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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	16.09.2025
Pronounced On	:	21.01.2026

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

S.A.(MD) No.141 of 2018
and
C.M.P.(MD).No.3759 of 2018

A.Nalluchamy ...Appellant

Vs.

Chandrasekaran ... Respondent

Prayer : This Second Appeal is filed under Section 100 of C.P.C., to set aside the judgment and decree dated 30.06.2017 passed in A.S.No. 29 of 2016 on the file of the Principal Sub Court, Karur, confirming the judgment and decree dated 12.07.2016 passed in O.S.No.118 of 2013, on the file of the Additional District Munsif Court, Karur.

For Appellant : Mr.A.Joel Paul Antony
For Respondent : Mr.K.Govindarajan

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JUDGMENT

The unsuccessful plaintiff in O.S.No.118 of 2013 on the file of the Learned Additional District Munsif, Karur has filed this appeal challenging the dismissal of his suit which was confirmed in A.S.No. 29 of 2016 on the file of the Learned Principle Sub-Court, Karur.

2.For convenience and better appreciation, and brevity the rank referred in the O.S.No.118 of 2013 is followed hereunder. The Plaintiff in O.S.No.118 of 2013 is the appellant and the defendant in O.S.No.118 of 2013 is the respondent herein.

3. **The case of the plaintiff:**

The plaintiff had purchased and constructed a house in Door No.L-151 of Housing Board Allotment, Gandhi Gramam Village at Karur, Thanthoni vide Sale deed dated 01.08.2011 from Tamil Nadu Housing Board. The total measurement of the property is 1500 Sq.Ft., with "L" type construction house and a vacant place in

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the rear portion. The defendant is having his house on the eastern side of the suit property. There is a "*Common Compound Wall*" between the suit property and property of the defendant. The hight of the compound Wall is four and half feet (4 - ½) and width of ½ feet. The said compound wall was described as "B" schedule property. On the said "Common Compound Wall", the defendant made a construction and attempted to make further construction which will protrude into the "A" schedule property of the plaintiff. The area of the illegal construction made by the defendant is described as "X", "Y" in the rough plan produced along with the plaint. The defendant has no right to make the construction on the common compound wall and also he has no right to construct the lintel protruding into his property. Therefore, the plaintiff filed a suit to grant a decree for permanent injunction restraining the defendant and their men or any one on his behalf from anyway interfering with the peaceful possession and enjoyment of the "A" schedule property belonging to the plaintiff either by constructing any further

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construction on the "*Common Compound Wall*" or putting up any construction protruding into the suit property and also a decree for mandatory injunction directing to demolish and remove the construction of half feet structure made on the common compound wall mentioned as "*B*" schedule property and also any other further reliefs as deemed fit.

4. **The case of the Defendant:**

The defendant has filed the written statement admitting that his property is situated on the eastern side of the suit property, but disputed the existence of the common compound wall and specifically stated that he has not made any construction as stated in the plaint. The said common compound wall is his exclusive and absolute property and hence he is entitled to raise any construction. He is not making any attempt to construct the lintel portion protruding into the suit property. The plaintiff's suit for bare injunction without relief of declaration is not legally maintainable.

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5. Finding of the the Learned Trial Judge:

The Learned Trial Judge on the basis of the pleading framed necessary issues and also appointed a Advocate Commissioner and the Advocate Commissioner also filed a report. The plaintiff in order to prove his case examined himself as PW.1 and marked Ex.A1, Ex.A2. The defendant examined himself as DW.1 and marked Ex.B1. The Learned Trial Judge after considering the evidence dismissed the suit holding that the plaintiff has not proved his case of the common compound wall and his suit without prayer for declaration is not maintainable. The Learned Trial Judge considering the evidence of the defendant that he himself removed the construction during the pendency of the suit made on the common compound wall, dismissed the relief of mandatory injunction.

6.Finding of the 1st Appellate Court:

Aggrieved over the same, the plaintiff filed the 1st Appeal in A.S.No.29 of 2016 on the file of Learned Principal Sub-Judge, Karur

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and same also was dismissed. The Learned 1st Appellate Judge also had held that the plaintiff has not proved the existence of the common compound wall and the plaintiff failed to prove that a common compound wall existed between both properties of plaintiff and the defendant by admeasuring the extent of the properties mentioned in the Sale deed with help of the Surveyor. The learned 1st Appellate Judge has also concurred with the finding of the Learned Trial Judge that suit for bare injunction is not maintainable without prayer of declaration.

7.Aggrieved over the concurrent judgments, the plaintiff has filed the Second Appeal. At the time of the admission this court framed the following substantial questions of law:

> *1.Whether the judgment of the lower appellate Court is correct in the eye of law by rendering findings to the effect that the appellant/plaintiff has not sought for any declaratory relief when there is no title dispute in respect of the suit properties.*

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2.Whether the judgment and decree passed by the Courts below are correct in the eye of law by rendering perverse findings to the effect that the compound wall has been constructed by the respondent /defendant when the respondent has not marked any documents in support of his claim?

3.Whether the Courts below are right in holding that the plaintiff has not proved his common right over the compound wall on the eastern side, merely because the plaintiff has not proved his common right by any documentary evidence?

4.When it is admitted that the defendant has made a structure over the disputed compound wall and when such construction of building is without any laternal support and there is likelihood of some damages in case the construction made by the defendant collapses, is not the plaintiff entitled to seek mandatory injunction?

8.The Learned Counsel for the appellant would submit that both the courts below failed to consider that both plaintiff and the appellant have purchased and constructed an "L" shape house from

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the Housing Board. Therefore, sale deed of the appellant and the evidence of the witnesses has to be considered in proper manner and the same was not done by both the courts below. Hence, there is perversity in the finding of both the Courts.

8.1.The Learned Counsel for the appellant would submit that in the sale deed Ex.A1, there is a clear mentioning of "fences" and "appurtenances" and DW.1 also admitted norms of the Tamil Nadu Housing Board to construct the common compound wall except in the front portion of the house. DW.1 also admitted that on the other two sides of his house, he constructed a common compound wall with the contribution by their adjacent owners. Therefore, the case of the appellant that the disputed wall is also deemed as a common compound wall. The said inferential fact has to be presumed by the courts below from the above evidence. More particularly the defendant has not produced his title deed to prove his case. Further, he has not produced any material to prove his case

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of exclusive ownership over the property of common compound wall. When the plaintiff established the foundational facts to infer the existence of the common compound wall the defendant has to prove his case of absolute title of the disputed common compound wall. In view of the limited claim of the appellant to prevent the further construction on the common compund wall, both courts below have committed error in holding that suit for bare injunction is not maintainable without relief of declaration. Therefore, the Learned Counsel for the appellant seeks to set-aside the judgment of the both the courts below.

9.The Learned Counsel for the Respondent would submit that the plaintiff has to prove his case through independent evidence and he can not rely on the weakness of the defendant's case. The plaintiff has admitted that he has not produced any evidence to prove that the construction was not made with the common contribution and the portion of the common compound wall was

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situated in the middle of the both plaintiff and defendant's house and hence, both the courts below correctly dismissed the suit.

9.1.The Learned Counsel for the Respondent would further submit that the plaintiff prayed permanent injunction restraining the defendant from making any further construction on the common compound wall and the defendant specifically denied the same. Therefore, both the courts below correctly dismissed the suit holding that mere injunction without seeking relief of declaration is not maintainable.

9.2.The Learned Counsel for the respondent also submitted that both the courts only after analyzing the entire evidence, have dismissed the suit filed by the plaintiff without any perversity and therefore no ground was established by the appellant to interfere with the concurrent finding of both the courts U/s.100 CPC.

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10.**Findings:**

The plaintiff and the defendant are the purchasers of the constructed house of Tamil Nadu Housing Board. The plaintiff purchased the plot in Door No.L151 of the Tamil Nadu housing Board situated at Gandhi Gramam Village, Karur District. The sale deed was marked as Ex.A1 dated 01.08.2011. On the eastern side, the defendant's house is situated. Both the plaintiff and the defendant admitted that they had purchased a constructed house. According to the plaintiff, the defendant made construction over the common compound wall situated on the Eastern side and attempted to make further construction. Hence, he filed the suit for mandatory injunction to remove the construction made by the defendant and permanent injunction restraining the defendant to make any further construction on the compound wall. The defendant admitted the construction made on the compound wall but, disputed the plea of the plaintiff that the wall was a common compound wall. After filing of the suit, he removed the construction made on the compound wall

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by giving the following admission in evidence and hence, the relief of mandatory injunction is rightly dismissed by both the Courts below.:

> *வழக்கிற்கு பின்னிட்டு நான் காம்பௌவுண்ட் சுவரில் சப்போட்டுக்காக ஏற்படுத்தியிருந்த 3 அடி அகல சுவரை இடித்து எடுத்துக்கொண்டேன். மேற்புற காம்பௌண்ட் சுவரை பழைய நிலையில் விட்டுவிட்டேன். மேல்தள வேலை முடிந்ததை பின்னிட்டு காம்பௌண்ட் சுவர் அமைக்கப்பட்டிருந்த சப்போட் சுவர் தேவையில்லை என்பதால் அதை இடித்து எடுத்துவிட்டேன்.*

11. Both the Courts below dismissed the suit for permanent injunction restraining the defendant from making construction on the common compound wall on the ground that the plaintiff has not produced any document to show that the compound wall was constructed jointly.

12.It is the specific case of the plaintiff that all the houses are constructed houses which were sold by the Tamil Nadu Housing Board in L shape measuring to an extent of 1500 sq.ft. with absolute right of the front portion of the compound wall and the other three

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portions of the compound wall as a common compound wall. The same was also admitted by the defendant in his cross examination which is as follows:

> *வாதியின் வீட்டை ஒட்டி கீழ்புறம் எனது வீடு உள்ளது என்றால் சரிதான். எனது வீடு மற்ற வாதியின் வீடு தமிழ்நாடு வீட்டு வசதி வாரியத்தால் விற்பனை செய்த வீடுகள் என்றால் சரிதான். ஏனது வீட்டிற்கு பின்புறமும் மற்றும் கீழ்புறமும் அமைந்திருக்கக்கூடிய வீடுகள் தமிழ்நாடு வீட்டு வசதி வாரியத்தால் விற்பனை செய்த வீடுகள் என்றால் சரிதான். . .....வீட்டு வசதி வாரியத்தால் கட்டப்பட்ட அனைத்து வீடுகள் ஆங்கில எழுத்தான* ***எல் வடிவில்*** *அமைக்கப்பட்ட வீடுகள் என்றால் சரிதான்.*
>
> *.....வீட்டு வசதி வாரியத்தில் உள்ள வீடுகளுக்கு முன்புறம் உள்ள காம்பௌவுண்ட் சுவர் ஒதுக்கீடு செய்யபட்ட நபர்களாலும், மற்ற 3 புறம் உள்ள சுவர்களையும் மற்ற 3 நபர்களின் சம்மதத்தோடு கட்டப்படும் சுவராக இருக்கும் என்றால் சரிதான்.*
>
> *ஏனது கிரைய ஆவணத்தை நீதிமன்றத்தில் தாக்கல் செய்யவில்லை.*
>
> *நீதிமன்றத்தில் எனது கிரைய ஆவணத்தை தாக்கல் செய்யாததற்கு குறிப்பிட்ட மட்டுமே பாத்தியப்பட்டது என்று குறிப்பிட்டு எனது கிரைய ஆவணத்தில் வாசகம் ஏதும் இல்லை.*
>
> *எனது வீட்டிற்கும் வடபுறம் உள்ள பிரேம்குமார்*

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வீட்டிற்கும் இடையே கட்டப்பட்ட காம்பவுண்ட் சுவர் இருவரும் சேர்ந்து கட்டியது என்றால் நான் கட்டினேன். அதற்குரிய பாதித்தொகையை பிரேம் குமார் என்னிடம் கொடுத்துவிட்டார். எனது வீட்டிற்கு கீழ்புறத்தில் உள்ள காம்பவுண்ட் சுவர் நானும், எனது வீட்டிற்கு கீழ்புறம் உள்ளவரும் சேர்ந்து கட்டிய சுவர்.

13.In the sale deed produced by the plaintiff under Ex.A1, it is stated as follows:

"All that piece and parcel of the land in the sanctioned plan of the Karur Gandhigramam thanthoni Village Housing scheme area Bearing House No.LIG-151 in Survey No,363/part

On the North by :Plot No.LIG 128

On the East by :Plot No.LIG 150

On the South by :20" - 0" Road

On the West by :Plot No.LIG 152

Measuring on the North :30" feet Nil inches

Measuring on the East :50" feet Nil Inches

Measuring on the South :30" feet Nil Inches

Measuring on the West :50" feet Nil inches

and in measuring--- Ground ***1500 sq.ft*** *with the*

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Building standing and credited thereon and situated within the Sub-Registration and District of Karur and Registration District of Karur.

The sale deed contains the following specific clause:

VII.NOW THIS DEED WITNESSES that, in consideration of the sum of Rs.60,100/- (Rupees Sixty Thousand and One Hundred Only) already paid by the Purchaser to the Vendor, as mentioned above the receipt of which sum, the Vendor does hereby accept and acknowledge the Vendor Doth HEREBY GRANT SELL TRANSFER AND ASSIGNS into the Purchaser all that place and Parcel of the Land Bearing House Plot No.LIG-151 extent of 1500 sq.ft in the Karur Gandhigrammam Houshing Scheme are together with the Building created and standing thereon, more particularly and fully described in the Schedule hereunder written with all tree, ***fences,*** *ditches, common ways, water courses, liberties privileges, easements and* ***appurtenances whatsoever to the property belonging in any way apparent usually held on enjoyed with or reputed to belong or to be appurtenant or thereto*** *and all the estate right, title, interest claim and demand whatsoever of the vendor in and to property and every part thereof TO HAVE OF HOLD THE PROPERTY hereby*

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assured or expressed so to unto the purchaser.".

14. From the above sale deed and deposition of D.W.1, this Court legitimately infers that the wall was deemed to be a common compound wall. There is no bar to infer any other fact from the proved circumstances. A fact can be proved through circumstances also. The defendant has not produced his title deed. He admitted that he has not produced any material to show that he had constructed the wall within his boundary. It is clear that as per the housing board norms except the front portion of compound wall, the other portions of the compound wall are to be treated as a common compound wall. Apart from the norms of the housing board, the defendant further admitted that the other portions of the compound wall was further constructed by both neighbours is a common compound wall. From the above facts, it is clear that the plea of the appellant that this wall was a common compound wall is probable and the same is proved by preponderance of probabilities.

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15. The evidence in this case makes it clear that there is a common compound wall as claimed by plaintiff. The defendant has also removed the construction during the pendency of the suit. Therefore, in all aspects, the plaintiff is entitled to the relief of permanent injunction restraining the defendant from putting up any further construction affecting the right of the appurtenances of the plaintiff. In the said circumstances, the injunction suit without seeking declaration relief is maintainable. The plaintiff has not claimed any absolute right or any common right of house site. He only seeks to restrain the defendant from making any further construction over the said common compound wall. Therefore, it is not necessary for the plaintiff to seek the relief of declaration.

16.It is equal on the part of the defendant to prove his case of his separate compound wall by producing his documents and evidence to show that he is entitled to put up a structure over the compound wall. A *prima facie* case has been established by the

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plaintiff, on the evidence of the defendant and also through his documents and his evidence and also as per the norms of the housing board that there was a procedure to make a construction over the compound wall with the consent of the neighbours of all three sides except the front portion of the house. Both the Courts below only on the basis that there was no express material available on record to presume that it was common compound wall dismissed the suit. when the admission of the defendant and the housing board norms, alone would show that it is a common compound wall, both the Courts below have committed error in holding that the plaintiff has not established the plea of the common compound wall. Therefore, this Court is inclined to interfere with the concurrent finding in exercise of the power under Section 100 of C.P.C. Therefore, this Court is inclined to allow this appeal.

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17.Accordingly, this Second Appeal stands allowed in the following directions:

17.1.Both the plaintiff and the defendant are entitled to keep the common compound wall as such as mentioned in the "B" scheduled property without doing any further construction or any demolition.

There shall be no order as to costs.

Consequently, connected miscellaneous petition is closed.

21.01.2026

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

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

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