

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.691 of 2015

Paramasivam

... Appellant/Plaintiff

Vs.

1. Kumar
2. Sankar
3. Baby

... Respondents/Defendants

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and decree of Principal Sub Court, Mayiladuturai, dated 04.09.2014 made in A.S.No.23 of 2013 confirming the Judgment and decree of Principal District Munsif, Mayiladuturai, dated 28.03.2013 made in O.S.No.237 of 2010.

For Appellant : Mr.S.Sounthar

For Respondents: Mr.A.Muthukumar (for R3)

J U D G M E N T

The plaintiff in O.S.No.237 of 2010 whose suit for mandatory injunction was dismissed by the trial Court, upon its confirmation by the lower appellate Court has come up with this second appeal.

2. The plaintiff claimed that the defendants have encroached upon an extent of 2 feet X 50 feet on the western side of his property and the said encroachment is shown in plaint plan as A, B, C, C1. According to plaintiff, he is entitled to 4 feet of land on the west of his house that has been constructed in Survey Nos.313/ 18, 313/19, 313/20 and 313/21.

3. The defendants would resist the suit contending that they are entitled to land in Survey No.313/17 by way of a purchase made by them on 25.06.1999 from one R.Lakshmiammal and the entire construction put up by them is only within the land purchased by them under the Sale deed situate in Survey No.313/17. A Commissioner was appointed pending suit and he

inspected the property along with the Surveyor and filed a report and plan. The Commissioner's report disclosed that the entire construction put up by the defendants was within Survey No.313/17 and there was no encroachment of any property of the plaintiff.

4. The trial Court as well as the lower appellate Court referred to the evidence of the Surveyor who was examined as PW4 and concluded that the plaintiff has not established that the defendants have encroached upon his property. Though the plaintiff would claim that he is entitled to 4 feet of land on the western side of the property, the said claim was not believed by the Courts below, since the plaintiff did not support the claim by producing necessary documents. The lower appellate Court in particular found that the plaintiff has not chosen to produce any document, apart from Ex.A1, which is a Release deed executed by the plaintiff's brothers in the year 2009. In the absence of any other antecedent document to show the title of the plaintiff to any land on the west of the western wall, the appellate Court refused to believe the claim of the plaintiff and accepting the evidence of the Surveyor concluded that there was no encroachment. On the said finding, the suit was dismissed. Aggrieved, the plaintiff has come up with this second appeal.

5. I have heard Mr.S.Sounther, learned counsel appearing for appellant and Mr.A.Muthukumar, learned counsel appearing for R3 upon notice of motion.

6. Mr.S.Sounther, learned counsel appearing for the appellant would vehemently contend that the Courts below were not right in rejecting the claim of the plaintiff on the ground that he has not proved his title to any portion of land in Survey No.313/17. According to the learned counsel, the measurements were taken on the basis of the revenue documents and that there was a difference between the revenue documents and the plaint description was admitted by the Surveyor. Therefore, the Courts below were not right in relying upon the evidence of PW4, the Surveyor.

7. I have considered the submissions of the learned counsel for the appellant.

8. The suit is one for mandatory injunction to remove the alleged encroachment. It is for the plaintiff to prove his title to the portion which he alleges that the defendants have encroached upon. Unless such title is proved, the plaintiff cannot claim the extraordinary relief of mandatory injunction. The Commissioner appointed by the trial Court was assisted by a surveyor and measurements were taken on the basis of the revenue

documents and the Commissioner as well as the surveyor found that the defendants have not encroached upon any portion of the plaintiff's property. This report of the Commissioner along with the plan based on the local inspection has been accepted by the Courts below based on the evidence of the surveyor as PW4.

9. In the light of the above, I do not see any perversity in the factual findings of the lower appellate Court in order to enable me to disturb the factual findings. I do not also see any question of law, much less a substantial question of law, in order to enable me to entertain this second appeal. The appeal therefore fails and it is accordingly dismissed without being admitted. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sub Court,
Mayiladuturai.
2. The Principal District Munsif,
Mayiladuturai,
3. The Section Officer,
VR Section,
Madras High Court,
Chennai.

+1cc to Mr.S.Sounthar, Advocate Sr.29164
+1cc to Mr.A.Muthukumar, Advocate Sr.29179

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