

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 08.01.2020

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A. (MD) .No.720 of 2005
and
C.M.P. (MD) .No.7192 of 2019

RM.Manickam ... Appellant / Appellant / 1st Defendant
Vs.

1.N.P.Chidambaram ... 1st Respondent / 1st Respondent / Plaintiff
2.RM.Ponnusamy ... 2nd Respondent / 2nd Respondent / 2nd Defendant

Prayer: The Second Appeal filed under Section 100 of Civil Procedure Code against the decree and judgment passed in A.S.No.60 of 2004, dated 28.12.2004 on the file of the Sub Court, Devakottai, Confirming the decree and judgment passed in O.S.No.57 of 2003 dated 05.08.2004 on the file of the District Munsif, Devakottai.

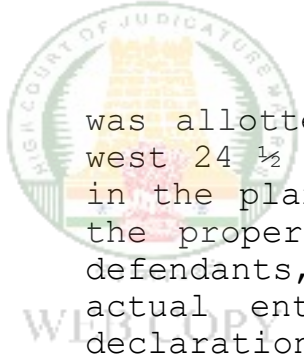
For Appellant : Mr.R.Sundar Srinivasan
For R1 : Mr.V.Chandrasekar
for Mr.B.Muruganantham
For R2 : No appearance
Advocate
Commissioner : Mr.N.Ga.Natraj

J U D G M E N T

Aggrieved over the concurrent finding of the Courts below, the present second appeal has been filed.

2. The brief facts leading to the filing of the appeal is as follows:

The suit property originally belonged to the father of the plaintiff. Thereafter, partition was effected between the plaintiff and his brothers. As per the plan, green colour shown in the plan was allotted to Natarajan Asari and yellow colour shown in the plan



was allotted to the plaintiff. The suit property is situated east west 24 ½ feet. The suit schedule property described as A, B, C, D in the plan. The brother of the plaintiff viz., Natarajan has sold the property to the defendants, wherein in the sale deed of the defendants, east west measurement is shown as 22 feet instead of actual entitlement of 20 feet. Hence, the suit is filed for declaration.

3. The defendants have denied the plan and contended that the suit property was allotted to his vendor and the defendants have purchased from him east west measuring only 22 feet and not 20 feet and contested the suit. Based on the same, necessary issues were framed and the trial Court has decreed the suit in favour of the plaintiff and the first appellate Court has also confirmed the same. As against which, the present second appeal came to be filed.

4. Though the second appeal was admitted and substantial questions of law were also framed, at the time of hearing, this Court identified that the issue is only with regard to the Wall and the case of the appellant that they are entitled to 22 feet and they purchased 22 feet, whereas, the contention of the first respondent is that the vendor of the appellant was allotted only 20 feet, whereas he created a document to 22 feet. To find out the actual measurement of the property, the Commissioner was appointed and he visited the property and filed a report and both side counsel have no objection to the Commissioner's Report. The Commissioner's Report clearly indicates that the portion A, B, C, D shown in the plan is within the boundaries of the first respondent / plaintiff's property and the defendants property is unconnected to A, B, C, D portion. The Commissioner's Report clearly indicates that the Wall is not within the defendants' property and the Commissioner's Report clearly pointed out that the first respondent / plaintiff is entitled to 22 feet east west and 20 feet was allotted to the defendants, green shaded in the plan, which is marked as Ex.A2. Therefore, answering substantial questions of law not required by this Court, since the parties have no objection to the Commissioner Report filed before this Court. Therefore, the judgment and decree of the Courts below is confirmed. Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1. The Subordinate Judge,
Devakottai.

2. The District Munsif,
Devakottai.

Copy to:

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

+1 CC to M/s.B.MURUGANATHAM, Advocate (SR-939[F]

+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-943[F]

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SDS (18.02.2020) 3P-7C