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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Second Appeal No.450 of 2019

M. PremChand Baid,
Rep. by its Power Agent,
Mr.C.Venkatesan,
No.36/75, V.M.Street,
Royapettah,
Chennai - 600 014

... Appellant/Appellant/Plaintiff

Vs.

1. S. Kathirvelu
2. The Member Secretary,
Chennai Metropolitan
Development Authority,
Chennai - 600 008.
3. The Commissioner,
Corporation of CHennai,
CHennai - 600 003.
4. The Managing Director,
CHennai Metropolitan Water Supply &
Sewerage Board,
Chinthadripet, Chennai -600 002
5. The Divisional Engineer,
Tamil Nadu Electricity Board,
Royapettah,
Chennai - 600 014. ... Respondents/Respondent/Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree of A.S.No.57 of 2018 dated 27.09.2018 on the file of XVII Additional Judge, City Civil Court, Chennai and confirmed the judgment and decree of O.S.No.2719 of 2011 dated 07.11.2017 on the file of XV Assistant Judge, City Civil Court, Chennai .



For Appellant : Mr. M. Chidambaram

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JUDGEMENT

The plaintiff, who has lost the suit in both the Courts below, has come forward with the present Second Appeal.

2. The appellant/plaintiff, has filed a suit in O.S.No.2719 of 2011 on the file of the XV Assistant City Civil Court, Chennai, for declaration declaring that the Northern wall of the suit property belongs to him and also for a permanent injunction restraining the first defendant from interfering with his right to use the property and also for mandatory injunction to remove the unauthorized construction put up by the first defendant.

3. The case of the plaintiff is that, the suit property belongs to a Trust, namely, Pachiyappa Trust, and both the plaintiff and the defendant are tenants under the Trust. The Superstructure in the suit land belongs to the plaintiff and he has been paying the property tax and other taxes. In the northern side of the said suit property, the first defendant is living, and there is a wall in the northern side of the suit property between the plaintiff and the first defendant. Now the first defendant commenced construction without obtaining any planning permission from the concerned authorities. The first defendant also damaged the northern wall belongs to the plaintiff. In the above circumstances, after giving a police complaint, the present suit has been filed.

4. The first defendant filed a written statement contending that the trust is the owner of the property, and the alleged wall only belongs to the first defendant and he has been residing in the suit property for more than 77 years, without impleading the trust, as a party defendant, the suit is not maintainable, and the plaintiff cannot claim any exclusive right. He has put up construction after getting necessary permission from the concerned authorities and there is no violation.

5. The trial Court, after considering the pleadings and oral and documentary evidence, has come to a conclusion that the plaintiff has failed to prove that he has absolute right over the disputed wall and the first defendant established that there was no gap earlier between the houses of the plaintiff and the



first defendant. Now, the wall in dispute is not existing on the date of the filing the suit. Hence, the declaration sought for by the plaintiff is no more in existence and thereby dismissed the suit, by a judgment and decree dated 07.11.2017. Aggrieved by the same, the appellant/plaintiff filed an appeal in A.S.No.57 of 2018 on the file of the XVII Additional City Civil Court, Chennai. The First Appellate Court, after considering the entire materials available on record, concurred with the findings of the trial Court, and dismissed the appeal by judgment and decree dated 27.09.2018. Now, challenging the above judgment and decree, the appellant is before this Court with this second appeal.

6. In the grounds of appeal, the appellant has raised the following substantial question of law for consideration :

"1. Whether the declaration relief is accompanying with the relief of recovery of possession when the possession with the party ?

2. Whether the evidence Act is applicable once the first respondent who had violated the principle promissory estoppel ?

3. Whether the manipulated document is admissible when it was pointed out ?

4. Whether the declaration relief to be dismissed when that there was no description of the property ?

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

8. Admittedly, the Pachiyappa trust is the owner of the property and both the plaintiff and the first defendant claiming to be the tenants under the trust. But, to prove the same, no lease deed has been marked. That apart, the plaintiff claims that he is the exclusive owner of the wall. But in order to establish that he has not produced any material to show what was the extent of the land leased out to him, and also regarding the ownership of the wall. The plaintiff has filed a suit for declaration and also for mandatory injunction, and it is his burden to establish his right over the wall, but he has not established that what is the extent of the property that was leased out to him and extent of land that the first defendant has encroached and absolutely there is no evidence to that effect. Considering the above circumstances, both the Court on fact, rejected the contention of the plaintiff. Hence, I find no infirmity in the judgment passed by the Courts below and no question of law much less 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.

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Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

mrp

To

1. The XVII Additional Judge,
City Civil Court, Chennai
2. XV Assistant Judge,
City Civil Court, Chennai .

+1cc to Mr.M. Chidambaram, Advocate SR.No.28952

S.A. No.450 of 2019

GMV (24/09/2019)