



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

SECOND APPEAL NO.900 OF 2016

AND

CMP NO.18324 OF 2016

T.Nagaraj

...Appellant / Defendant

Vs

M.Chinnusamy

...Respondent / Plaintiff

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree of the learned Sub Judge, Bhavani, Erode District, dated 24.08.2015 in A.S.No.10 of 2015 confirming the judgment and decree of the learned Principal District Munsif Court, Bhavani, Erode District dated 23.06.2014 in O.S.No.106 of 2011.

For Appellant : M/s.S.Meenakumari

For Respondent : Mr.S.Kaithamalai Kumaran

JUDGMENT

The defendant is the appellant in this Second Appeal.

2.The respondent/plaintiff filed a suit seeking for the relief of declaration and for delivery of possession of the suit property.

3. The case of the plaintiff is that the suit property was originally owned by the family of one Muthu Gounder and they sold the property to an extent of 0.22cents to the plaintiff by virtue of a registered Sale Deed dated 16.09.2008. The said Muthu Gounder and his family members also sold the property on the Northern side of the plaintiff's property to an extent of 0.22cents to the defendant. The grievance of the petitioner is that the defendant encroached upon an extent of 0.02 cents and had put up a residential house. In view of the same, the suit came to be filed seeking for the above reliefs.

4.Both the Courts below considered the oral and documentary evidence and also the report filed by the Advocate Commissioner.



Both the Courts concurrently found that the defendant had in fact encroached to an extent of 0.02 cents into the property belonging to the plaintiff. This was sufficiently substantiated through the report of the Advocate Commissioner and no objections were raised on the side of the defendant on the report filed by the Advocate Commissioner.

5.The learned counsel for the appellant submitted that the plaintiff did not even plead specifically with regard to the nature and extent of encroachment and both the Courts below decreed the suit only based on the report of the Advocate Commissionere. The learned counsel further submitted that, if really, the defendant had encroached upon the property of the plaintiff and put up construction, the plaintiff would have rushed to the Court and filed the suit within six months and sought for the summary remedy under Section 6 of the Specific Relief Act. The learned counsel for the appellant further submitted that even in the report of the Advocate Commissioner, there was no mention about the construction in the so called encroached portion of the property belonging to the plaintiff. It was therefore submitted that the judgments of both the Courts below are liable to be interfered with by this Court.

6.In the considered view of this Court, this Court exercising its jurisdiction under Section 100 of the Code of Civil Procedure, 1908 cannot reappreciate evidence. This Court can only examine as to whether the findings of the Courts below is perverse and is contrary to the evidence available on record. Both the Courts below have appreciated the evidence and taken note of the report of the Advocate Commissioner and categorical finding has been given to the effect that the 1st defendant had encroached an extent of 0.02 cents into the property belonging to the plaintiff. This Court does not find any ground to interfere with this factual finding. No substantial questions of law are involved in the present Second Appeal.

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

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

KP



To

1.The Sub Judge, Bhavani,
Erode District.

2.The Principal District Munsif Court,
Bhavani, Erode District.

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

+1cc to Mr.D.Balachandran, Advocate Sr.No.9955

+1cc to Mr.S.Kaithamalai Kumaran, Advocate Sr.No.10171

Second Appeal No.900 of 2016

CA(CO)
RVM(01/06/2022)