



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **31.10.2019**

CORAM

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

S.A(MD)No.635 of 2010

Jeyasankar

.. Appellant /
Plaintiff/Appellant

Vs.

1.Ramalakshmi (died)

.. 1st Respondent /
Defendant/Respondent

2.G.Subburaj

[2nd respondent is brought on record
as legal heir of the deceased sole
respondent vide order dated 25.09.2019
made in C.M.P(MD)No.1247 of 2019]

.. 2nd Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 27.10.2009, made in A.S.No.7 of 2009 on the file of the Sub Court, Sivakasi, confirming the judgment and decree, dated 06.02.2009, made in O.S.No.108 of 2005 on the file of the District Munsif Court, Sattur.

For Appellant : Mr.S.Kadarkarai

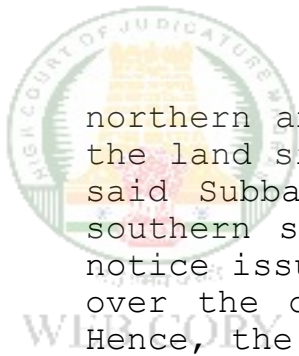
For Respondent No.2 : Mr.M.Thirunavukkarasu

JUDGMENT

The concurrent Judgment and decree passed in O.S.No.108 of 2005 by the District Munsif Court, Sattur and in A.S.No.7 of 2009 by the Sub Court, Sivakasi, are under challenge in the present second appeal.

2.The appellant / plaintiff filed O.S.No.108 of 2005 for the reliefs of declaration and mandatory injunction in respect of suit 1st schedule property and declaration and permanent injunction in respect of suit 2nd schedule property.

3.The case of the plaintiff is that he purchased 3 cents of land from one Subbammal through a registered sale deed dated 20.04.2001, in which, he built a house leaving vacant space on



northern and eastern sides. While so, the defendant, who purchased the land situated on the north of the plaintiff's property from the said Subbammal, started constructing a house and dug pits on the southern side over the portion belongs to the plaintiff. For the notice issued to the defendant, she sent reply notice claiming right over the disputed portion and also 4½ feet on the further south. Hence, the suit.

4.The defendant had resisted the suit contending that the plaintiff had not furnished the measurements of his house and the land purchased by him, in the plaint. The plaintiff had not mentioned the extent of area left by him as vacant on eastern and northern sides. The defendant had constructed his house wall within his property leaving margin on all its sides.

5.Before the trial Court, on the side of the plaintiff, the plaintiff was examined as P.W.1 and one Varadaraj was examined as P.W.2 and Exs.A1 to A6 were marked and on the side of the defendant, the defendant was examined as DW1 and Exs.B1 and 2 were marked. Both the Courts below have concurrently rejected the claim of the plaintiff on the ground that the appellant / plaintiff had not furnished necessary particulars in respect of the measurements of the defendant's property and the appellant / plaintiff has failed to prove the measurements in occupation of the defendant. Against which, the appellant / plaintiff has filed this second appeal.

6.Today, when the matter came up for hearing, the learned counsel for the appellant / plaintiff would submit that the appellant / plaintiff purchased 3 cents of land and since the extent of 3 cents is not available on land, he filed the suit and the Courts below have concurrently rejected the claim of the appellant / plaintiff.

7.The learned counsel for the appellant as well as second respondent in unison would also submit that the appellant / plaintiff and the respondent / defendant purchased each 3 cents of land with boundaries from the same vendor and both of them constructed houses in their properties and therefore, nothing survives for adjudication in the present second appeal.

8.Considering the submissions made on either side and also considering that the Courts below have concurrently rejected the claim of the plaintiff on the ground that the appellant / plaintiff had not furnished necessary particulars in respect of the measurements of the defendant's property and the appellant / plaintiff had failed to prove the measurements in occupation of the defendant, this Court does not find any infirmity in the concurrent judgment and decree passed by the Court below and the second appeal is liable to be dismissed.

<https://hcservices.gov.in/govt/hcservices>, the second appeal is dismissed confirming the



WEB COPY

S.A(MD)No.635 of 2010

concurrent judgment and decree passed by the Courts below. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

smn

To

1.The Subordinate Judge,
Sivakasi.

2.The District Munsif,
Sattur.

3.The Record Keeper, (2 Copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.KADARKARAI, Advocate (SR-95174[F] dated 31/10/2019)

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-95514[F] dated
01/11/2019)

**JUDGMENT MADE IN
S.A(MD)No.635 of 2010
31.10.2019**

JMN(02.12.2019) 3P : 7C