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S.A.No.474 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 474 of 2022
and
C.M.P.No.9611 of 2022

Periyasamy

...Appellant/Respondent/Plaintiff

Vs.

Konga Konar

...Respondent/Appellant/Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 14.10.2020 in A.S.No.06 of 2020 on the file of the learned Additional Subordinate Judge, Namakkal modified the Judgment and Decree dated 22.09.2017 in O.S.No.425 of 2012 on the file of the learned Principal District Munsif, Namakkal.

For Appellant : Mr.N.Manoharan



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JUDGMENT

The unsuccessful plaintiff before the Courts below is the appellant before this court.

2.The facts in brief are as follows:

The appellant has filed O.S.No.425 of 2012 on the file of the learned Principal District Munsif, Namakkal, for declaration of his title over the suit 1st item of the property, for mandatory injunction directing the respondent to remove the encroachment over the 1st item of the property and for permanent injunction, restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property to take water from the common well situate in S.F.No.236/5.

3.The 1st item of the property is comprised in S.No.236/5 of Muttanchetty Village, Erumapatti, Namakkal District. The respondent had in turn filed O.S.No.335 of 2012 on the file of the learned District Munsif, Namakkal, for a declaration of his right over the ABC Wall and a portion of the land that has been shown as the “B” schedule in the



plaint schedule property and for injunction restraining the appellant herein from interfering with the peaceful possession and enjoyment of his portion marked in the “B” Schedule of the property and for mandatory injunction to the appellant to restore the ABC Wall.

4.The suits have been tried together and ultimately, the learned Judge has decreed the suit O.S.No.335 of 2012 declaring the respondent as the owner of the suit “B” portion of the land and the ABC stone wall and also granting decree for permanent injunction, restraining the respondents from interfering with the peaceful possession and enjoyment of the portion marked “B” and the mandatory injunction was granted directing the appellant to restore the ABC Wall at the length of 140 ft.

5.The plaintiff's suit was decreed. Aggrieved by the same, the respondent had filed A.S.No.06 of 2020 on the file of the learned Additional Subordinate Judge, Namakkal, however, the appellant herein has not challenged the decree in the suit O.S.No.335 of 2012.



The appeal filed by the respondent in A.S.No.6 of 2020 was allowed by the learned Additional Subordinate Judge, Namakkal, on the ground that the appellant has not challenged the Judgment and Decree in O.S.No.335 of 2012 where the right of the respondent not only to the stone wall shown as ABC wall in the Plaint but also to the portion of the land shown as the “B” schedule has been declared and further a mandatory injunction directing the appellant herein to restore the wall which was removed to the length AB has also been passed. In the instant suit the plaintiff is seeking a declaration with reference to the very same property over which the defendant's right has been declared and a mandatory injunction and a permanent injunction granted in another proceeding which has not been challenged by the appellant herein. Therefore, the Decree in O.S.No.335 of 2012 has attained finality by virtue of which the defendant's title has been declared to the portion shown as B and the wall. Therefore, nothing survives for consideration in the above Second Appeal and no Substantial Question of Law arises for consideration.



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In fine, this Second Appeal is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

08.07.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

1.The Additional Subordinate Judge,
Namakkal.

2.The Principal District Munsif,
Namakkal.



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P.T. ASHA, J,

mps

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