



S.A(MD)No.439 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No.439 of 2021
and C.M.P(MD)No.5842 of 2021

Ayirathammal

.... Appellant/Appellant/Plaintiff

Vs.

1.Krishnammal

2.Seetharaman

...Respondents/Respondents/Defendants

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 11.12.2020 passed in A.S.No.106 of 2019 on the file of the Additional Subordiante Court, Tirunelveli confirming the judgment and decree dated 03.01.2019 passed in O.S.No.475 of 2011 on the file of the Principal District Munsif Court, Tirunelveli.

For Appellant : Mr.M.S.Suresh Kumar

For Respondents : Mr.V.Sukumar

J U D G M E N T

This Second Appeal has been filed challenging the concurrent findings of the courts below. The plaintiff in the suit in O.S.No.475 of 2011 on the file of



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the Principal District Munsif Court, Tirunelveli, is the appellant herein. The suit was filed seeking the following reliefs:

- a) To declare that the A D north south western wall of the plaintiff's property as described in the 4th schedule of the plaint is a common wall belonging to both to the plaintiff and the first defendant;
- b) To declare that the plaintiff is exclusively entitled to the vacant land as described in the 2nd schedule of the plaint as ABCD and for a consequential permanent injunction restraining the defendants from interfering in any manner with the plaintiff's peaceful possession and enjoyment of the plaint 2nd schedule property
- c) For a mandatory injunction to direct the first defendant to remove the eastern north south, side wall of the overhead tank of the first defendant to the north south length of 5 feet and 1 feet breadth constructed on the plaint 4th schedule common wall as described as plaint 3rd schedule constructed by her and as shown as AEFG in the rough plan at the north eastern corner of the terrace of her house by using the common wall as the eastern side wall of the overhead tank within a time limit to be fixed by the court.



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2. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

3. The defendants, as seen from their written statement, have denied the allegations of the plaintiff and they have pleaded as follows:

a) It is not correct to state that eastern wall of the defendant is a common wall belonging to both the plaintiff and the defendants. As seen from the sale deed of the defendants, it is clear that the east-west measurement is shown as 21 feet and hence it is false to state that the wall is used as common wall by both the plaintiff and the defendants. The plaintiff at no point of time has enjoyed the wall as a common wall and therefore, the plaintiff has no right to prevent the defendants from enjoying the wall exclusively.

b) On 23.07.1998, both the plaintiff and the first defendant have entered into an agreement, which has been marked as Ex.B.1 before the trial court and under the said agreement, the plaintiff has agreed to leave 1 feet and the first defendant has agreed to leave 2 feet and both the parties should not let the rain water or waste water into the space of the other. The plaintiff has suppressed the same in the suit.



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c) The plaintiff herself admitted that the cause of action arose more than 13 years ago as the defendants have enjoyed the property for more than 13 years and has prescribed title by way of adverse possession. Therefore, the plaintiff is ousted from claiming any rights over the property. The water tank is in existence even in the year 1993 when the defendants purchased the property. Hence, the suit is barred by limitation.

4. The trial court framed issues including the issue whether the suit is barred by law of limitation based on the pleadings of the respective parties.

5. Before the trial court, as seen from the deposition of the plaintiff's witnesses, she has disputed the agreement dated 23.07.1998 reached between the plaintiff and the defendants namely Ex.B.1. However, the learned counsel for the appellant/plaintiff on instructions would now submit that the plaintiff is willing to abide by the terms and conditions of the agreement Ex.B.1 dated 23.07.1998. The said undertaking given by the plaintiff through her counsel is recorded by this Court.

6. The trial court has answered all the issues framed by it against the



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plaintiff by dismissing the suit and one of the grounds for dismissal is that the suit is barred by limitation. The lower Appellate Court namely, the Additional Sub Court, Tirunelveli in A.S.No.106 of 2019 filed by the plaintiff by its judgment and decree dated 11.12.2020 also confirmed the findings of the trial court by dismissing the first appeal. Aggrieved by the concurrent findings of the courts below, this Second Appeal has been filed.

7. This Court is of the considered view, as seen in the pleadings and deposition on the side of the plaintiff, it is clear that the plaintiff was aware of the alleged irregularities committed by the defendants as pleaded in the plaint as early as in the year 1995 itself when the plaintiff purchased her property. In fact, there was an exchange of notice in the year 1996 between the parties with regard to the same cause of action for which the suit was filed. However, the plaintiff has chosen to file the suit only in the year 2011. Though she may claim that her husband was bed ridden and that is the reason for the delay, any suit will have to be filed within the prescribed period of limitation as fixed under the Limitation Act. The cause of action arose in the suit in the year 1995 itself when the plaintiff had purchased her property and in the year 1995 itself the very same irregularities committed by the defendants were noticed and hence, the



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suit ought to have been filed within a period of 3 years from that date when the said irregularities were noticed. Since the suit was filed only in the year 2011, the trial court has rightly dismissed the suit by giving apart from other reasons on the ground of limitation. The lower Appellate Court has also rightly confirmed the findings of the trial court by dismissing the first appeal. However, an undertaking has been given by the appellant/plaintiff that she is now willing to abide by the terms and conditions of the settlement agreement reached between the plaintiff and the defendants dated 23.07.1998 (Ex.B.1). Even though there is no merit in the Second Appeal, on considering the said undertaking, this Court will have to give an observation that the respondents/defendants will have to necessarily abide by the terms and conditions of Ex.B.1, a settlement agreement, reached between the parties, which has already been accepted by the respondents as seen from the written statement and their deposition.

8. For the foregoing reasons, since there is no debatable issues of fact or law required for further consideration by this Court under Section 100 C.P.C, this Court is inclined to dismiss this Second Appeal. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed. However, this Court is making it clear that in view of the undertaking



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given by the appellant/plaintiff as stated supra, the respondents/ defendants will also adhere to the settlement agreement dated 23.07.1998 (Ex.B.1) reached between the parties which is also not disputed by the respondents/defendants in their written statement as well as in their deposition.

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Index : Yes/No
Internet: Yes/No
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To

- 1.The Additional Subordinate Judge, Tirunelveli
- 2.The Principal District Munsif, Tirunelveli.
- 3.The Section Officer,
VR Section, Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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