



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD)No. 1226 of 2008

1.Subramani

2.D.Govindarajan (Died)

3. Pitchai

4.Vinoth Kumar

5.Sujatha

... Appellants

[Appellants 3 to 5 are brought on record as LR's of the deceased 2nd Appellant, vide Order of this Court, dated 29.04.2022]

/Vs./

Chinnappa (Died)

2. Rajam

3. Saravanan

4. Rajadevan

... Respondents

[Respondent Nos.2 to 4 are brought on record as LR's of the deceased sole respondent vide Court order dated 29.04.2022]



PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and decree dated 31.07.2008 made in A.S.No.73 of 2005 on the file of the Additional Sub Court, Kumbakonam, reversing the Judgment and Decree of the Additional District Munsif Court, Valangaiman at Kumbakonam made in O.S.No.123 of 2001 dated 31.01.2005.

For Appellants : Mr/s.K.Govindaraj

For Respondents : R-1 – Died
Mr.P.Thiyagarajan, for R-2 to R-4

JUDGMENT

This Second Appeal is filed by the defendants in the suit to set aside the Judgment and decree dated 31.07.2008 passed in A.S.No.73 of 2005 on the file of the Additional Sub Court, Kumbakonam, thereby confirming the Judgment and Decree of the Additional District Munsif Court, Valangaiman at Kumbakonam passed in O.S.No.123 of 2001 dated 31.01.2005.

2. The defendants in the suit are the appellants herein and the plaintiffs in the suit are the respondents herein. For the sake of convenience, the parties shall be referred to as Plaintiffs and Defendants. Pending this Second appeal the 2nd defendant/2nd appellant died and his legal heirs were added as



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appellants 3 to 5/defendants. The plaintiff died and his legal heirs were added as Respondent Nos.2 to 4/plaintiffs.

3. The suit in O.S.No.123 of 2001 was filed by plaintiff namely Chinnappa to declare the eastern side of the wall of the suit property belongs to the plaintiff. The defendant has taken a plea that the said wall belongs to him.

4. After hearing the rival claims, the Trial Court had come to the conclusion that the plaintiff is not entitled to any relief and dismissed the suit. Against the said Judgment, dated 31.01.2005 the plaintiff has preferred an appeal in A.S.No.73 of 2005 on the file of the Additional Subordinate Court, Kumbakonam. After appreciating the evidence, the Appellate Court has allowed the appeal on 31.07.2008 and declared that the eastern Wall belongs to the plaintiff. Against the same, the defendants had filed the present Second Appeal.

5. Heard Mr/s.K.Govindaraj, the Learned Counsel appearing for the Appellants and Mr.P.Thiyagarajan, the Learned Counsel appearing for the respondents 2 to 4 and perused the documents available on record.



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6. The contention of the defendants is that even though the disputed Wall was erected subsequent to the Wall of the plaintiffs, that does not mean the entire wall belongs to the plaintiffs. However, the plaintiffs have submitted that plaintiff had already constructed the entire building along with the wall and the defendants have put up construction subsequent to the building put up by the plaintiff. In other words, the plaintiff's building is prior to the defendants building along with the wall. Hence the said disputed wall belongs to the plaintiffs.

7. Further, pending Second appeal, the defendants have initiated repair work in the suit property. While demolishing the portion of the building it was found that the wall of the defendants was fixed on the wall of the plaintiffs. Therefore, the contention of the plaintiffs is proved by the fact that the defendants wall is fixed on the wall of the defendants. The plaintiffs had produced photographs to prove the same.

8. On perusal of the photograph, it is seen that the eastern wall of the plaintiffs is 5 1/2 feet, whereas the wall of the defendants is half of the said wall. From the said photograph, it is also evident that the window was constructed on



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the eastern wall and subsequent to the construction of the defendants, the plaintiffs have closed the window, however the wooden frame of the window is evidence. However, is it exclusively proved the eastern wall is belonging to the plaintiffs. Therefore, there is no merits in the present second appeal and the same is liable to be dismissed.

9. Accordingly, this Second Appeal stands dismissed. The Judgment and Decree dated 31.07.2008 passed in A.S.No.73 of 2005 on the file of the Additional Sub Court, Kumbakonam is hereby confirmed and the Judgment and Decree dated 31.01.2005 passed in O.S.No.123 of 2001 on the file of Additional District Munif Court, Valangaiman at Kumbakonam is set aside. No Costs.

21.10.2024

Index : Yes / No

NCC : Yes / No

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TO:

1. The Additional Sub Court, Kumbakonam.
2. The Additional District Court,
Valangaiman at Kumbakonam.
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. 1226 of 2008

Dated:
21.10.2024