



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

S.A.No.657 of 2016

and

C.M.P.No.12196 of 2016

M.Balarama Reddy

...Appellant/Appellant/Defendant

Vs.

Muthurangan (deceased)

1.Mrs.Soundaravalli

2.Choodamani

3.Swarnalatha

Suganthi (deceased)

4.M.R.Varadharajan

5.V.Thiyagarajan

6.V.Balaji Raj

...Respondents/Respondents/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 05.11.2013 made in A.S.No.507 of 2007 on the file of the XVIII Additional Judge, City Civil Court, Chennai confirming the decree and judgment dated 01.08.2005 made in O.S.No.8938 of 1993 on the file of the XI Assistant Judge, City Civil Court, Chennai.

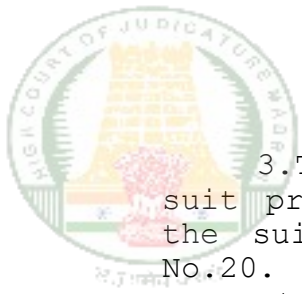
For Appellant : Mr.P.R.Balasubramanian

For Respondents: Mr.Muralikumaran for
M/s.McGan Law Firm for R1 to R6

JUDGMENT

The defendant is the appellant in the present Second Appeal.

2.The plaintiff filed a suit for permanent injunction restraining the defendant from demolishing the northern wall which was marked as "A,B".



3.The case of the plaintiff is that he is the owner of the suit property and one Williams was the original owner of both the suit property as well as the property situated at Door No.20. The said Williams sold the southern portion of the property in the year 1972 to the 1st plaintiff. The northern portion was sold to the defendant by the said Williams in the year 1985. The grievance of the plaintiff is that the defendant was attempting to demolish the wall and hence, proceeded to file the suit for permanent injunction against the defendant.

4.Heard the learned counsel for the defendant/appellant and the learned counsel appearing on behalf of the plaintiffs/respondents.

5.This Court carefully went through the pleadings and also the findings rendered by both the Courts below based on the evidence available on record.

6.Both the Courts below found that there was a common wall in between the property of the plaintiff and the defendant. Both the Courts below heavily relied upon Exhibits C1 and C2 to come to this conclusion. The Courts had to rely upon the Report of the Commissioner, since the Sale Deed of both the parties were silent about the disputed wall. The Commissioner on inspecting the property found that there was only one wall in between the properties of the plaintiff and defendant. It was also found that the disputed "A,B" wall is a common wall and it is having a cupboard for the usage of both the properties in the southern side and the northern side.

7.The learned counsel for the appellant submitted that objections were raised to the Report of the Commissioner and in spite of the same, both the Courts below proceeded to rely upon Report and rendered their findings. The lower Appellate Court has specifically dealt with this submission made by the appellant and it has held that if the appellant had any objection or requires any clarification, it is for the appellant to have examined the Commissioner by putting him in the witness box. Admittedly, the appellant has not chosen to examine the Commissioner. The lower Appellate Court rightly held that it is not necessary for the Court to examine the Commissioner as a Court witness when the Report filed by the Commissioner is clear.

8.In the considered view of this Court, both the Courts below have rendered their factual findings based on certain materials. This Court in exercise of its jurisdiction under Section 100 of C.P.C. cannot re-appreciate the evidence. In any case, this Court does not find any substantial questions of law involved in the second appeal.



9. In view of the above, the Second Appeal stands dismissed. Considering the facts and circumstances of the case, there will be no order as to costs. Consequently, connected civil miscellaneous petition is closed.

WEB COPY

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The XVIII Additional Judge,
City Civil Court, Chennai.
2. The XI Assistant Judge,
City Civil Court, Chennai.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to M/s.Mcgan Law Firm, Advocate, S.R.No.9595

S.A.No.657 of 2016
and
C.M.P.No.12196 of 2016

PMK(CO)
RGA(13/04/2022) (27/06/2022)