



S.A.(MD)No.224 of 2004

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD).No.224 of 2004

M.Jegatheesa Prasad

....Appellant/Appellant/Defendant

-VS-

Radhakrishnan

....Respondent/Respondent/Plaintiff

(This second appeal is restored
vide order dated 19.08.2025)

PRAYER : Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree in A.S.No.16 of 2003 dated 16.02.2004 on the file of the Principal District Judge, Srivilliputtur by confirming the judgement and decree in O.S.No.365 of 2000 dated 13.01.2003 on the file of the Additional District Munsif, Srivilliputhur.

For Appellant : Mr.M.Thirunavukkarasu

For Respondent : Mr.Saravanan
for Mr.A.Sivaji



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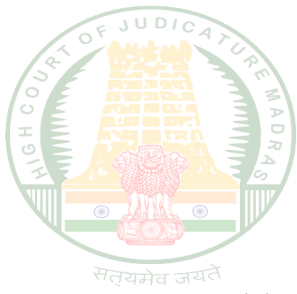
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JUDGMENT

The defendant in O.S.No.365 of 2000 on the file of the Additional District Munsif, Srivilliputtur has filed the present second appeal challenging the concurrent findings of the trial Court as well as the Appellate Court.

2.The respondent herein as plaintiff has filed the above said suit for the relief of declaration that the second schedule 'CD' wall is a common wall of the plaintiff and the defendant. A consequential injunction has also been sought for as against the defendant that he should not interfere in the rights of the plaintiff to put up or attach any construction over the said common wall.

3.As per the case of the plaintiff, the first schedule property has been purchased by the plaintiff under Ex.A10 on 22.03.2000. According to the plaintiff, the eastern side of the wall of his property is a common wall between the plaintiff and the defendant. The plaintiff has relied upon Ex.A9 common wall agreement dated 14.01.1964 which has been entered into between the plaintiff's vendor and the defendant's vendor. Relying upon the

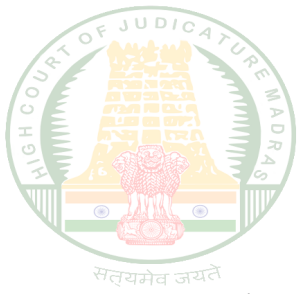


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said agreement, the suit second schedule wall is a common wall between the plaintiff and the defendant and therefore, the defendant should be enjoined from disturbing the rights of the plaintiff from putting up any construction over and above the common wall.

4.The defendant had filed a written statement contending that the suit schedule wall is not a common wall and it is the absolute wall of the defendant. He has also disputed Ex.A9 common wall agreement. It was further pointed out that there is no reference about the common wall agreement in Ex.A10 sale deed under which the plaintiff has purchased the suit schedule property. It was further pointed out that the plaintiff's vendor had executed two registered Wills in favour of his legal heirs under Exs.B6 and B7 on 21.07.1984 and 09.06.1988. In those two registered Wills, there is no reference about the suit common wall. Ex.A9 requires registration under Registration Act. On the other hand, the said document being an unregistered one, cannot be relied upon.

5.The trial Court as well as the Appellate Court after going through the contents of Ex.A9 common wall agreement, arrived at a finding that it is only a license given to the plaintiff's vendor to put up construction over the



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suit wall and in such circumstances, it does not require any registration. The Courts below further found that the document having been there in existence for more than 30 years, presumption under Section 90 of the Indian Evidence Act would get attracted. Since the genuineness of Ex.A9 has not been questioned, the same has been acted upon and at this length of time and the same cannot be questioned on the ground that it is an unregistered document. Challenging the concurrent findings, the present second appeal has been filed.

6.The second appeal was admitted on the following substantial question of law.

“Whether Ex.A9 is inadmissible in evidence for want of compulsory registration?”

7.The entire case of the plaintiff rests upon Ex.A9 common wall agreement. The defendant had raised an objection with regard to the admissibility of the said document on the ground that it requires registration under Section 17 of the Registration Act.

8.A perusal of Ex.A9 common wall agreement reveals that it has been entered into between the plaintiff's vendor and the defendant's vendor on



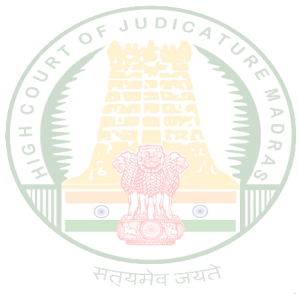
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14.01.1964. As per the recital in the said agreement, the wall belongs to the defendant's vendor. The defendant's vendor is alienating $\frac{1}{2}$ share in favour of the plaintiff's vendor for a sale consideration of Rs.100/-.

9.As per Section 2(6) of the Registration Act, the wall being attached to earth, should be construed to be an immovable property. As per Section 17(b) of the Registration Act, any document which perpetuates to create or declare any right, title or interest of the value of Rs.100/- and upwards in immovable properties, require registration.

10.In the present case, Ex.A9 points out that the wall is exclusively owned by the defendant's vendor. He had alienated $\frac{1}{2}$ of the said immovable property in favour of the plaintiff's vendor for a sale consideration of Rs.100/-. In such circumstances, there cannot be any doubt whatsoever that Ex.A9 document requires registration.

11.The Trial Court as well as the Appellate Court have not properly appreciated the admissibility of Ex.A9 common wall agreement. They have proceeded to treat it as mere agreement or license to put up construction over and above the disputed wall. Merely because a document is permitted to be marked in evidence, it does not preclude the other party from



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questioning the admissibility on a later point of time. Only if the mode of admission is disputed, the objection cannot be raised at a later point of time. On the other hand, if there is an objection with regard to the admissibility of a document, the same can be raised even after it has been marked. In such circumstances, the trial Court as well as the appellate Court were not right in relying upon Ex.A9 for granting a decree in favour of the plaintiff. Except Ex.A9 document, the plaintiff could not produce any other document in support of his prayer.

12.In such circumstances, the substantial question of law is answered in favour of the appellant. The judgment and decree of both the Courts below are hereby set aside. The second appeal stands allowed. No costs.

19.08.2025.

Index : Yes / No
Internet : Yes / No
NCC : Yes/No
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To

1.The Principal District Judge
Srivilliputhur

2.The Additional District Munsif
Srivilliputhur

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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