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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

SA.No.304 of 2012
and MP No.1 of 2012

ArjunanPlaintiff/Appellant/Appellant
Vs.

1. Asokan

2. Periasamy ..Defendants/Respondents/Respondents

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 23.12.2011 made in A.S.No.6 of 2011 on the file of the Subordinate Court, Namakkal confirming the judgment and Decree dated 06.12.2010 in O.S.No.476 of 2007 on the file of the Additional District Munsif, Namakkal.

For Appellant : Mr.T.Dhanyakumar

JUDGMENT

The plaintiff is the appellant in this second appeal.

2. The case of the plaintiff is that he is the owner of the suit property by virtue of two registered sale deeds that were executed in the name of the grand father of the plaintiff. The further case of the plaintiff is that his grand father died intestate leaving behind the father of the plaintiff and on the demise of his father, the plaintiff became the absolute owner of the suit property.

3. The further case of the plaintiff is that the property of the defendants is situated on the western side and according to the plaintiff, the property is a vacant house plot.

4. The grievance of the plaintiff was that the defendants prevented the plaintiff from fencing his property on the ground that they are having pathway right and hence, the



plaintiff filed the suit seeking for the relief of declaration to declare that the defendants have no right to enter upon the property belonging to the plaintiff and for a consequential relief of permanent injunction.

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4. Both the Courts below concurrently dismissed the suit filed by the plaintiff and aggrieved by the same, the present second appeal has been filed before this Court.

5. Heard the learned counsel for the appellant and carefully perused the findings rendered by both the Courts below.

6. Both the Courts below concurrently found that the plaintiff was seeking for a negative declaration to the effect that the defendants have no right to enter into the property belonging to the plaintiff. Both the Courts below after taking into consideration various judgements, found that the relief of negative declaration is unsustainable in law.

7. In the considered view of this Court, the findings of both the Courts below is perfectly in accordance with law and it does not warrant any interference. It is now too well settled that a Court will not grant a negative declaration since Section 34 of the Specific Reliefs Act which deals with declaratory relief only provides for declaring the legal character or the right of property belonging to the plaintiff. Extreme cases where a negative declaration can be granted is where it is merely a counter part of the right of the plaintiff. In short, the plaintiff has to seek for a declaration of a legal character or his right primarily failing which, a declaration cannot be granted under the provisions of a Specific Reliefs Act. No substantial question of law is involved in the present second appeal.

8. In the result, this Second Appeal is dismissed. Considering the facts and circumstances of this case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

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To

1.The Subordinate Judge, Namakkal

2.The Additional District Munsif, Namakkal.

Copy To:-

The Section Officer

VR Section, High Court

Madras.

+1cc to Mr.T.Dhanyakumar, Advocate SR.No.11674

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NK(CO)
CB(17/03/2022)