



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.09.2019**

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

S.A. (MD) No.410 of 2019

and

C.M.P. (MD) No.8104 of 2019

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Amutha @ Chinnachi

... Appellant/Appellant/
Defendant

vs.

Vijayasundaram

... Respondent/Respondent/
Plaintiff

Prayer:- Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.53 of 2016 dated 18.02.2019 on the file of the learned Subordinate Judge, Ambasamudram, confirming the judgment and decree passed in O.S.No.357 of 2005 dated 17.08.2016 on the file of the learned Additional District Munsif, Ambasamudram and decreed the counter claim of the appellant.

For Appellant : Mr.N.Vallinayagam

For Caveator : Mr.A.Sankararamasubramanian

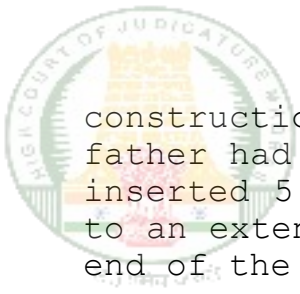
JUDGMENT

The unsuccessful defendant before the Courts below is the appellant before this Court.

2.The suit in O.S.No.357 of 2005 has been filed by the plaintiff/respondent on the file of the learned Subordinate Judge, Ambasamudram, for declaration that the second item of suit property belongs to him and for a mandatory injunction, directing the defendant to remove the wall put up at E, F portions in the second suit schedule property and to hand over the same to the plaintiff. The plaintiff also sought for injunction, restraining the defendant and their men and agents from in any manner digging a foundation west of the B, E wall

3.The case of the plaintiff in a nutshell is as follows:

3 (i) The suit properties originally belonged to one Avudaiammal, from whom, one Sahul Hameed had purchased the same under a registered sale deed dated 17.09.1981. Thereafter, the plaintiff's father had purchased the property on 22.08.1983 and after his purchase, he has been in possession and enjoyment of the same. By settlement deed dated 09.01.2004, the plaintiff's father had settled the property on the plaintiff and handed over the possession of the same to the plaintiff. When the plaintiff's father had purchased the property, there was a house under



construction at southern end. After his purchase, the plaintiff's father had completed the construction and on the western wall he had inserted 5 cement pipes for draining out the water, which projected to an extent of 1.6 ft., and there was also a window in the northern end of the western wall measuring to an extent of 1.6 ft.,

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3.(ii) The defendant five years prior to the institution of the suit, had put up a wall on the west side of the second item of the suit property. The second item of property was the space between the western wall of the plaintiff and the eastern wall of the defendant. The defendant all of a sudden had put up a wall at the entrance of the 4 feet lane and had threatened the plaintiff to remove the draining pipes as well as the window, thereby, constraining the plaintiff to approach the Court below.

4.The defence to the above suit was that the measurements, which have been put forward in the plaint was totally erroneous. The pipes were also put up illegally by the plaintiff and also the second item of property was not in the existence at the time of purchase of suit property by the plaintiff's father. Therefore, he sought for dismissal of the suit.

5.The learned Additional District Munsif, Ambasamudram, by his order dated, 17.08.2016, was pleased to return the findings against the defendant on the issues framed by him and ultimately, decreed the suit as prayed for.

6.Aggrieved by the said judgment and decree, the appellant had moved the Subordinate Court, Ambasamudram in A.S.No.53 of 2016. The learned Subordinate Judge, by his order dated, 18.02.2019, was pleased to dismiss the appeal by confirming the judgment and decree of the trial Court.

7.Pending the suit, the property had been inspected by the Advocate Commissioner along with Surveyor and Exs.C1 to C3 had been marked. The Courts below had relied on Ex.C3 to come to a conclusion that the defendant was in enjoyment of an excess extent of 1.5 ft, which was only part of the second item of the property. The Surveyor had correlated the suit property with the revenue records and held that the second item of property is situated in S.No.92/2A and the defendant's property was comprised in S.No.92/2B. The Surveyor had also measured the property by taking into account the respective title deeds and also by the revenue records. The defendant had also come out with the contention that the property was a vacant site and that there was no construction in the suit property.

8.The Appellate Court relied upon Ex.A1, in which, there is a clear mention about the half constructed house and after the purchase, the plaintiff had constructed the house and the invitation for farming is evident by Ex.A6. The Courts below have



also relied upon the defendant's evidence as D.W1, to come to the conclusion that the plaintiff has proved his case. Both the Courts below have considered the evidence both oral and documentary and arrived at a conclusion that the plaintiff was entitled to the decree as prayed for.

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9. In view of the above, this Court is not inclined to interfere with the concurrent judgment and decree of the Courts below and the second appeal does not involve any question of law much less the substantial question of law.

10. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Subordinate Judge,
Ambasamudram.
2. The Additional District Munsif,
Ambasamudram.
3. The Section Officer, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.SANKARARAMASUBRAMANIAN, Advocate (SR-85808[F] dated 09/09/2019)

+1 CC to M/s.N.VALLINAYAGAM, Advocate (SR-85842[F] dated 09/09/2019)

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