



S.A.No.1277 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.1277 of 2007 and M.P.No.1 of 2007,
C.M.P.Nos. 7580 and 7584 of 2023

S.Jai krishnan

...Appellant

Vs.

1. Jimmi Carter

2. The Commissioner

Nagapattinam Municipality

Kadambadi, Nagapattinam

...Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the decree and judgment dated 28.09.2007 made in A.S.No.24 of 2007 on the file of the Subordinate Judge, Nagapattinam, in reversing the decree and judgment dated 06.02.2007, made in O.S.No.340 of 2005 on the file of the District Munsif Court, Nagapattinam.

For Appellants
For Respondents

: Mr.G.Ethirajulu
: Mr.Mr.S.Raghu for R1
: Mr.P.A.Srinivas for R2



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JUDGMENT

The instant second appeal has been filed at the instance of the first defendant.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

The brief facts, which give rise to this second appeal are as follows:

3. According to the Plaintiff, he is the owner of the suit property comprised in S.No.2199, 22/1 in Block N.41, Ward No.4 in Nagapattinam. The first defendant has purchased a house on the western side of the above said property in S.No.2200. The first defendant's house was adjacent to the plaintiff's main wall, in which the roof of the plaintiff was resting. The first defendant has made an arrangement to remove the tiled roof and to put up RCC construction. Since the house of the plaintiff is very old, and the western main wall is made up of clay and mud, he requested the first defendant not to raise pillars nearer to the plaintiff's western main wall, and also requested him not to have any window on the eastern wall of his house, as the same would endanger the privacy of the plaintiff. It was the specific submission of the



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plaintiff that, at the time of construction, the first defendant had agreed to leave 1 ½ foot space from the plaintiff's western main wall. However, contravening to his promise and also in contravention to the approved plan of the second defendant, the first defendant had put up a wall, very near to the plaintiff's western main wall. In spite of the objection for such an illegal construction, the first defendant had proceeded with construction hurriedly by employing more number of masons and labours. Further, the plaintiff had complained regarding such illegal construction of the first defendant to the second defendant. Even then, the second defendant did not take any steps to stop the construction. Hence the plaintiff had come forward with a suit for the relief of mandatory injunction and also for permanent injunction.

4. The said suit was resisted by the first defendant by contenting that on 14.11.2002, the first defendant had purchased the property from One Krishnaswamy and he wanted to put up RCC roof after removing the tiles and he also obtained approved plan from the Corporation. Thus defendant submits that the alleged western main wall belongs to him. The first defendant further submits that he has not put up any construction endangering the plaintiff's wall, and the so called window will in no way affect the privacy of the plaintiff or the family members.



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Hence prayed to dismiss the suit.

WEB COPY Evidence and documents:

5. Before the trial Court, the Plaintiff has marked 5 documents as Exs.A1 to A5, and the defendants marked 3 documents as Exs.B1 to B3. As a Court document, Exs.C1 and C2 have been marked. On behalf of the plaintiff, defendants and as Court witness, each one witness was examined.

Findings of the Courts below:

6. The trial Court, after considering the oral and documentary evidence has dismissed the suit. Aggrieved by the said finding, the plaintiff preferred an Appeal, wherein the first Appellate Court found that the first defendant has put up construction in contravention to the plan approved by the second Respondent and also found that erection of window would impair the privacy of the Plaintiff. Eventually allowed the appeal, thereby decreed the suit on 28.07.2007.

Substantial questions of law:

7. At the time of admission of the second appeal, this Court has admitted this appeal with the following substantial questions of law:

(i) Whether the suit for mandatory injunction is barred under Section 69 of the Specific Relief Act in the absence of any suit notice being issued by the



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plaintiff before filing the suit claiming the said relief against the first defendant?

(ii) Whether the plaintiff is entitled to the decree for mandatory injunction and permanent injunction on the principles of right to privacy, when he himself has not let out any side set back on the western side of the suit property so as to enable the first defendant to enjoy such a right so far his property?

Submissions on both sides:

§ (a). The learned counsel for the appellant has filed an application in C.M.P.No.7584 of 2023 to formulate an additional Substantial Question of Law. It was the contention of the learned counsel for the Appellant/first defendant that subsequent to the filing of the suit, there were numerous subsequent developments which made the earlier cause of action becomes irrelevant.

8 (b). It was also contended that the plaintiff himself had constructed RCC structure to the entire length of the building and that the prayer in respect of permanent injunction restraining the defendant from erecting any window would also become redundant in view of the subsequent development. Therefore he contended that the original cause



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of action is not subsisting as of today.

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9. Apart from this, in respect of subsequent developments, the first defendant has filed counter in C.M.P.Nos.7580 and 7584 of 2023. Wherein he has categorically admitted that the plaintiff has put up RCC construction. It is pertinent to mention here that, even at the time of argument of the second appeal, additional substantial question of law can be framed. Therefore this Court is of the view that for effective disposal of the second appeal, it is imperative for the Court to formulate the following additional Substantial Question of law.

“(i) Whether the original cause of action pleaded in the plaint by the plaintiff still subsists for adjudication when the character and nature of the suit property itself was changed pending the second appeal by demolishing the tiled house of the plaintiff and putting up new construction?”

10. Both side Counsels have argued upon the Substantial Question of law formulated on 20.11.2007 and also upon the additional Substantial Question of law formulated today.

11. The learned Counsel for the Appellant/defendant also invited the attention of this Court to the petition filed under Order XLI Rule 27 of C.P.C in C.M.P.No.7580 of 2023, to receive the additional document



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in respect of the construction made by the plaintiff. It is the submission of the learned counsel for the Appellant/defendant that the original cause of action for filing suit has arisen due to the weakening of western main wall which was made of mud and clay due to the illegal construction made by the first defendant, which has affected the stability of the plaintiff's wall.

12. Further, it was also pleaded in the plaint that there is a open back yard, and if the first defendant have any window on the eastern side of his building, it would affect the privacy of the plaintiff and his family members. The learned counsel for the Plaintiff, in all fairness, has submitted that they have already put up construction in their suit property and that there is no such open backyard, and the main parent wall which was situated on the western side, which was made of mud and clay has been demolished and replaced with new cement wall. Further it is the submission of the learned Counsel for the Plaintiff that he has put up the constuction in due compliance with the plan approved by the second defendant.

13. At this juncture, the learned Counsel for the defendant/Appellant would rely upon some additional documents such as the notice issued by the second defendant to the plaintiff for unauthorised



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construction made by the plaintiff. However, the plaintiff is disputing such unauthorised construction. Though the suit was filed in the year 1999, by efflux of time, so many subsequent developments had taken place, which appears to have made the earlier pleadings of the parties become inappropriate to some extent.

14. In support of the Appellant's case, the learned counsel for the Appellant/defendant had relied the judgment in the case of ***G.Ramasubramani -vs- District Forest Officer, District Forest Office, Madurai and another*** reported in (2010) 2 MLJ 595, and would contend that the subsequent development, which had taken place in the present case, would make the plaint original cause of action become irrelevant and such developments has got a bearing in the disposal of the appeal.

15. Though the plaintiff admits the demolition of old building, and the construction of the new one, he disputes the allegation of unauthorised construction. However, the first defendant/appellant relied on some documents to show that though the plaintiff alleges unauthorised construction of the defendant, he also put up unauthorised construction. Therefore for effective disposal of this appeal, the additional document would be very much useful and would serve substantial cause of justice. Therefore, this Court deem it appropriate that



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the document mentioned in C.M.P.No.7580 of 2023 is liable to be received as an additional evidence. In doing so, an opportunity to be given to the plaintiff to controvert the document. But here this Court has received the additional document only to establish the putting up new construction by the plaintiff which factum was admitted by the plaintiff in the counter statement filed in the present C.M.P. Therefore, question of challenging the additional document pales into insignificance. Hence, it is appropriate to allow C.M.P.No.7580 of 2023 and the petition mentioned documents are ordered to be received as evidence. The Appellant has filed the following documents in the above C.M.P.

- (i) Reply given by the Right to Information Officer to the 1st defendant stating that action will be taken under the provisions of Tamil Nadu District Municipalities Act.
- (ii) Reply given under the Right to Information Act, enclosing the Notice issued in Ka.Ma.2000/2012 dated 02.05.2013 under Section 205(1), (2) and 313 & 317 of Tamil Nadu District Municipalities Act.



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- (iii) Reply given by the Right to Information Officer, Nagapattinam in Na.Ka.No. 3089/2015/F1 furnished copy of the building plan and the order dated 11.09.2013 made in Na.Ka.No. 200/2012 granting Building Plan Permission by the 2nd defendant.
- (iv) Photographs showing the physical features of the plaintiff and 1st defendant's house with Studio Bill.

The above documents may be marked as Ex.B4 to B7 respectively.

16. Coming back to the impact of subsequent developments in pending court proceedings, it is useful to refer some precedents to understand the legal nuances in this regard in the case of ***Gayaprasad vs. Pradeep Shrivatsava***, reported in ***(2001) 2 SCC 604***, the Hon'ble Supreme Court had held that, when subsequent events had an impact on the rights of the parties, then the relief can be moulded,

11. "We cannot forget that while considering the bona fides of the need of the landlord the crucial date is the date of petition. In Ramesh Kumar v.e Kesho Ram a two-Judge Bench of this Court (M.N. Venkatachaliah, J., as he then was, and N.M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the Court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on



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those rights and obligations. What the learned Chief Justice observed therein is this: (SCC pp. 626-27, para 6)

"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the Court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief."

12. This Court reiterated the same principle in Kamleshwar Prasad v. Pradumanju Agarwal that the crucial date normally is the date of filing the petition. In that case, a two-Judge Bench (K. Ramaswamy and G.B. Pattanaik, JJ.) has held that even the subsequent event of death of the landlord who wanted to start a business in the tenanted premises is not sufficient to dislodge the bona fide need established by him earlier. This is what Pattanaik J. has observed for the Bench: (SCC p. 415, para 3)

"That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in the eye of the law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son."

13. In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. A three-Judge Bench of this Court in Pasupuleti Venkateswarlu v. Motor and General Traders which pointed to the need for remoulding the reliefs on the



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strength of subsequent events affecting the cause of action in the field of rent control litigation, forewarned that cognizance of such subsequent events should be taken very cautiously. This is what learned Judges of the Bench said then: (SCC pp. 772-73, para 4)

"We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

17. In another judgment in the case of ***Shipping Corporation of India Ltd vs Machado Brothers and Others*** reported in (2004) 11 Supreme Court Cases 168, the Hon'ble Supreme Court had held that, when the dispute raised in the case has lost its relevance in the passage of time, relief can be moulded:

"24. Almost similar is the view taken by this Court in the case of J.M.Biswas v. N.K. Bhattacharjee⁴ wherein this Court held: (SCC p. 71, para 10) "[T]he dispute raised in the case has lost its relevance due to passage of time and subsequent events which have taken place during the pendency of the litigation. In the circumstances, continuing this litigation will be like flogging a dead horse. Such litigation, irrespective of the result, will neither benefit the parties in the litigation nor will serve the interest of the Union."

25. Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the Court to take such action



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as is necessary in the interest of justice, which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under Section 151 CPC to bring to the notice of the Court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the Court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not.”

18. In the case of ***N. Sowbbagyalakshmi Vs. Lakshmikantamma and Others***, reported in ***MANU/OR/0226/1975***, the ***Orissa High Court*** has held that, it is the duty of the Appellate Court to take all subsequent developments in litigation and to modulate the relief in appropriate way.

“9 . I may now refer to some decisions of the Supreme Court. In the case of Surinder Kumar v. Giap chand MANU/SC/0024/1957 : A.I.R. 1957 S.C. 875, the view expressed by the American Supreme Court in the case of Patterson v. State of Alabama (1934) 294 U.S. 600, has been quoted with approval:

We have frequently held that in the exercise of our appellate jurisdiction we have power not only correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.

In the case of Kotturuswami v. Veerayya MANU/SC/0102/1958 : A.I.R. 1959 S.C. 577, changed position brought about by the Hindu Succession Act was



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given effect to. Similarly, in the case of Ram Sarup v. Munshi

MANU/SC/0401/1962 : A.I.R. 1963 S.C.553, changed position brought about by the Amending Punjab Act, 10 of 1960 to the Punjab Preemption Act, 1 of 1913 was given effect to. In the case of Nair Service Society v. K.C. Alexander MANU/SC/0144/1968 : A.I.R. 1968 S.C. 1165, idayatullah, J.(as the learned Judge then was) in clear terms approved the view indicated by Sir Asutosh Mookherjee, J. in Rai Charan v. Biswanath A.I.R. 1915 Cal. 103 and agreed with the view that subsequent events can be taken into account with a view to doing complete justice to the parties. In the case of Mahalinga Thambiran v. Arulnandi Thambiran MANU/SC/0263/1973 : (1974) 1 S.C.C. 150, it has been observed thus in paragraph 45 of the judgment:

.... Normally, a Court will declare only the rights of the parties as they existed on the date of the institution of the suit. But, in this case on account of the subsequent event, namely, the death of the Defendant, we have to mould the relief to suit the altered circumstance. If the Defendant had been alive, it would have Been sufficient if we had declared, as the learned, Single Judge has done, that the Appellant was the Elavarsu of the Kasi Mutt. Now that the Defendant is dead, we make a declaration to at the Appellant was holding the position of the Elavarsu during the life time of the Defendant, that the revocation of the nomination of the Appellant as the Elavarasu by Exhibit B-9 was bad, and that the Appellant was entitled to succeed to the headship of the Mutt on the death of the Defendant.

A review of the legal position thus leaves the matter beyond doubt that it is the duty of the appellate Court to take all subsequent developments in the litigation both of fact and law into consideration and modulate the relief in an appropriate way with a view to doing complete justice to the parties. Admittedly Defendant No. 1 died during the pendency of the litigation. As found by the lower appellate



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Court, the status of Defendant No. 1 was only that of a bhag chasi with life interest, and the right was not heritable. In that, view of the matter, it would not be appropriate to dismiss the suit by merely holding that the suit when instituted was not maintainable. On the other hand, litigation would be cut short, complete justice would be done to parties and nobody would at all be prejudiced if in this very suit, on the admitted basis of the death of Defendant No. 1 pendente lite, the relief prayed for is modulated and the legal representatives of Defendant No. 1 are evicted from the property on the footing that they are trespassers.”

19. Therefore, from the above precedents, it is covertly and overtly apparent that there is a duty cast upon the Appellate Court to consider the subsequent developments. During the pendency of the litigation, there is a possibility of sprouting new rights and liabilities between the parties which cannot be simply kept aside while deciding the case at later point of time. In the instant suit, at the time of filing of the suit, the cause of action was, constructing a wall near the plaintiffs western parent wall, made of mud and clay. Now that, admittedly, such western parent wall of the plaintiffs had been removed and replaced with RCC construction, which factum could be elicited through the counter statement and additional documents submitted before this Court in C.M.P.No.7580 of 2023.

20. Though the factum of putting up construction after replacing



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the western parent wall is admitted by the plaintiff in the counter statement in C.M.P.No.7580 of 2023, the plaintiff would dispute the alleged unauthorised construction in contravention to the plan approved by the second respondent. Therefore, the construction of new building in the suit property after demolishing the Western parent wall, which was the cause of action to institute the suit, has been fully established. Therefore, in view of the above precedent stated supra, and in the background of subsequent development there is a duty cast upon this Court to find out whether cause of action stated in the plaint is still survives or not.

21. While considering the plaint prayer harmoniously, in order to protect the western parent wall which was made of mud and clay, the plaintiff wanted a mandatory injunction to remove the construction which was constructed adjacent to the western parent wall, endangering the plaintiff's mud parent wall. Such parent wall is not in existence as on today. Therefore, if at all the plaintiff has got any grievance over the first respondent's construction, it may be for an unauthorized construction, qua construction made deviating from the plan approved by the second defendant.

22. Coming to the second prayer, if any window had been erected



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on the wall facing western side, the same would affect the privacy of the family members of the plaintiff especially women. This prayer also becomes insignificant in view of putting up construction by the plaintiff without leaving any vacant space on the backyard. Therefore, even the prayer in respect of permanent injunction restraining the defendant from putting up window would also has lost its relevance and pales into insignificance. Therefore, this Court is of the firm view that in view of the subsequent development, the relief sought for lost its relevance and the continuance of suit is nothing but flogging a dead horse as stated in Shipping Corporation of India Limited case (cited supra).

23. In view of the above detailed discussion, the additional substantial question of law is answered in favour of the appellant. As a concomitant substantial Question of law formulated on 20.11.2007 becomes infructuous.

24. In the result, this second appeal is allowed by setting aside the order of the Lower Appellate Court and thereby restoring the dismissal order passed by the Trial Court. The C.M.P.No.7584 and 7580 of 2023 are also allowed. There shall be no order as to cost.

25. It is made clear that both parties are making allegations against each other about the deviation and unauthorized construction



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contravening to the approved plan sanctioned by the second defendant.

Therefore, the order passed in the Second Appeal will in no way affect the power of the second respondent to proceed against the alleged deviation and unauthorized construction of both the plaintiff and the first defendant according to law. No costs. Consequently connected miscellaneous petitions are closed.

22.12.2023

Internet : Yes/No

Index: Yes/No

Speaking Order: Yes/No

NCC : Yes / No

shl/nsl

List of Exhibits marked on the side of the Appellant:

Sl. No.	Exhibits	Description
1	Ex.B4	Reply given by the Right to Information Officer to the 1 st defendant stating that action will be taken under the provisions of Tamil Nadu District Municipalities Act.
2	Ex.B5	Reply given under the Right to Information Act, enclosing the Notice issued in Ka.Ma.2000/2012 dated 02.05.2013 under Section 205(1), (2) and 313 & 317 of Tamil Nadu District Municipalities Act.
3	Ex.B6	Reply given by the Right to Information Officer, Nagapattinam in Na.Ka.No. 3089/2015/F1 furnished copy of the building plan and the order dated 11.09.2013 made in Na.Ka.No. 200/2012 granting Building Plan Permission by the 2 nd defendant.
4	Ex.B7	Photographs showing the physical features of the plaintiff and 1 st defendant's house with Studio Bill.



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To

1. The District Munsif Court,
Nagapattinam
2. The Subordinate Court,
Nagapattinam



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C.KUMARAPPAN,J.

shl/nsi

S.A.No.1277 of 2007
and
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