



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2022

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.735 of 2012
& M.P. No.1 of 2012

1.Pavayee
2.Krishnan

...Appellants/Plaintiffs

Vs.

Ezhil Murugan

...Respondent/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 23.01.2012 in A.S.No.84 of 2011 on the file of the Principal Subordinate Judge at Salem, confirming the judgement and decree dated 22.03.2011 in O.S.No.432 of 2009 on the file of the I Additional District Munsif Court at Salem.

For Appellants : Mr.D.Shivakumaran
For Respondent : Mr.M.R.Thangavel

JUDGMENT

The plaintiffs are the appellants. The plaintiffs have filed a suit seeking for the relief of mandatory injunction and permanent injunction against the defendant.

2.The case of the plaintiffs is that the defendant is the neighbour of the plaintiffs who had purchased the house property in the year 2007. The suit property was purchased by the father of the 2nd plaintiff in the year 1971 as a vacant site. Thereafter, the father of the plaintiffs had put up a thatched house and subsequently it was converted into a tiled house. The further case of the plaintiffs is that they have left three feet vacant land on the northern side of the suit property and had also put up boundary stones with the help of Surveyor. The grievance of the plaintiffs is that the defendant with the help of his men removed the boundary stones installed by the plaintiffs and was attempting to encroach upon three feet path way on the northern side of the suit property. Aggrieved by the same, the present suit was filed by the plaintiffs seeking for various reliefs against the defendant.

3.Both the Courts on appreciation of the oral and documentary evidence came to a conclusion that the plaintiffs



have not even established the availability of the three feet lane on the northern side of the plaintiffs property. In order to come to such a conclusion, both the Courts below have relied upon the Sale Deed that was marked as Ex.A1. The Courts below also relied upon the evidence of PW1 and the deposition made by PW1 to the effect that there is actually a five feet downward slope on the northern side which made both the Courts to come to a conclusion that the question of fixing the boundary stones will not arise considering that there is a five feet downward slope in the northern side.

4.Both the Courts below found that the plaintiffs have not even established the four boundaries around the suit property and even Surveyor was not examined in order to substantiate the fact that boundary stones were actually laid around the suit property. The Courts below found that the plaintiffs were trying to establish the availability of the disputed lane through photographs which were marked as Exhibits A6, A7 and A9.

5.The Courts below have also commented upon the fact that the plaintiffs did not even seek for the appointment of an Advocate Commissioner to elicit the description of the property and substantiate that there is a three feet vacant site available on the northern side.

6.In view of the above, both the Courts concurrently found that the plaintiffs did not prove the marking of boundary stones or the so called attempt made by the defendant to encroach upon the three feet vacant site. In view of the same, both the Courts below rightly dismissed the suit filed by the plaintiffs.

7.In the considered view of this Court, both the Courts below have properly appreciated the oral and documentary evidence and have come to a correct conclusion. This Court in exercise of its jurisdiction under Section 100 of C.P.C. cannot re-appreciate the evidence. There is no substantial question of law involved in the present case and accordingly, the present second appeal stands dismissed. Considering the facts and circumstances of the case, the parties shall bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

ssr



To

1. The Principal Subordinate Judge,
Salem.

2. The 1st Additional District Munsif Court,
Salem.

Copy To

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

+1cc to Mr.D,Shivakumaran, Advocate SR.No.7656
+1cc to Mr.M.R.Thangavel, Advocate SR.No.8152

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VG II(CO)
GN(07/06/2022)