



S.A.(MD) Nos.421 & 422 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) Nos.421 & 422 of 2011

M.Murugesan

... Appellant/Appellant/Plaintiff
in both appeals

-VS-

Ganesan

... Respondent/Respondent/
Defendant in both Appeals

Prayer:- Appeals filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 25.11.2009 passed in A.S.Nos.15 and 19 of 2009 on the file of the Sub Court, Pattukkottai, confirming the judgment and decree dated 06.04.2009 passed in O.S.Nos.34 of 2005 and 168 of 2003 on the file of the District Munsif Court, Pattukkottai respectively.

For Appellant : Mr.D.R.Murugesan
(In both Appeals)

For Respondent : Mr.Raguvaran Gopalan
(In both Appeals) for Mr.G.Mohan Kumar



S.A.(MD) Nos.421 & 422 of 2011

WEB COPY

COMMON JUDGMENT

The plaintiff is the appellant in both the appeals. The plaintiff's property is to the west of defendant's property and the dispute is over a width of $\frac{1}{2}$ a foot from the western wall of the defendant's house. According to the plaintiff, this $\frac{1}{2}$ foot wide property is an encroachment by the defendant into his property.

2. Earlier, the present defendant had laid O.S.No.4 of 1988 against the plaintiff's mother for declaration of title and for certain ancillary reliefs as concerning the inter-space that lies between the building of both the parties measuring 95 feet x 2 feet. This suit came to be decreed by the trial court and the plaintiff's mother had preferred A.S.No.65 of 1991 and that came to be dismissed. The plaintiff herein preferred S.A.No.1179 of 1992 and that came to be disposed of by this Court vide judgment dated 03.07.2003. In paragraph 5 of the judgment, this Court has held that the defendant would be entitled to 2.5 feet from his western wall for enabling him to discharge



S.A.(MD) Nos.421 & 422 of 2011

the eaves water of his roof through his property. This judgment is marked as Ext.A7. Paragraph 5 of Ext.A7 reads as follows:-

“5. From the above recital, it is clear that the deceased defendant's property situate beyond the western wall of the house bearing Door No.7 and its Kooraivaram is having a width of 2½ feet. So, under Ext.A6, the deceased defendant could have purchased the property which situate beyond 2½ feet from the western wall of Door No.7. According to the plaintiff, the First Schedule of the suit property is the property mentioned as kooraivaram. Even in the cross-examination, the deceased defendant admits the existence of kooraivaram. When the deceased defendant is not having any right with respect to the said portion, in view of the recitals under Ext.A6, the deceased defendant cannot resist the plaintiff from claiming right in the suit property.”

3. Thereafter, the present defendant is stated to have constructed a wall up to the point where his title extends in terms of Ext.A7, judgment of this court. Now, the plaintiff filed a suit contending that while so constructing, the defendant had encroached into some area beyond the western boundary line



S.A.(MD) Nos.421 & 422 of 2011

where 2.5 feet ends. Indeed, he would file two separate suits for two stretches of the same lane like property.

4. A Commissioner was appointed by the trial court and he had inspected the the property and filed his report which are taken on record as Ext.C1 and Ext.C2. The Commissioner's report clearly indicates that the new wall constructed by the defendant ends within 2.25 feet from the western extremity of his old wall, which implies that there is still left some 3 inches beyond the newly constructed western wall of the defendant. The Commissioner, however, proceeded to state that there are four coconut trees in the property of the defendant of which, three overhang the property of the plaintiff and some damage is caused. However, the suit is laid for mandatory injunction to remove the wall on the allegation that the defendant has constructed the above referred new wall by encroaching into the plaintiff's property.

5. Both the Courts below dismissed the suit and hence, the appeals.



S.A.(MD) Nos.421 & 422 of 2011

6. Heard both sides. The appeals were admitted for considering the following substantial questions of law:

“a) Whether the Courts below is correct in dismissing the suit ignoring Ext.A11 and B9 under which the respondent is entitled only 6 cents?

b) Whether the Courts below is properly evolved the oral evidence of DW1, with the recital made in the documentary evidence relied on by him?

c) Whether the Courts below is legally correct in dismissing the commission application filed in I.A.No.62 of 2009 by the appellant?

d) Whether the judgments and decrees of both the Courts are legally sustainable since it was held that the present suit is not barred by res judicata?”

7. The learned counsel for the appellant submitted that even in terms of Ext.A7, judgment in S.A.No.1179 of 1992, the defendant would only be entitled to a claim over 2 feet from his western wall ends and not 2½ feet.



S.A.(MD) Nos.421 & 422 of 2011

He, therefore, argued that even going by the Commissioner's report, the defendant had encroached into an extent of 3 inches. He submitted that the Courts below have almost presumed that the defendant was entitled to upto 2.5 feet, in terms of the pleadings of the defendant in the earlier suit, but he is entitled to only 2 feet. He also brought to the notice of this Court paragraph 9 of the written statement wherein the defendant has conceded though subtly that if at all any, the plaintiff would only be entitled to damages.

8. At the end of the day, this Court is required to decide the extent of 3 inches in the western newly constructed wall. This Court considered that it is too trivial an issue for this Court to decide in the second appeals. The defendant might have made an offer when he indicated in paragraph 9 that the plaintiff might be entitled only to damages, but then the plaintiff did not make use of that opportunity, and today it is too late in the day for him to lay emphasis on that. Administration of justice cannot be reduced to such ridiculous level as is now done, and here, this Court is reminded of the



S.A.(MD) Nos.421 & 422 of 2011

WEB COPY

maxim “*De minimis non curat lex.*” - *the law does not concern itself about trifles.*

9. In conclusion, this Court does not find any merit in these appeals and the second appeals are dismissed. No costs.

16.06.2022

Internet: Yes
Index: Yes/No

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To

1. The Sub Court, Pattukkottai.

2. The District Munsif Court,
Pattukkottai.



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S.A.(MD) Nos.421 & 422 of 2011

N.SESHASAYEE, J.

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S.A.(MD) Nos.421 & 422 of 2011

16.06.2022