



S.A(MD)No.273 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 03.07.2024

CORAM

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

S.A(MD)No.273 of 2011

Madhan

... Appellant

-VS-

Thajudeen

... Respondent

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure against the Judgment and Decree dated 06.08.2009 made in A.S.No.171 of 2003 on the file of the Principal Sub Court, Kumbakonam reversing the Judgment and Decree dated 22.04.2003 made in O.S.No.40 of 2002 on the file of the Additional District Munsif, Valangaiman at Kumbakonam.

For Appellant

... Mr.G.Gomathi Sankar

For Respondent

... Mr.V.K.Vijaya Ragavan



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JUDGMENT

With the consent of both sides, this second appeal is taken up for final disposal.

2.The respondent is the plaintiff and the appellant is the defendant in the suit in O.S.No.40 of 2002 on the file of the Additional District Munsif, Valangaiman at Kumbakonam. The respondent filed the said suit seeking the relief of permanent injunction. The Trial Court, after considering the oral and documentary evidence, dismissed the said suit. Challenging the same, the respondent filed the appeal in A.S.No.171 of 2003 on the file of the Principal Sub Court, Kumbakonam. The First Appellate Court, allowed the appeal suit. Aggrieved over the same, the defendant filed the present second appeal. For the purpose of clarity, the parties are referred to as per their rank before the Trial Court.

3. The case of the plaintiff as per the plaint is that the suit 'A' schedule property consist of 2 shops was previously owned by one Abdul Rahim, who is the father of the plaintiff by way of a registered sale deed dated 23.06.1967. From the date onwards, he was put in possession and enjoyment of the same. The father of the plaintiff died on 09.03.2000.



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Thereafter, the plaintiff had succeeded to his estate and he continued to be in possession and enjoyment as absolute owner. The plaintiff's father had put up a wall along with his northern wall extending to the further west up to the point "G" portion. The extension of the wall was made in 1980. The plaintiff's father had been enjoying the south of the wall 'AG' and thereafter, the plaintiff is in possession and enjoyment of the same. The 'AG' wall's breath is $\frac{3}{4}$ feet. On the north of the 'AG' wall the defendant's vendor himself had put up a corresponding wall in his property. Both the walls are inexistence even today. The perusal of the rough ketch will show that it could not be possible for the defendant to have any enjoyment over the property lying south of the 'AG' wall. The plaintiff is carrying on a spare parts business in the suit 'A' schedule property. The plaintiff had access from the road only on the south of the 'AG' wall to that shop. If the 'AG' wall and the corresponding wall i.e., on the north of 'AG' wall put up by the defendant's vendor are demolished, the plaintiff will be put to much prejudice and hardship and there will be no safety and privacy to the plaintiff's property and there is every possibility the defendant and other can get into the property of the plaintiff. If the wall is removed, the plaintiff's property will remain open and there is every possibility anybody can enter into the plaintiff's



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property without his knowledge and even committing theft of the plaintiff's property. Hence, the defendant has to be restraining from demolishing the 'AG' wall shown in the rough sketch. The plaintiff and his father have been enjoying the same without any interference and disturbance for nearly two decades. Hence, he filed the suit.

4. The case of the defendant is that the father of the plaintiff has not put any wall in 1980 along with his northern wall. There was no extension of the northern wall as stated in the plaint. The father of the plaintiff never enjoyed the southern portion of the 'AG' wall. The suit property does not belong to the plaintiff. The photographs filed by the plaintiff will not prove the alleged possession. Mere filing of the photographs will not take the plaintiff to any better title or possession. The said wall is the southern wall of this defendant's shop. The plaintiff is not carrying any business on the disputed property. His shop is on the opposite side. The vendors of the defendant and the plaintiff are close relatives. There is no possibility of affecting the privacy of the plaintiff and there is no threat for committing any theft. The property of the plaintiff has stopped at a distance away from the eastern wall belonging to this defendant. The plaintiff has wrongly put up a thatched shed over



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vacant land belong to the Municipality south of the southern wall of this defendant. After wrongfully putting up the shed over the Municipality property, the plaintiff now wants to claim the southern wall absolutely belonging to the defendant as his wall. The plaintiff is not in possession for nearly two decades as stated in the plaint. The defendant is a poor tea stall owner. The disputed wall is in T.S.No.599. The site originally belonged to Afrap Ahamad Khan. He sold the same to Jamal Mohideen under a registered sale deed dated 06.01.1977. After purchase, the said Jamal Mohideen was enjoying the property absolutely and after his death, his legal heirs sold the property including the disputed property to the defendant under a registered sale deed dated 01.11.2000. The defendant has purchased all the three walls situated on the southern side, eastern side and northern side with the wooden gate on the western side. Hence, the disputed wall is over T.S.No.599 which never belonged to the plaintiff. There is no question of trespass and there is no need for any threat and there is no demolition. The defendant has got every right over the 'AG' wall. The defendant is not going to demolish the AG wall or any wall. The plaintiff has no right with the disputed property. Hence, he prayed for dismissal of the suit.



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WEB COPY 5. The trial Court, considering the pleadings, framed the issues.

During trial, on the side of the respondent/plaintiff, two witnesses were examined and 8 documents were marked as Exs.A1 to A8. On the side of the appellant/defendant, one witness was examined and 2 documents were marked as Exs.B1 and B2. Besides, Exs.C1 and C2 were marked.

6. Considering the above pleadings, oral and documentary evidence, the Trial Court dismissed the suit. Therefore, the plaintiff filed the appeal before the first appellate Court. The first appellate Court allowed the appeal and set aside the judgment and decree passed by the trial Court. Hence, the defendant has moved before this Court.

7. At the time of hearing, the learned counsel for the appellant/defendant fairly submitted that the defendant is not going to demolish the 'AG' wall. The learned counsel for the respondent/plaintiff submitted that the second appeal may be disposed of by recording the said submission of the appellant/defendant.



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8. In view of the above submission of both the learned counsels,

the Second Appeal is disposed of. No costs.

03.07.2024

NCC : Yes/No

Index : Yes/No

Internet: Yes

skn

To:

1.The Principal Sub Court, Kumbakonam.

2.The Additional District Munsif, Valangaiman at Kumbakonam.

3.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.



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A.A.NAKKIRAN, J.

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