



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.07.2019

PRONOUNCED ON : 03.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.713 of 2019

T.Mukundan	..	Appellant/Plaintiff
	Vs.	
Rangan	..	Respondent/ Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 26.11.2018 passed in A.S.No.138 of 2018 on the file of the XV Additional City Civil Court, Chennai, confirming the Judgment and Decree dated 01.11.2017 passed in O.S.No.5648 of 2011 on the file of the VII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.C.P.Sivamohan

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 26.11.2018 passed in A.S.No.138 of 2018 on the file of the XV Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 01.11.2017 passed in O.S.No.5648 of 2011 on the file of the VII Assistant Judge, City Civil Court, Chennai.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The suit has come to be laid by the plaintiff for the reliefs of Permanent Injunction and Mandatory Injunction with reference to the suit property as described in the plaint.

4.The plaintiff claims title to the suit property based on the sale deed dated 29.04.1982 by way of which, he claims to have purchased the plaint "A" schedule property and on the basis of the same, the plaintiff seeks the reliefs prayed for in the suit contending that the defendant, without any authority, had put up the pillar at the entrance of the passage on the western side of the plaint "A" schedule property, which has been separately described as the plaint "B" schedule property.



5.The defendant, in toto, resisted the plaintiff's case and contending that the defendant has not made any encroachment into the property belonging to the plaintiff and only with a view to grab the property in issue belonging to the defendant, the plaintiff has come forward with the suit as if the defendant had encroached into the suit property measuring an extent of 2' x 20' and hence, according to the defendant, the plaintiff is not entitled to seek and obtain the reliefs as prayed for.

6.Based on the materials placed on record both oral and documentary, the Courts below were pleased to dismiss the plaintiff's suit. Aggrieved over the same, the present second appeal has been laid.

7.Considering the case projected by the plaintiff and the documents put forth by him, it is seen that the plaintiff claims that he has purchased the suit property by way of a sale deed dated 29.04.1982 marked as Ex.A1. However, as rightly determined by the Courts below, the plaintiff has failed to establish that he had acquired the suit property as described in the plaint, by way of Ex.A1 sale deed. On a perusal of the property comprised in Ex.A1 sale deed, the East-West measurement is found to be only measuring an extent of 39'. For claiming the property measuring East- West 42', the plaintiff is found to be relying only upon the patta document projected by him and when the patta document cannot be relied upon by the plaintiff for sustaining his claim of title to the suit property as described in the plaint and barring the patta projected by him, the plaintiff has no other materials to hold that he has title to the suit property, particularly, the alleged portion said to have been encroached by the defendant described as the plaint "B" schedule property and when the plaintiff is found to be relying only upon the Commissioner's report marked in the case inclusive of the Surveyor's report and when the title to the suit property claimed by the plaintiff cannot be upheld based on the Commissioner's report and when the title deed projected by the plaintiff marked as Ex.A1 does not advance his case in any manner as determined by the Courts below and furthermore, despite the challenge put forth by the defendant to the claim of title of the plaintiff qua the suit property, the plaintiff having not come forward with the suit for the relief of declaration as per law, in all, it is found that the Courts below had analysed and assessed the materials placed on record in the right perspective and correctly held that the plaintiff is not entitled to the property measuring East- West 42' and thereby, not entitled to the plaint "B" schedule property and in such view of the matter, the Courts below are justified in dismissing the plaintiff's suit and in my considered opinion,



no valid reason is made out to interfere with the concurrent judgment and decree of the Courts below and holding that no substantial question of law is involved in this second appeal, accordingly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.NO.Costs

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sms

To

1.The XV Additional Judge,
City Civil Court, Chennai.

2.The VII Assistant Judge,
City Civil Court, Chennai.

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

+1cc to Mr.C.P.Sivamohan, Advocate SR.No. 55357

in S.A.No.713 of 2019

A.SK(04/11/2019)