

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.06.2022

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

S.A.No.13 of 2010

and

M.P.No.1 of 2010

Karthigeyan ... Appellant/Defendant in Trial Court

Vs

Kumaravel ... Respondent /Plaintiff in Trial Court

The Second Appeal filed under Section 100 of CPC, to set aside the judgment and decree dated 31.10.2007 made in O.S.No.73 of 2001 on the file of the District Munsif -cum- Judicial Magistrate, Arcot as the same being confirmed in A.S.No.1 of 2008 by the Sub Court, Ranipet, Vellore by the judgment and decree dated 30.07.2009.

For Appellant : Mr.V.Manohar

For Respondent : No appearance

JUDGMENT

Heard learned counsel for the appellant.

2.The Appeal has not yet been admitted. However, notice had been directed to the respondent and notice had been served. The name of the respondent is also printed in the cause list. There is no appearance. However, let me not hold the Second Appeal any further on the board of this Court.

3.The defendant in O.S.No.73 of 2001, on the file of the District Munsif - cum - Judicial Magistrate, Arcot is the appellant herein. The respondent had filed the suit with respect to a small pathway measuring two feet in breadth and twenty five feet in length on the eastern side of his house, seeking permanent injunction restraining the appellant herein from interfering with peaceful possession of the said two feet strip of land. That piece of property was given as B-schedule to the plaintiff.

4.The appellant's property was to the east of the said strip of land. This would indicate that the property which was contested and for which injunction was sought lay between the properties of the respondent/plaintiff and the appellant / defendant.

5.It is the contention of the respondent / plaintiff that he had purchased his property including the said two feet strip of land, and as vendor in turn obtained title by way of koorchit. On the other hand, it the contention of the appellant / defendant that he had purchased his property, which according to him also included that two feet strip of land through Court auction.

6.One factor which had played on the mind of the Trial Court was the report of the Advocate Commissioner, who stated that the property of the plaintiff measured 50 feet and if that be so, it should also include the two feet strip of land. The First Appellate Court, as a fact found that over the two feet strip of land, the plaintiff had built his windows in his house and the window shades would project out and therefore, if the defendant were to put up any construction in the nature of a wall, that would be an encroachment of the easementary right and would affect the easementary right and on that basis the First Appellate Court had confirmed the decree granting permanent injunction to the plaintiff / respondent herein.

7.Even though notice had been directed and learned counsel for the appellant had argued stating that there are substantial questions of law which arise, I am not inclined to accept that particular view. But let me mould the relief in the following manner.

8.The contentious portion of the land is a narrow strip of land measuring two feet between the property of the plaintiff and the property of the defendant.

9.It must be kept in mind that the respondent herein was the plaintiff in the suit and the appellant was the defendant in the suit. Let me retain that nomenclature as plaintiff and the defendant.

10.The plaintiff had filed the suit for injunction alone restraining the defendant from putting up any construction, more particularly in the nature of wall in the said two feet strip of land. If at all, the plaintiff claims title over the said two strip of land, then the plaintiff should have also included the relief of declaration and then should have sought for injunction as a consequential relief. The First Appellate Court had gone on a tangential line by examining the issue of easement. When that aspect was not put up by either one of the two parties. The

injunction which now prevails in form of the plaintiff is not to interfere with the plaintiff's possession of the two feet strip of land.

11.However, I would modify the said decree and retain the right of the defendant to seek declaration, if at all the schedule in his sale deed through Court auction and the lay of the land measured in actual terms also includes the two feet of land, since both the Courts below have granted an injunction on different reasonings, to still file a suit for declaration that he is entitled to put up a wall without interfering with the right of the plaintiff. It all depends on the basic fact of actual measurement of the lay of the land namely, the property of the plaintiff and the property of the defendant and to whose side the two feet falls.

12.Unfortunately, one round of ligation up to this Court has not determined that particular fact. The Trial Court had further extended the jurisdiction granted to it by directing that the defendant should not even put up any construction and if at all any construction is put up, it should be removed. That finding cannot not stand, without there being a declaration of title sought, adjudicated and granted in manner known to law.

13.Viewed from that particular angle, even though I am not disturbing the decree granted for permanent injunction I hold the decree would not stand in the way of appellant / defendant from exercising his right after taking correct measurements of the land and if it is extends to that particular two feet strip of land, to institute necessary suit for declaration of title. I would leave it open to the defendant to workout his remedies in the aforesaid manner.

14.With the above observations, the Second Appeal is dismissed. No order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

smv

To

1.The Sub Court, Ranipet, Vellore.

2. District Munsif -cum- Judicial Magistrate, Arcot.

3.The Section Officer, VR Section, Madras High Court.

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PMK(CO)
CT/19/07/2022