

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 12.12.2017

JUDGMENT PRONOUNCED ON : 03.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.No.3929 of 2016 in C.S.No.671 of 2009
and A.No.7893 of 2016 in Tr.C.S.No.409 of 2017
and Tr.C.M.A.No.1710 of 2017 &
C.M.P.No.9212 of 2017

K.Vidhya

... Applicant/Applicant/
Appellant

K.Sumithra

... Respondent/Respondent/
Respondent

Vs.

Prayer in A.No.3929 of 2016 in C.S.No.671 of 2009:-

This application filed under Order XIV Rule 8 of O.S.Rules read with Section 151 of Civil Procedure Code, to clarify on the common wall as agreed in Para 5 of the Compromise Memo which in part of the Decree and Judgment dated 26.08.2013 made in C.S.No.671 of 2009.

Prayer in A.No.7893 of 2016 in Tr.C.S.No.409 of 2017:-

This application filed under Order XIV Rule 8 of O.S.Rules read with Order VII Rule 11 of Civil Procedure Code read with Section 151 of Civil

Procedure Code, to reject the Plaint in Tr.C.S.No.409 of 2017 on the file of this Court and impose heavy cost to the Plaintiff.

Prayer in Tr.C.M.A.No.1710 of 2017:-

This Civil Miscellaneous Appeal filed against the order and decreetal dated 06.06.2016 made in I.A.No.6544 of 2016 in O.S.No.2595 of 2016 on the file of the XII Assistant City Civil Court, Chennai.

For Applicant : Mr.K.Rajasekaran

For Respondent : Mr.E.Prabu

J U D G M E N T

The brief history of the litigation between siblings is as follows:-

The suit in C.S.No.671 of 2009 was filed by the applicant in Application No.3929 of 2016 seeking partition and separate possession of her half share in the suit property.

2. According to the plaintiff, in the said suit, the suit property belongs to the mother of the parties, namely, Dr.S.Thavamani. The father of the parties Mr.T.P.Kamalanathan died on 14.11.2007 and the mother Dr.S.Thavamani, died on 05.08.2008 at Chennai intestate leaving behind

the parties as their legal representatives.

3. The suit property was allotted to the mother by the Tamil Nadu Housing Board and the sale deed came to be executed in her favour by the Board on 09.12.1994. Since dispute arose between the parties after the death of the parents, the suit came to be filed. A compromise was entered into between the parties and the Joint Memo of Compromise was filed on 26.08.2013, which was accepted by this Court.

4. A final decree was passed on 26.08.2013 by this Court based on the said compromise.

JOINT COMPROMISE MEMO FILED BY THE PLAINTIFF AND DEFENDANT

The plaintiff and the Defendant had amicably settled their dispute as per the terms and conditions stipulated hereunder and the Plaintiff and the Defendant pray that this Hon'ble Court may be pleased to pass Final Decree as per the terms and conditions stipulated hereunder and thus render justice.

1. *The plaintiff and the defendant are the joint owners of the suit property, which is mentioned as ABCDEFA in the plan annexed herewith.*

2. *The Plaintiff is allotted with the Eastern half portion, namely BCDEB, which is coloured in Green in the Plan annexed*

herewith, measuring BC, ED = 23 feet and BE, CD = 80 feet, totally measuring (23'X 80' = 1840 sq.ft.) 1840 sq.ft.

3. The Defendant is allotted with the Western half portion, namely ABEFA together with the existing building, which is coloured in Blue in the plan annexed herewith, measuring AB, FE = 23 feet and AF, BE = 80 feet, totally measuring (23'x 80' = 1840 sq.ft.) 1840 sq.ft.

4. The Plaintiff shall vacate her tenants occupied in the ground floor portion in the Western side (ABEFA) and the Defendant shall vacate her tenants in the Out-house, which is lying in the Eastern side (BCDEB) within 3 months from this date. The Plaintiff, after vacating her tenants shall handover vacant possession of the Western ground floor portion to the Defendant within a period of 3 months from this date, similarly the Defendant shall hand over vacant possession of the Eastern Portion (out-house) to the plaintiff within a period of 3 months from this date, so as to facilitate each other to shift their respective movables to their respective allotted portion. The Plaintiff is entitled to initiate necessary preliminary construction work, taking E.B. connection, Water & Sewerage connections etc., to the Eastern portion allotted to her.

5. After taking their respective portions, the Plaintiff and the Defendant shall mutually make effort to mark the centre line to divide the property equally and thereafter the Defendant shall make necessary arrangements to strengthen the building in the

Western portions allotted to her. Thereafter, the plaintiff and the Defendant shall take effort to cut and demolish the building, which is protruding on the Eastern Portion with the help of Engineer/Architect at the costs of the plaintiff and the defendant equally. The Plaintiff and the Defendant shall erect a Common wall width of 1 foot sharing the costs equally or the plaintiff shall erect a wall in her portion and the Defendant shall erect a wall in her portion with thickness of 6 Inches each at their own costs. Thereafter, the Defendant shall handover vacant possession of the Eastern portion to the plaintiff towards her share.

6. The outer period for taking possession of their respective portions namely the Eastern portion BCDEB and Western portion namely ABEFA shall be within 6 months from this date. The Defendant is given two more months time thereafter to demolish the portion, which is protruding into the Eastern portion and hand over vacant possession as stated above to the plaintiff, if she could not perform her obligations within the said period of 6 months. The time schedule agreed hereto shall be treated as essential condition of this joint Compromise Memo.

7. The Defendant shall retain the original title document and other related document in respect of the suit property and the Defendant shall retain the original property Tax, Water & Sewerage Tax Cards and also the Electricity Card and other related cards and papers in respect of the suit property. Moreover, the plaintiff and the Defendant shall co-operate each other to execute any other required documents, such as Release

Deed or Partition and NOC to the Statutory Authorities etc., and letters for their better right and possession in respect of their respective allotted portion in the suit property.

8. The Plaintiff is entitled to peruse the Original Title Deed of the suit property, if necessary for her real need in advance intimation to the Defendant. The plaintiff and the defendant declare and indemnify each other that the suit property is free from any encumbrance.

9. The plaintiff and the Defendant shall agree to settle jointly all accounts for the period 2009-2013 regarding the payment of property Tax, Water & Sewerage Tax and Electricity Charges in respect of the suit property already paid and also if there is any arrears upto this date.

10. The Defendant is entitled to retain the existing EB Service Connection, Water and Drainage Connection and shall make all efforts to shift and transfer the existing such connection to her allotted Western portion in her name. The Plaintiff shall not have any objection for transferring of name and shifting of place of the said service connections. The Plaintiff shall obtain a fresh connection for the said facilities for her Eastern allotted portion independently at her own costs and efforts.

11. By virtue of this Joint Memo of Compromise the plaintiff shall be the absolute owner of the Eastern portion namely Green Coloured portion as shown as BCDEB in the plan,

totally measuring 1840 sq.ft. and the Defendant shall have no right or title over the said Eastern portion henceforth.

12. Similarly by virtue of this Joint Memo of Compromise the Defendant shall be the absolute owner of the Western portion, namely Blue Coloured portion as shown as ABEFA in the plan, totally measuring 1840 sq.ft. and the plaintiff shall have no right or title over the said Western portion henceforth.

The Plaintiff and Defendant therefore pray that this Hon'ble Court may be pleased to pass Final Decree in terms of this Joint Memo of Compromise in the above suit, C.S. No.671 of 2009 and pass such further orders and thus render justice.

Dated at Chennai on this the 26th day of August 2013.

5. Clause five (5) of the said compromise memorandum provided that the plaintiff and the defendant shall erect a common wall of a width of 1 foot sharing the costs equally or the plaintiff shall erect a wall in her portion and the defendant erect a wall in her portion with thickness of 6 inches on their own costs. Thereafter, the defendant is to hand over vacant possession of the Eastern portion to the plaintiff towards her share.

6. It is not in dispute that the possession of the property allotted to

the plaintiff namely, the eastern portion was handed over to the plaintiff towards her share of the property. At the time of handing over the possession, the defendant had raised a wall of 6 inches width as per clause five of the Joint Compromise Memo and she also constructed the wall for a length of over 50 feet out of 80 feet.

7. It is stated that the plaintiff had applied for sub-division of her property and thereafter paying necessary fees to Chennai Metropolitan Development Authority, made an application for approval of plan for construction of the building. After inspection, the Chennai Corporation approved the plan for construction under reference No.D/8/3667/2015. The permission to construct the building was also granted in building permission under reference No.D/8/3667/2015 on 14.08.2015. The plaintiff commenced the construction in February, 2016 as per the sanctioned plan. She has removed a portion of the compound wall and raised pillars and building was raised on the compound wall. When the construction was in progress, it is stated that the defendant filed a Civil Suit contending that the plaintiff cannot put up construction over the common wall of 6 inches as agreed in the Compromise Memo and obtained an injunction in I.A.No.6544 of 2016 in O.S.No.2595 of 2016 on the file of

the XII Assistant Judge, City Civil Court, Chennai. It is also seen that the injunction granted in I.A.No.6544 of 2016 was made absolute by the XII Assistant Judge, City Civil Court, Chennai on 06.06.2016.

8. Aggrieved by the same, the defendant filed an appeal in C.M.A.No.1710 of 2017. It is at this juncture, the plaintiff in C.S.No.671 of 2009 has come forward with Application in A.No.3929 of 2016 seeking clarification of compromise decree made by this Court on 26.08.2013. During the pendency of the said application, an Advocate Commissioner was appointed by this Court to inspect the suit property and note down the physical features. Accordingly, Ms.Parimala Devi was appointed as Commissioner in A.No.3929 of 2016 on 31.08.2016. She has also visited the property and filed a report. Pending this application, the applicant filed an application in A.No.113 of 2017, seeking transfer of the suit in O.S.No.2595 of 2016 as well as C.M.A.No.56 of 2016 to this Court to be heard along with this application and by an order dated 02.03.2017, both the suit and Civil Miscellaneous Appeal have been transferred to this Court and renumbered as Tr.C.S.No.409 of 2017 and Tr.C.M.A.No.1710 of 2017.

9. The plaint in the suit in Tr.C.S.No.409 of 2017 is based on the

compromise and that the construction put up by the defendant is not in accordance with the CMDA Regulations and Building Control Rules. It is averred in the plaint that the defendant has removed the wall put up by her at the time of demarcating the property and constructed the pillars in the said place in order to rest the new construction on the common dividing wall, in violation of compromise decree.

10. It is also claimed that the defendant in Tr.C.S.No.409 of 2017, applicant herein, has not left 3 feet side set-back on the western side of the property and therefore, the said construction is in violation of Development Control Rules of the Chennai Metropolitan Development Authority. The clarification that is sought in A.No.3929 of 2016 is with reference to the purpose of direction contained in paragraph five (5) of the Joint Compromise Memorandum filed by the parties. The parties were at liberty either to put up common wall jointly or to put up independent wall on their side of the property with thickness of 6 inches in order to have demarcation of the property. The applicant in A.No.3929 of 2016, who is the defendant in Tr.C.S.No.409 of 2016, has come forward with the application in A.No.7893 of 2017 seeking rejection of the plaint in the said suit contending that the same amounts to abuse of process of Court and

that there is no cause of action for the suit. It is claimed that the cause of action pleaded is an illusory cause of action.

11. A counter affidavit has been filed by the respondent in A.No.3929 of 2016, wherein, it is contended that the common wall, which is provided for under clause five, is the common dividing wall between the parties and the same has to be maintained as such. It is also stated in the said counter affidavit that the applicant as well as the respondent have constructed half feet each of the dividing common wall as per the terms of the compromise. Therefore, according to the respondent, there is no ambiguity in the terms of the compromise decree and it does not require any clarification.

12. It is claimed that the applicant has attempted to put up construction over the said common wall and rest the new structure on the common wall without leaving side set-back apart from raising construction affecting the right to light and air to the western portion of the house property and hence the defendant has come forward to file a suit in O.S.No.2595 of 2016 and her petition for injunction, filed in I.A.No.6544 of 2016, has been allowed after contest making the interim injunction

absolute.

13. She would also deny the fact that she had put up construction over her portion of the common wall. She would contend that she has cut the house/building only up to the dividing line since the area has a bathroom and lavetrine, which are in existence from the date of construction of the building.

14. It is also claimed that the Corporation has sanctioned a plan with the condition to leave side set-back. According to the respondent, the attempt made by the applicant in A.No.3929 of 2016 to raise a building over and above the 6" common wall is illegal. Therefore, she claimed that the action of the applicant in constructing over the common wall is illegal and therefore, she is justified in filing the suit for injunction in O.S.No.2595 of 2016.

15. A separate counter affidavit has been filed by the respondent in A.No.7893 of 2017, which has been filed seeking to reject the plaint. It is contended in the said application, the plaint cannot be rejected under Order VII Rule 11 of Civil Procedure Code in as much as the plaintiff has

filed the suit only to protect invasion of her right to the property. It is contended therein that the provisions of Order VII, Rule 11 cannot be invoked.

16. It is further claimed in the counter affidavit that the suit has been filed on the basis of the fact that the applicant/defendant is not entitled to put up construction without leaving side set-back on the west of her property and also not to put up construction on the west over the dividing common wall and also to rest the proposed construction on the common dividing wall, contrary to the terms of compromise memo filed in C.S.No.671 of 2009.

17. Therefore, according to her, the plaint in Tr.C.S.No.409 of 2017 discloses valid cause of action and the claim of the applicant, that it does not disclose the cause of action or that the cause of action claimed illusory is not correct. On the above contentions, the respondent is seeking dismissal of both the applications.

18. I have heard Mr.K.Rajasekaran, learned counsel appearing for the applicant in A.No.3929 of 2016 in C.S.No.671 of 2009 and A.No.7893 of

2017 in Tr.C.S.No.409 of 2017, appellant in Tr.C.M.A.No.1710 of 2017, plaintiff in Tr.C.S.No.409 of 2017 and Mr.E.Prabhu, learned counsel appearing for the respondent in A.No.3929 of 2016 in C.S.No.671 of 2009 and A.No.7893 of 2017 in Tr.C.S.No.409 of 2017, respondent in Tr.C.M.A.No.1710 of 2017, defendant in Tr.C.S.No.409 of 2017.

19. Since the dispute is with reference to the construction of common wall, it is relevant to refer to clause five (5) of the compromise decree in C.S.No.671 of 2009 dated 26.08.2013. which reads as under:-

5. After taking their respective portions, the Plaintiff and the Defendant shall mutually make effort to mark the centre line to divide the property equally and thereafter the Defendant shall make necessary arrangements to strengthen the building in the Western portions allotted to her. Thereafter, the plaintiff and the Defendant shall take effort to cut and demolish the building, which is protruding on the Eastern Portion with the help of Engineer/Architect at the costs of the plaintiff and the defendant equally. The Plaintiff and the Defendant shall erect a Common wall width of 1 foot sharing the costs equally or the plaintiff shall erect a wall in her portion and the Defendant shall erect a wall in her portion with thickness of 6 Inches each at their own costs. Thereafter, the Defendant shall handover vacant possession of the Eastern portion to the plaintiff towards her.

share.

20. It is admitted case of the parties that they had erected the wall in their respective portion with thickness of 6 inches each at their own costs and it is also admitted that the plaintiff in Tr.C.S.No.409 of 2017 had raised construction over the 6 inches wall put up by her on her side in order to cover her building in as much as she had cut and removed the building that was in existence in the eastern portion allotted to the plaintiff.

21. Pending this application, a Commissioner was appointed. The Commissioner filed the report after inspecting the suit property. In the report, the Commissioner has stated that the defendant had constructed the building on the central wall for length of 46.6 feet. The remaining 33.6 feet does not have any structure resting on it.

22. It is also stated by the Commissioner that the defendant namely, the respondent herein has not produced any approved plan. A plan has also been filed by the Commissioner along with the report, which shows that the plaintiff in Tr.C.S.No.409 of 2017 had put up construction on her

side of the wall. It is seen from the said plan that the plaintiff in Tr.C.S.No.409 of 2017 had constructed a wall over and above the 6 inches wall on her side, as per clause five (5) of the compromise decree, almost up to 75% of the area on her side. When the defendant in Tr.C.S.No.409 of 2017 obtained approved plan and commenced the construction on her side, she has come forward with the suit objecting the said construction and she has effectively prevented her own sister from enjoying the fruits of the decree.

23. Mr.E.Prabhu, learned counsel appearing for the respondent in A.No.3929 of 2016 has contended that clause five (5) of the Joint Memo of Compromise is clear and the parties had put up 6 inches wall on their side for the purpose of demarcation and 6 inches wall is their common wall. If the 6 inches wall that has been put up by the applicant on her side of the property is to be treated as common wall equally the 6 inches wall that was put up by the respondent on her side of the property should also be common and she would also not have a right to put up any construction on her side.

24. Admittedly, construction has been put up by her on the 6 inches

wall raised by her as demarcating wall under clause five (5) of the compromise decree. She now wants to prevent her sister from putting up the construction and claims that the said wall is common wall. If the parties have put up common one (1) feet wall sharing the costs equally it can be said to be a common wall, but, it is not the case here. Both parties have put up independent walls with thickness of 6 inches at their own costs on the land allotted to them. Therefore, the plain reading of clause five (5) of the compromise decree particularly the highlighted portion supra would show that the parties did not have independent dividing wall, which should be treated a common wall.

25. In view of the same, the claim of the respondent in A.No.3929 of 2016 to the effect that 6 inches wall has been put up by the applicant should be treated as a common wall and she can not put up any construction either on the wall or by scrapping wall or by removing the wall in portions, so as to raise pillars, on her side of the land and raise construction in her portion cannot be accepted.

26. The applicant has obtained building permission as well as the planning permission for construction. The building permission as well as

the planning permission granted would show that the planning permission has been granted for the purpose of constructing with side set-back on one side only. The eastern portion has been allotted to the plaintiff in C.S.No.671 of 2009 as per the compromise. Even according to the approved plan, there is no side set-back required on the western side.

27. Therefore, the claim of the respondent in A.No.3929 of 2016 that the building is sought to be constructed without side set-back is incorrect. The approved plan that has been produced shows that the applicant is obliged to leave side set-back only on the eastern side and not on the western side. The Commissioner's report as well as the photographs would show that the respondent in A.No.3929 of 2016 had put up construction on 6 inches common wall on her side in the major portion of the property.

28. It is claimed that there are certain windows, ventilators on the western side of the property and the construction put up would affect light and air to the property allotted to the respondent in Application No.3929 of 2016. The partition was effected in 2014. May be the respondent would be put to some inconvenience because of the

construction. But in so far as the law relating to easementary right of light and air is concerned, unless it is shown that the building of the respondent will be rendered unfit for occupation because of the construction, the respondent cannot seek any injunction against the applicant from putting up construction in her own property. A reading of the plaint in Tr.C.S.No.409 of 2017 does not disclose any pleading to effect that the building of the respondent would become unfit for occupation because of the construction that is sought to be put up by the applicant.

29. Therefore, it is clear that clause five (5) of memo of compromise does not make the partition wall a common wall between the parties. Since the parties had chosen the latter portion of clause five of the compromise decree, which provides that the plaintiff and the defendant shall erect the wall on their portion with thickness 6 inches each at their own costs, it would only mean the wall erected by each of the parties belongs to them and the same is not to be treated as a common wall.

30. In my considered opinion the applicant is entitled to clarification to the effect that 6 inches wall put up by the parties as a partition wall to

demarcate their respective portion is not a common wall and each party has right to construct over or in the place of said wall. To this extent the compromise decree will stand clarified in A.No.3929 of 2016.

31. A.No. 7893 of 2017 has been taken up by the defendant in Tr.C.S.No.409 of 2017 seeking rejection of plaint therein on the ground that it amounts to abuse of process of Court as well as it does not disclose cause of action.

32. A reading of the plaint in Tr.C.S.No.409 of 2017 would disclose that the intention behind the same is to prevent the defendant therein from put up construction in the property, which is allotted to her. The plaintiff has come to the Court, particularly contending that the dividing wall is common wall and the parties have no right to construct over the said wall. As already observed by me, the parties have not put up the wall as common wall and the intention was to have a separate wall on either side of the property, which belongs to the parties as per the compromise decree.

33. It is claimed that the defendant in Tr.C.S.No.409 of 2017 is

obliged to leave 3 feet side set-back on the west of the property from dividing common wall under Chennai Metropolitan Development Rules but no such Rule has been brought to my notice. The sanctioned plan shows that the side set-back on one side is sufficient and the plaintiff in Tr.C.S.No.409 of 2017 cannot compel the defendant to leave set-back on one particular side. The cause of action alleged in the plaint in Tr.C.S.No.409 of 2017 is based on the compromise decree dated 26.08.2013 and the claim that the partition wall that is erected pursuant to clause five of the said decree is treated to be a common dividing wall of the parties.

34. It is also seen from the records as well as the Commissioner's report that the plaintiff in Tr.C.S.No.409 of 2017 has herself constructed over the said wall on her side. Therefore, she cannot contend that the defendant cannot raise any construction on the said wall.

35. Mr.K.Rajasekaran, learned counsel appearing for the applicant in A.No.7893 of 2017 would invite my attention to the judgment of the Hon'ble Supreme Court in *T.Arivanandam Vs. V.Satyapal and another* reported in **AIR 1977 SCC 2421** in paragraph five of the said judgment,

wherein, the Hon'ble Supreme Court had observed as follows:-

5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O.VII R.11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O.X. C.P.C.

36. He would also contend that the suit is abuse of process of law. He would draw my attention to the judgment of this Court in *Tamil Nadu Handloom Weavers' Co-operative Society, rep. by its Managing Director, 350, Pantheon Road, Egmore, Chennai -8 Vs. S.R.Ejaz rep. by his Power Agent, Muralidhar T.Balani* reported in 2009 (5) CTC 710, wherein, this Court held that the suit, which amounts to relitigation or abuse of process of Court has to be rejected at threshold.

42. The remedy as provided under Order 7, Rule 11, C.P.C. is an effective remedy to axe the Civil Suit at the threshold in case it satisfies the ingredients of the said provision. The Trial Court was given exclusive jurisdiction to decide the fate of a litigation in its initial stage itself. Therefore, the Trial Court should be apprised of the inherent defects in the Plaint and on such appraisal, the Trial Court was obliged to consider the maintainability of the Suit. It is true that the jurisdiction of the Trial Court cannot be bypassed in a routine manner. Normally, the parties should be directed to pursue the statutory remedy available to them before availing the Constitutional remedy. However, in extraordinary circumstances, when it was demonstrated that there was flagrant violation of the principles of law, or abuse of process of Court or the Lower Court was accused of dereliction of duty of grave nature, the parties would be entitled to invoke the jurisdiction under Article 227 of the Constitution of India.

43. Because of clever drafting, at times, it would be difficult for the Trial Court to find out the inherent defects in the Suit. The provisions as contained in Order 7, Rule 11, C.P.C. was enacted to find out such defects though at a later stage. The Trial Court is within its powers to exercise the jurisdiction under Order 7, Rule 11, C.P.C. at any point of time. Though by-passing the

alternative remedy should be in exceptional circumstances only, it cannot be said that the High Court has to maintain silence at all point of time even when it was demonstrated that the Trial Court has committed serious illegality and its order had the effect of flouting the order passed by the Supreme Court.

Referring to the judgment of the Division Bench of this Court in ***Cambridge Solutions Limited, Bangalore - 560 095 Vs. Global Software Limited, Chennai and others*** reported in **2017 (1) CTC 497**, the learned counsel would contend that the plaint can be rejected not only for absence of cause of action, but also on the ground that it creates a illusory cause of action. The Division Bench had pointed out that the Court must consider the nature of averments in the plaint and the documents filed thereon and the plaint can be rejected where cause of action pleaded in plaint is fictitious. It is also pointed out by the Division Bench that the suit instituted with illusory or surreal cause of action should be rejected at threshold. The Division Bench has also referred the judgment of the Hon'ble Supreme Court in ***T.Arivanandam Vs. V.Satyapal and another***, supra.

37. Looking at the cause of action in Tr.C.S.No.409 of 2017, it refers

to compromise decree in C.S.No.671 of 2009 and claims that the defendant has attempted to put up construction over the common dividing wall without leaving any side set back and same is a violation of Building Regulations.

38. The defendant had produced approved plan, which shows that the building has been approved by the Chennai Corporation without side set-back on the western side on her property. Therefore, it is clear that the construction of the building without side set-back on one side does not amount to violation of any Building Rules or Development Control Rules.

39. The other contention is that the 6 inches wall is common dividing wall. I have already concluded the said wall is not common dividing wall and the plaintiff had treated it as her own and put up construction over a major portion of the said wall except front portion, where there is no building. The claim of the plaintiff that the wall in question is the dividing wall and it is common wall and the building has been put up in violation of Development Control Rules without approved plan has been proved to be false.

40. Therefore, I find that there is no cause of action for the plaintiff to maintain the suit in Tr.C.S.409 of 2017. I find the suit itself is only attempt to prevent the other sister, who has obtained possession after litigating for over six years from enjoying fruits of the decree.

41. In my considered opinion, this attempt would amount to abuse of process of Court in as much as it seeks to prevent a decree holder from enjoying the fruits of the decree. It should also pointed out that the plaint exhibits envy and jealousy. The plaintiff has brought about illusory cause of action claiming that the partition wall to be a common wall and that construction is in violation of the Development Control Rules. I do not see any violation of the Development Control Rules in as much as the building plan has been approved by the Corporation and the building is put up is strictly in accordance with law with sanctioned plan.

42. Therefore, I see no reason to allow the suit in Tr.C.S.No.409 of 2017 to be retained on file and the same will stand rejected.

43. Tr.C.M.A.No.1710 of 2017 is an appeal filed by the applicant in A.No.7893 of 2017 challenging the order of injunction, that has been granted pending suit. Now that the plaint itself is rejected, the appeal will have to be allowed vacating the order of injunction granted by the City Civil Court in I.A.No.6544 of 2016 in O.S.No.2595 of 2016.

44. In fine, the application in A.No.3929 of 2016 is allowed clarifying that the dividing wall put up with 6 inches on either side is not a common wall.

45. The application in A.No.7893 of 2017 is allowed. The plaint in Tr.C.S.No.409 of 2017 will stand rejected.

46. Tr.C.M.A.No.1710 of 2017 is allowed and the injunction granted in I.A.No.6544 of 2016 in O.S.No.2595 of 2016 (Tr.C.S.No.409 of 2017) will stand vacated forthwith.

47. Since the dispute is between two sisters, I do not want impose any costs, though I stoutly the action of the plaintiff in Tr.C.S.No.409 of 2017. Consequently, connected miscellaneous petitions are closed.

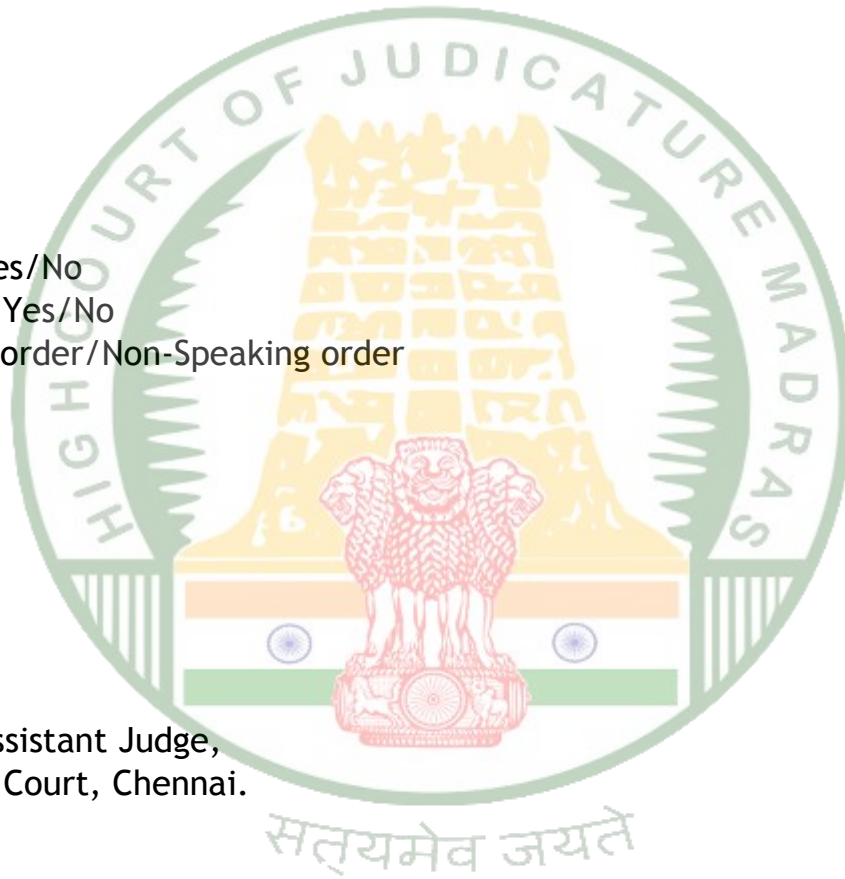
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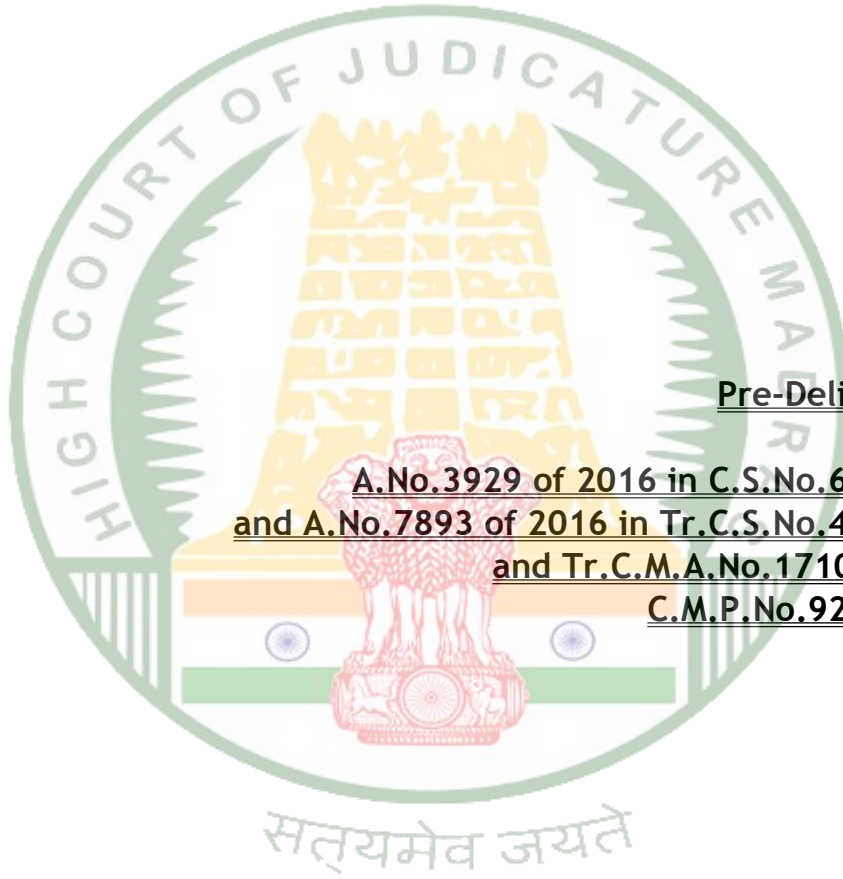
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R.SUBRAMANIAN, J.

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Pre-Delivery Order
in

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