property by means of a sale deed dated 18.08.2018. Likewise, the defendant also purchased the "B" schedule property from the same vendor on 15.12.2005. After purchase, the plaintiff has found that the defendant has illegally encroached an extent of 2 feet width and 48 feet length on the Northern portion of the suit "A" schedule property, which is shown as "C" schedule property. In the above circumstances, he has filed the suit for the above said reliefs.



4. The defendant contested the suit stating that the "A" schedule property is measuring 42 feet East West and 36 feet North South. The defendant had purchased the site measuring 42' x 36' with specific boundaries, and when the plaintiff purchased the property subsequently, ought to have measured the property before purchase, and the defendant also denied that he has encroached any property, which belongs to the plaintiff.

5. Pending suit, an Advocate Commissioner was appointed and he measured the property as per the respective sale deeds of the plaintiff and the defendant and filed a report stating that the defendant has encroached the "C" schedule property.

6. The trial Court, after considering the pleadings and evidence and the entire materials available on record, decreed the suit by an judgment dated 31.07.2014. Aggrieved by the same, the defendant filed an appeal on the file of the Principal Sub Court, Krishnagiri. The First Appellate Court also considering the entire materials available on record, came to a conclusion that the defendant has encroached "C" schedule property and dismissed the appeal by judgment and decree dated 31.10.2018. Challenging the same, the appellant is before this Court with this second appeal.

7. I have heard the learned counsel appearing for the appellant and perused the materials available on record.

8. Both the plaintiff and the defendant had purchased their respective A and B schedule properties from the same vendor. The defendant has purchased the property at the earliest point of time and the plaintiff has purchased the property at a later point of time. Now, it is the case of the plaintiff that the defendant has encroached the "C" schedule property, which is measuring 2 feet North South and 48 feet East West and put up a compound wall. Pending suit, an Advocate Commissioner was appointed and he has measured the property with a help of surveyor as per the respective sale deeds of the parties and found that the defendant has encroached the "C" schedule property. Even though the defendant has raised objection before the trial Court, he has not taken any steps to examine the Advocate Commissioner or appoint another Commissioner to measure the property. Now, both the Courts below, considering the entire materials, on fact have come to a conclusion that the appellant has encroached the "C" schedule property and thereby decreed the suit. I have also gone through the entire materials and I find no perversity or illegality in the judgment passed by the Courts below and no substantial question of law arises for consideration in this Second Appeal.



9. In the result, the second appeal is dismissed and the judgment and decree of the First Appellate court confirming the judgment and decree of the trial court is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Principal Sub Court,
Krishnagiri.
2. The District Munsif Court,
Krishnagiri.

+1 cc to Mr.V.Nicholas, Advocate, S.R.No.16465

S.A. No.306 of 2019

SS(CO)
SSM(03/10/2019).