



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.No.674 of 2020
and
C.M.P.No.13950 of 2020

S.Baskar,
S/o.Srinivasan,
No.81, Bagavathi Amman Koil Street,
Mettukulam Village, Periyapurdhur Post,
Katpadi Taluk, Vellore District.

...Appellant/Respondent/Plaintiff

.Vs.

G.Sundaresan (Died)

1.S.Suseela
W/o.Sundaresan

2.A.Vajra,
W/o.Annadurai

3.Annadurai
S/o.Sundaresan

All are residing at
No.81, Bagavathi Amman Koil Street,
Mettukulam Village, Periyapurdhur Post,
Katpadi Taluk, Vellore District.

...Respondents/Appellants/Defendants

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree in A.S.No.93 of 2019 dated 02.01.2020 on the file of the Principal Subordinate Court, Vellore against the Judgment and Decree in O.S.No.815 of 2009 dated 10.09.2012 on the file of the District Munsif Court, Katpadi.

For Appellant : Mr.P.Satheesh Kumar
For Respondents : Mr.M.Sathishkumar



6.It was brought to the notice of this Court that Respondent filed a comprehensive Suit in O.S.No.47 of 2015, for declaration of title in respect of the disputed property, mandatory injunction directing the Defendant to remove the obstruction in 'B' schedule property and for permanent injunction.

7.The main issue here is, in the suit property, where septic tank lies - whether it lies within the property of the Appellant or the property of the Respondent. It is absolutely necessary that an Advocate Commissioner with the help of qualified Surveyor should inspect both the properties, measure the suit properties, with the help of title deeds and other revenue records and file a report. Only then, a proper adjudication can be made in this case.

8.A joint memo was filed by the learned counsel today, wherein, they reiterate the aforesaid facts and prayed to remand the case to be tried along with O.S.No.47 of 2015, pending on the file of learned Principal Sub Court, Vellore.

9.This Court on the facts and circumstances of the case, finds it absolutely necessary for arriving at the right decision and to do complete justice to the parties, this Suit should be tried along with the Suit in O.S.No.47 of 2015. It is represented that the trial has not been commenced in O.S.No.47 of 2015. To facilitate the joint trial of O.S.No.47 of 2015 and O.S.No.815 of 2009, this Court set aside the judgment of the Courts below in A.S.No.93 of 2019 and O.S.No.815 of 2019 and remands the case to the file of learned Principal Sub Judge, Vellore for conducting joint trial and dispose the case in accordance with law. Learned trial Judge is directed to appoint an Advocate Commissioner to inspect the properties of both the parties with a qualified surveyor, measure the properties, with the help of their title deeds and revenue records and file a report. The Advocate Commissioner's expense and other expenses to be borne by both the parties. The evidence to be recorded in the comprehensive Suit filed in O.S.No.47 of 2015.

10.The Appellant is directed to move a transfer application before the learned Principal District Judge, Vellore for transfer of O.S.No.815 of 2009 on the file of the learned District Munsif, Katpadi to the file of learned Principal Sub Judge, Vellore for trying along with O.S.No.47 of 2015. On such application being filed, learned Principal District Judge is directed to pass orders for transfer of O.S.No.815 of 2009,



pending on the file of the District Munsif Court, Katpadi to the Court of Principal Sub Court, Vellore.

11.Finally, there is no dispute with regard to the fact that septic tank in the disputed area was constructed by the Appellant and is being used by the Appellant. Till final decision is arrived, the possession and enjoyment of the septic tank by the Appellant is protected, by way of injunction against the respondents from interfering with the possession and enjoyment of the disputed area.

12.In fine, the Second Appeal is disposed as indicated above. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

sai
To
1.The Principal District Judge,
Vellore.

2.The Principal Subordinate Court,
Vellore

3.The learned District Munsif
District Munsif Court, Katpadi.

4. The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.P.Satheesh Kumar, Advocate sr 69357.

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SVI (CO)
SP(17/02/2022)