



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD)No.414 of 2010 and

C.M.P. (MD)No.8744 of 2018

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Ravichandran

... Appellant / Appellant /
Defendant

Vs.

Kalandar Moideen,
Rep. By power agent,
Raja Mohamed

... Respondent / Respondent /
Plaintiff

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the decree and judgment dated 30.09.2009 in A.S.No.21 of 2007 on the file of the Sub Court, Pudukkottai, confirming the judgment and decree dated 26.04.2006 in O.S.No.141 of 2000 on the file of the District Munsif, Aranthangi.

For Appellant : Mr.R.Sundar Srinivasan
For Respondent : Mr.K.Balasundharam

J U D G M E N T

Heard the learned counsel on either side.

2. The defendant in O.S.No.141 of 2000 on the file of the District Munsif, Aranthangi, is the appellant in this second appeal.

3. The suit was filed for the relief of declaration and permanent injunction. The suit property essentially concerns the wall that is standing in between the plaintiff's shop and the defendant's shop. According to the plaintiff, the wall is having a width of 1½ feet and that it exclusively belongs to him. Relief was also sought in respect of the suit second schedule. It is a space underneath the suit wall. The defendant filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial Court framed necessary issues. The plaintiff's power agent Raja Mohammed examined himself as P.W.1 and two other witnesses were examined on his side. Ex.A.1 to Ex.A.36 were marked. The defendant Ravichandran examined himself as D.W.1 and two other witnesses were examined on his side. Ex.B.1 to Ex.B.30 were marked. An Advocate Commissioner was appointed and his report and plan including survey sketch were marked as Ex.C.1 to Ex.C.7. After considering the evidence on record, the trial Court by judgment and decree dated 26.04.2006 decreed the suit as prayed for. Aggrieved by the same, the defendant filed A.S.No.21 of 2007 before the Sub Court, Pudukkottai. By the impugned judgment and decree dated



30.09.2009, the first appellate Court confirmed the decision of the trial Court and dismissed the appeal. Aggrieved by the same, the defendant filed this second appeal.

4. The second appeal was admitted on 30.08.2012 on the following substantial questions of law:-

" 1. Whether the Courts below are correct in shifting the burden of proof on the defendant / appellant vis-a-vis the admission in the annexure of Ex.A.2 providing breadth of respondent's western wall as 9" and whether the Courts below are legally justified in decreeing the suit 1st item based on no evidence?

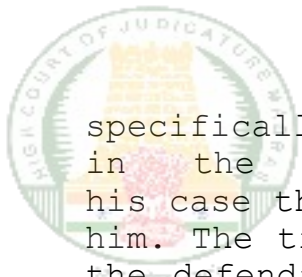
2. Whether the lower appellate Court has committed grave error and irregularity in deciding the case solely based on the plan filed by the respondent along with his written argument without even referring to plaint plan, commissioner report and plan and exhibits available in the suit?"

5. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and filed his notes of arguments. He called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned judgment and decree and dismiss the suit in toto.

6. Per contra, the learned counsel appearing for the respondent submitted that no substantial question of law is involved in this appeal.

1. I carefully considered the rival contentions and went through the evidence on record.

8. Though the suit schedule pertains two items, the case on hand turns essentially around the suit wall. The question that arises for consideration is whether the suit wall exclusively belongs to the plaintiff or whether it is a common wall or whether the plaintiff is entitled only to 9 inches from his side. The stand of the defendant is that the plaintiff's wall is a very old one and is a mud wall. The plaintiff's wall actually measures only 9 inches. The defendant's wall also measures 9 inches and thus the suit wall is not a single entity but it comprises two. The plaintiff is obliged to prove his case. He anchored his entire case on Ex.A.2 (ie.) inam settlement deed dated 21.09.1974 executed by his father. It is not as if the plaintiff's father owned the property ancestrally. He had purchased it under two documents, namely, Ex.A.1 and Ex.B.7. In Ex.A.1, no measurements have been set out. However, in Ex.B.7 measurements have been set out. The property sold to the plaintiff's father under Ex.B.7 measures 12½ feet east-west and the wall in question measures only 9 inches. Ex.B.27 is the annexure to Ex.A.2. In Ex.B.27, the width of the wall has been



specifically mentioned as 9 inches. These two measurements set out in the plaintiff's own parent documents clearly belie his case that the suit wall measuring 1½ feet exclusively belongs to him. The trial Court erred in casting the entire burden of proof on the defendant. The first appellate Court has not at all dealt with any aspect pleaded by the defendant. I therefore answer the substantial questions of law in favour of the appellant.

9. The impugned judgment and decree are set aside. At the same time, the suit filed by the plaintiff cannot be dismissed in *toto*. The plaintiff is given declaration and injunction in respect of 9 inches of the suit first schedule wall. The judgment and decree passed by the Courts below are modified as regards the suit second schedule. The title documents of the plaintiff indicate that he is entitled to only 31 feet north-south. He has not produced any document or evidence to prove that he is entitled to 93 feet north-south in the suit second schedule. Therefore, this portion of the relief granted to the plaintiff in respect of the suit second schedule is set aside.

10. This second appeal is partly allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Sub Judge,
Pudukkottai.
2. The District Munsif,
Aranthangi.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai

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+1 CC to M/s.R. SUNDAR SRINIVASAN, Advocate (SR-17990[F] dated
12/04/2022)

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