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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A.No.693 of 2003

1.A.Kaliyamurthy
2.Venkudusamy ...Appellants/Defendants

vs.

1.Amsavalli
2.Rajendran
3.Senthil
4.Prema
5.Bala ...Respondents/Plaintiffs

Prayer: Second Appeal filed under Section 100 CPC, against the judgment and decree made in A.S.No.10/2000 and A.S.No.104/2000 on the file of the court of Addl.Subordinate Judge, Mayiladuthurai dated 21.11.2002 in confirming the judgment and decree made in O.S.803 of 1995 on the file of the court of Principal District Munsif, Mayiladuthurai dated 22.9.99.

For Appellants : Mr.A.Muthu Kumar
For Respondents : Mr.Pugazhendhi for R1 to R3 & R5
R4 - Died - Disd as abated vide court order dt. 6.11.2019

JUDGMENT

The Appellants have filed this Second Appeal challenging the concurrent findings of the Courts below. The Appellants are the defendants in the suit O.S.No.803 of 1995 on the file of the Principal District Munsif, Mayiladuthurai.

2.The suit was filed by the respondents seeking for a permanent injunction restraining the Appellants from interfering with the respondents right to construct a compound wall as per the Partition Deed dated 12.09.1963 which was marked as Ex.A1 before the Trial Court under the Partition Deed. The first Appellant and the respondents who are the brothers agreed that the respondents/plaintiffs are entitled to construct the compound wall in the four feet common pathway.

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3.The contentions of the Appellants before the Courts below is that since the respondents/plaintiffs did not exercise the right of putting up a compound wall as per the Partition Deed dated 12.09.1963 and exercised their right only in the year 1994 they cannot seek relief of injunction as prayed for in this suit.

4.The Courts below negatived the contentions of the Appellants/defendants by holding that in order to claim adverse possession, they ought to have established their right through oral and documentary evidence which they failed to do so before the Trial Court. Further, the Trial Court as well as the Lower Appellate Court has held that the Partition Deed Ex.A1 does not prescribe a time limit within which the respondents/plaintiffs will have to exercise their right for constructing the compound wall.

5.Aggrieved by the concurrent findings of the Courts below, this Second Appeal has been filed by the defendants in this suit.

6.The Second Appeal was admitted by this Court on 29.04.2003 on the following substantial questions of law:

(a).When the 2 houses are continuous, one, whether mere suit for permanent injunction is maintainable when the relief of mandatory injunction for creation of common pathway by demolishing a portion of defendants house?

(b).When the partition was effected in 1963 after friction arose between the plaintiff and the 1st defendant, whether the plaintiff abandoned his right to put up compound wall to earmark a common pathway by demolishing a portion of the defendants property by keeping quiet for more than 30 years?

7.The Trial Court as well as the Lower Appellate Court has considered Ex.A1 which is a Partition Deed entered into between the respondents/plaintiffs and the first Appellant and has rightly come to the conclusion that the said Partition Deed does not prescribe a time limit within which the respondents will have to put up the compound wall in the common passage between the respondents/plaintiff's property and the Appellant's property.

8.This Court has also perused and examined Ex.A1.

9.As rightly held by the Courts below there is no time limit prescribed under the said Partition Deed for the respondents/plaintiffs to put up the compound wall. Even though, the respondents/plaintiffs exercised their right to put up the compound wall only in the year 1994, the

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Appellants/defendants cannot contend that they cannot exercise the said right since the Partition Deed Ex.A1 does not prescribe any time limit. Therefore, the first contention of the Appellants/defendants that the respondents/plaintiffs having not exercised their right available to them under the Partition Deed (Ex.A1), they cannot exercise the said right in the year 1994 cannot be accepted by this Court and the same is rejected.

10.The Trial Court has also held that the Appellants/defendants have not disputed Ex.A1 and they have also not established through oral and documentary evidence their right to claim adverse possession to prevent the respondents/plaintiffs to exercise their right available to them under the Partition Deed Ex.A1 for putting up a compound wall in the year 1994. In fact, the respondents/plaintiffs have also sent notices to the Appellants prior to filing the suit requesting them not to sell the property or preventing them from putting up a compound wall in the common passage which was marked as exhibits before the Trial Court but were not replied to by the Appellants/Defendants. This was also taken into consideration by the Trial Court as well as the Lower Appellate Court before rejecting the contention of the Appellants/defendants. The Trial Court has rightly considered Ex.A1 namely the Partition Deed in the year 1963 and has come to the right conclusion that the respondents/plaintiffs is entitled for grant of permanent injunction as prayed for in the suit.

11.The substantial questions of law framed by this Court at the time of admission of this Second Appeal are answered against the Appellants\defendants as the Trial Court as well as the Lower Appellate Court has rightly held the case as against the Appellants/defendants and in favour of the respondents/plaintiffs.

12.For the foregoing reasons, there is no merit in this Second Appeal. Accordingly, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1.The Additional Subordinate Judge,
Mayiladuthurai.

2.The Principal District Munsif,
Mayiladuthurai.

Copy to:

The Section Officer,
V.R.Section,
High Court of Madras.

+1cc to M/s.A.Muthukumar, Advocate Sr No.24108

S.A.No.693 of 2003

RP (CO)
PR (01/11/2021)

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