



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

CORAM :

THE HON'BLE MR.JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

O.S.A.NO.377 OF 2018
AND
C.M.P.NOS.16731, 16732 AND 21207 OF 2018

1. G.Venkataraman

2. K.Guruvan

... Appellants/Plaintiffs

.Vs.

1. N.Rajeswari

2. M.Narayanan

... Respondents/Defendants

PRAYER:-

Original Side Appeal filed under Clause 15 of Letters Patent and Order 36 Rule 9 of Original Side Rules to set aside the decree and judgment made in C.S.No.1048 of 2009, dated 15.03.2017.

For Appellant : Mr.S.Krishnasamy
For M/s.A.Malath Devapriyam

For Respondents : Mr.B.Ullasavelan

JUDGMENT

(Order of the Court made by M.DURAI SWAMY, J.)

Challenging the judgment and decree passed in C.S.No.1048 of 2009 on the file of this court, the plaintiffs have filed the above Original Side Appeal.

2. The plaintiffs filed the suit in C.S.No.1048 of 2009 for declaration that the superstructure on the "B" Schedule land



belongs to the 1st Plaintiff absolutely and for permanent injunction.

3. It is not in dispute that the 1st plaintiff and the 1st defendant are husband and wife. The 2nd plaintiff is the father of the 1st plaintiff and the 2nd defendant is the father of the 1st defendant. It is also not in dispute that the land in "B" schedule belongs to the 1st defendant absolutely. It is the case of the 1st plaintiff that he put up superstructure out of his own money and therefore, he is the absolute owner of the "B" schedule. The defendants contended that the superstructure was put up by them.

4. Before the learned Single Judge, on the side of the plaintiffs, 3 witnesses were examined and 15 documents, Exs.P.1 to P.15 were marked and on the side of the defendants, 2 witnesses were examined and 12 documents, Exs.D.1 to D.12 were marked.

5. The learned Single Judge taking into consideration the oral and documentary evidences let in by both sides, found that the plaintiffs failed to establish their case by oral and documentary evidences and ultimately dismissed the suit, imposing cost of Rs.50,000/- (Rupees fifty thousand only).

6. Challenging the judgment and decree passed in C.S.No.1048 of 2009, the plaintiff's have filed the above appeal.

7. Heard Mr.S.Krishnasamy, learned counsel for the appellants and Mr.B.Ullasavelan, learned counsel for the respondents.

8. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the 1st plaintiff is claiming right over the superstructure standing on the "B" schedule property which belongs to the 1st defendant. When the plaintiffs have filed the suit for declaration in respect of the superstructure, the burden of proof lies on them to establish that the superstructure was constructed by them.

9. It is settled law that the plaintiff should succeed in the suit on the strength of his case and not on the weakness of the defendant.

10. In the case on hand, the plaintiffs were not in a position to produce a single document to establish that the superstructure was put up by the 1st plaintiff. In the absence of any evidence let in by the plaintiffs to establish that the



superstructure was put up by the 1st plaintiff, the learned Single Judge has rightly dismissed the suit. We do not find any ground to interfere with the judgment and decree passed by the learned Single Judge. The Original Side Appeal is liable to be dismissed. Accordingly, the Original Side Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Rj

To

The Sub-Assistant Registrar,
Original Side,
High Court,
Madras - 104.

+1cc to Mr.B.Ullasavelan, Advocate, S.R.No.19936
+1cc to M/s.A.Malath Devapriyam, Advocate, S.R.No.19808

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AND 21207 OF 2018

RR(CO)
PBS/31/05/2022