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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1660 of 2008

1. Megavanna Pillai (died)
S/o, Duraisami Pillai,
Edamachi Village,
Porpandhal Post, Salavakkam Pirka,
Uttiramerur Taluk,
Chengalpattu District.

2. M.Kumaresan

3. K.Rani

4. J.Shanthi

5. J.Revathy

[Appellants 2 to 5 are brought on record
as Lrs of the deceased sole appellant
vide order of the Court dated 29.07.2005
made in CMPs.2993 to 2998 of 2004]

...Appellants
/Appellant /Plaintiff

Vs.

1. Samynatha Pillai

2. Arimuthu Pillai

3. Subramaniya Pillai

all sons of Rajaram Pillai
residing at Edamachi Village,
Porpandhal Post, Salavakkam Pirka,
Uttiramerur Taluk,
Chengalpattu District.

... Respondents



Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.51 of 1989 on the file of the Principal Subordinate Judge, Chengalpattu dated 12.12.2000 confirming the judgment and decree in O.S.No.313 of 1981 on the file of the District Munsif Court, Chengalpattu dated 14.07.1987.

For Appellants : Mr.B.Thilak Narayanan

For Respondents: No appearance - Set exparte

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 12.12.2000 passed in A.S.No.51 of 1989 on the file of the Principal Subordinate Court, Chengalpattu, confirming the judgment and decree dated 14.07.1987 passed in O.S.No.313 of 1981 on the file of the District Munsif Court, Chengalpattu.

2. When the matter is taken up for hearing, despite the service of notice, the respondents have not appeared either in person or through counsel. Hence the respondents being called and remaining absent, set exparte.

3. The unsuccessful plaintiff in the Courts below is the appellant.

4. The suit has been laid by the plaintiff against the defendants for declaration, permanent injunction and mandatory injunction.

5. Considering the pleas putforth by the respective parties in the matter and the materials available on record, both oral and documentary, in particular, noting the evidence adduced on the side of the plaintiff as P.Ws.1 to 3 and the documents marked on his side as Exs.A1 and A2 and the evidence adduced on the side of the defendants as D.Ws.1 and 2 and the documents marked on their side as Exs.B1 to B7 and also considering the Exs.C1 and C2 exhibited in the matter, it is found that the lis between the parties is only with reference to ABC wall and the plaintiff claims title exclusively to the ABC wall based on Exs.A1 and A2. It is noted that the plaintiff claims that he had purchased the property under Ex.A2 and the wall in question ABC



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according to the plaintiff, is lying on the southern side of the property purchased by him under Ex.A2. Considering the parent title deed of the plaintiff marked as Ex.A1 Will, it is noted that the property comprised in Ex.A1 Will is only a vacant site and furthermore, from the evidence adduced in the matter, it is seen that the plaintiff had put up the construction in the property only after the purchase under Ex.A2. In Ex.A1, while describing the property comprised therein, it has been specifically mentioned as lying to the north of tiled house and thottam of T.Rajaram Pillai. As above pointed out, it is only the property comprised in Ex.A1, the plaintiff had purchased by way of Ex.A2. From the evidence of P.W.3, it is noted that the property purchased by way of Ex.A2 is also a vacant site and only thereafter, the plaintiff had put up the construction.

6. Considering the documents projected by the defendants in particular, marked as Ex.B5, it is found that under the said sale deed, the 1/3rd share in the northern wall has been acquired and therefore from Ex.B5, the property had been alienated inclusive of 1/3rd share in the wall in question namely the ABC wall. The same has been reiterated in the subsequent transactions marked as Exs.B6, B7, B3 and B4. Therefore, from all the abovesaid sale transactions, the 1/3rd right of wall in question had been conveyed, in such view of the matter, the defendants and their predecessors in interest, as held by the Courts below, have also share in the wall in question and in such view of the matter, the plaintiff claim of exclusive right and title over the southern wall namely the ABC wall based on Exs.A1 and A2 cannot at all be accepted and rightly rejected by the Courts below.

7. From the materials available on record, it is noted that the defendants had put up the construction in the property much prior to the construction put up by the plaintiff. The same could also be gathered from the recitals contained in Ex.A2 sale deed. It is thus noted that the defendants' construction is resting on the wall in question and in such view of the matter, the case of the plaintiff that he had acquired exclusive title to the ABC wall and enjoying the same absolutely and the defendants have no right over the same as such cannot be accepted in any manner and the same had been properly considered by the Courts below and rightly rejected the plaintiff's case.



8. From the Commissioner's report and plan marked in the matter and his evidence as D.W.3, it is seen that excluding the ABC wall, the plaintiff is enjoying the north-south 29 feet and the same would also reveal that the plaintiff has no exclusive right or title over the ABC wall and furthermore from Exs.C1 and C2, the construction put up by the defendants resting the same on the northern wall ie., the wall in question, has not caused any damage or for the matter, the northern wall had not developed any cracks and by way of the same, the plaintiff has also not established that he has sustained any damages. Therefore, the case of the plaintiff that the defendants should be enjoined from putting up any construction over the wall in question on the footing that he has exclusive right over the same cannot be accepted based on the materials available on record and on the other hand, it is seen that the defendants also have share in the wall in question and in such view of the matter, the Courts below are found to be justified in non suiting the plaintiff.

9. Considering the reasonings and conclusions of the Courts below, it is found that the Courts below have properly appreciated the materials available on record, the pleas and the submissions put forth by the respective parties and had correctly, both on factual matrix and on the points of law, held that the plaintiff is not entitled to seek the reliefs prayed for. I do not find any valid reason warranting interference in the same. The determination of the issues involved in the matter by the Courts below are purely found to be based on factual matrix and for the reasons aforesaid, no substantial question of law is found to be involved in this second appeal.

10. In conclusion, the judgment and decree dated 12.12.2000 passed in A.S.No.51 of 1989 on the file of the Principal Subordinate Court, Chengalpattu, confirming the judgment and decree dated 14.07.1987 passed in O.S.No.313 of 1981 on the file of the District Munsif Court, Chengalpattu are confirmed and resultantly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



To

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1. The Principal Subordinate Judge,
Principal Subordinate Court,
Chengalpattu.

2. The District Munsif,
District Munsif Court,
Chengalpattu.

Copy to

The Section Officer,
VR Section,
High Court.

+1cc to Mr.B.Thilak Narayanan, Advocate, S.R.No.7825

S.A.No.1660 of 2008

GJ(CO)
SB(30/09/2021)