



S.A(MD)No.225 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No.225 of 2017

and

C.M.P(MD)No. 4405 of 2017

Ganapathy Raj

... Appellant

Vs.

The Kovilpatti Municipality
through its Commissioner,
New Road,
Kovilpatti Town,
Thoothukudi District.

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment, dated 03.12.2016 in A.S.No.8 of 2016 on the file of the Sub Court, Kovilpatti reversing the Judgment and Decree dated 17.11.2014 in O.S.No.168 of 2013 on the file of the Principal District Munsif Court, Kovilpatti.

For Appellant : M/s.F.X.Eugene

For Respondent : Mr.J.Parekh Kumar



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ORDER

This Second Appeal is filed against the Decree and Judgment, dated 03.12.2016 in A.S.No.8 of 2016 on the file of the Sub Court, Kovilpatti reversing the Judgment and Decree, dated 17.11.2014 in O.S.No.168 of 2013 on the file of the Principal District Munsif Court, Kovilpatti.

2. The Plaintiff is the Appellant and the Defendant is the Respondent herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendant.

3. The contention of the plaintiff is that he had purchased the Item Nos.1 & 2 of suit schedule of properties through sale deeds dated 30.06.1987 and 01.07.1987. The defendant Municipality has initiated action against the plaintiff to remove the encroachment alleging that the plaintiff has encroached the road. According to the plaintiff, he is entitled to the property as stated in the sale deed. But the defendant municipality has stated that the municipality is entitled to road. It is seen that the land situated in S.No.214 / T.S.No.189 belongs to plaintiff as per sale deed and the land earmark for road is situated in S.No.215 / T.S.No.190.



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4. Both the Trial Court and the Appellate Court have failed to identify the property. Therefore, it is necessary to remit back the matter to the Trial Court. The plaintiff is directed to file a petition for appointing an Advocate Commissioner. Thereafter the land shall be surveyed as per sale deed and then the plaintiff properties and road shall be marked. Based on the Advocate Commissioner's report the rival claims of the parties shall be decided.

5. Therefore, the matter is remitted back to the Trial Court to identify the property and thereafter, consider the claim of the plaintiff. The trial Court shall consider and dispose of the suit within a period of Four months from the date of receipt of a copy of the Order.

6. With the above directions and observations this Second Appeal is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
KSA

27.11.2023



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To

1. The Sub Court,
Kovilpatti.
2. The Principal District Munsif Court,
Kovilpatti.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J

KSA

**Judgment made in
S.A(MD)No.225 of 2017**

27.11.2023