



S.A.No.498 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2024

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.498 of 2012
and M.P.No.1 of 2012

1.Elayappa Gounder
S/o.Palanivel Gounder

2.Rangasamy
S/o.Elayappa Gounder

3.Srinivasan
S/o.Elayappa Gounder

... Appellants

Vs.

1.Shanmugavel
S/o.Subbaraya Gounder

2.Saravanan (Died)
S/o.Shanmugavel

3.Savitha
W/o.Saravanan

4.Guhaan. S. (Minor)
S/o.Saravanan

5.Nandhanaa S.S. (Minor)
D/o.Saravanan
(R4 & R5 are rep by mother and natural guardian)



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6.Ambikadevi
W/o.Shanmugavel

(R2 died, RR3 to 6 are brought on record
as LR's of the deceased R2 vide Court order
dt.08.12.2023 made in CMP.Nos.3529 & 3531
of 2023 in SA.No.498 of 2012 (KGJJ)

... Respondents

Prayer: The Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 29.09.2011 made in A.S.No.89 of 2011 on the file of the Additional District Court, Fast Track Court, Namakkal, confirming the judgment and decree dated 17.09.2008 made in O.S.No.558 of 2001 on the file of the Additional District Munsif Court, Namakkal.

For Appellants : Mr.T.Dhanyakumar

For Respondents : Mr.D.Selvaraju
for M.Thirumuthukumaran - R1

Mr.P.Navaneetha Krishnan - R3 to R6

R2 - Died

JUDGMENT

The plaintiffs are the appellants herein and the respondents herein are the defendants before the trial Court.



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2. For the sake of convenience, the appellants and the respondents will be referred to as plaintiffs and defendants respectively.

3. **The brief facts which gives rise to the instant second appeal is as follows:-**

Originally the suit property belongs to one Velappa Gounder, who had two sons viz. Rangasamy Gounder and Subbaraya Gounder. The defendants 1 and 2 are the son and grand son of the Subbaraya Gounder. The plaintiffs are the purchasers of the suit property from the Rangasamy Gounder. According to the plaintiffs, at the time of purchase of the suit property, there was a stone structure like revetment within their property. However, the defendants were interfering with the plaintiffs' right over the stone structure. Hence, the plaintiffs preferred a suit in O.S.No.558 of 2001 for declaration, declaring that the said stone structure belongs to them, and also sought for a relief of permanent injunction, restraining the defendants from interfering with the proposed further construction of the said stone structure.

4. **The Written statement in brief:-**

The said suit was resisted by the defendants on the ground that the



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stone structure, which is the subject matter of the suit is within their boundary, and therefore the plaintiffs are not entitled for the decree as has been sought for.

5. Evidence and Documents:-

Before the trial Court, the plaintiffs have examined four (4) witnesses and marked as many as seven (7) documents. On behalf of the defendants, three (3) witnesses were examined and one (1) document has been marked. Commissioners' reports were marked as Court documents in Ex.C1 to C8.

6. Findings of the Courts below:-

The trial Court having considered the oral and documentary evidence, had arrived at a conclusion that the stone structure which is lying on the southern end of the plaintiffs' property is not all situated within the boundary of the plaintiffs' land and the same exists only in the defendants' land and had ultimately dismissed the suit.

7. Aggrieved by the above findings of the trial Court, the plaintiffs approached the First Appellate Court in A.S.No.89 of 2011, and the First



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Appellate Court also concurred with the said findings of the trial Court and had dismissed the First Appeal. Aggrieved with the concurrent findings of the Courts below, the plaintiffs are before this Court by filing the present Second Appeal.

8. The learned counsel for the appellants would submit that there are abundant evidences available to prove that the stone structure is situated well within the property / boundary of the plaintiffs / appellants. However, it is their contention that the Courts below have erred while arriving at a conclusion. Accordingly, prays for interfering with the concurrent findings of the Courts below.

9. Per contra, the learned counsel appearing for the respondents / defendants would vehemently oppose the same on the ground that there are abundant evidences through the oral evidence of PW1, PW3 and PW4 and also through the evidence of DW3 and through the Commissioners' reports Ex.C4 to C8, that the alleged stone structure is well within the boundary of the defendants' property / boundary. It was also further contended by the learned counsel for the respondents that the finding of fact as arrived by the



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Courts below was based upon the evidences available before the Courts.

Therefore, contends that while exercising jurisdiction under Section 100 of C.P.C., this Court cannot interfere with the concurrent findings of the Courts below. Hence prayed to dismiss the above second appeal.

10. I have given my anxious consideration to either side submissions.

11.The sum and substance of the second appeal is that, whether the said stone structure exists within the plaintiffs' boundary / property, or in the defendants' boundary / property?.

12.According to the findings of the Courts below, the said stone structure is within the defendants' property. In this regard, the trial Court has relied upon the evidence of DW3 and the Commissioners' reports C4 to C8. It was submitted by the learned counsel on either side that three Commissioners were appointed before the trial Court to examine the features of the said stone structure. According to the trial Court, through the Commissioner's report it manifests that the alleged stone structure is within the defendants' property and such factum was further vindicated through the



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official witness DW3, who was the surveyor. As rightly contended by the learned counsel for the respondents, this is a pure question of fact, and such finding of fact is purely based upon the evidence made available before this Court.

13.As a matter of fact, from the submissions of the learned counsel for the appellants, this Court could not find existence of any substantial questions of law. Therefore, in view of the concurrent findings of both the Courts below, that too based upon the evidences made available before the Courts, this Court could not find any ground to interfere with the orders of the Courts below.

14.In the result, this Second Appeal stands dismissed. There is no order as to costs. Consequently, the connected miscellaneous petition is closed.

05.04.2024

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Index: yes / no

Neutral Citation : yes / no



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C.KUMARAPPAN, J.
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To

1.The Additional District Court
Fast Track Court
Namakkal

2.The Additional District Munsif Court
Namakkal.

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