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S.A.No. 1569 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **13.04.2023**

CORAM

THE HONOURABLE **MR. JUSTICE V. LAKSHMINARAYANAN**

S.A.No. 1569 of 2005

And

C.M.P.No. 20356 of 2005

1. Kaliyanna Gounder
2. K.Palanisamy ... Defendants/Respondents/Appellants

Vs.

1. Sellammal (died)
2. Palanivelu
3. Balakrishnan ... Plaintiffs/Appellants/Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Decree and Judgment dated 30.11.2004 made in A.S.No. 148Of 2003 on the file of the Principal District Judge, Namakkal, setting aside the Decree and Judgment made in O.S.No. 213 of 1995 dated 29.01.2003 on the file of the District Munsif, Trichengode and partly decreeing the same.



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For Appellants : Mr. S.A.Hafiz

For Respondents : Mr. C.Kulanthaivel

JUDGMENT

The suit had been filed by the plaintiff for the following reliefs:-

(i) declaring the plaintiffs right to fix 'C' and 'E' windows in the AB wall;

(ii) to declare the plaintiffs right to use the common land on the eastern side of their house;

(iii) for granting the mandatory injunction against the defendants to restore X Y ditch to its original condition; and

(iv) for granting permanent injunction against the defendants and their men restraining them from in any manner interfering with the



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peaceful possession and enjoyment of the suit property and from disturbing the plaintiffs enjoyment of A B wall and fixation of C and E windows and X Y ditch.

2. The trial Court decreed the suit partly, against which the present respondents had preferred an Appeal in A.S.No. 148 of 2003. The appeal came to be allowed granting the following reliefs:-

“1. that the appeal be and the same is hereby partly allowed by setting aside the judgment and decree dated 29.1.2003 made in O.S.No. 213/95 on the file of the Court of District Munsif, Tiruchengode relating to the reliefs of declaration and permanent injunction in respect of the plaintiffs rights to fix the windows in eastern side AB wall and in respect of their right to use the open space on the east of AB wall thereby granting the reliefs of declaration and the injunction as sought for in the suit in respect of their right to fix the windows in the eastern side AB wall and by



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declaring the plaintiffs limited right to use the eastern side open space once in a year for repairing and white washing AB wall,

2. that the appeal be and the same is hereby partly dismissed by confirming the judgment and decree dated 29.01.2003 made in O.S.No. 213 / 95 on the file of the Court of District Munsif, Tiruchengode relating to the reliefs of mandatory injunction and permanent injunction as sought for in respect of X Y ditch,

3. that the suit in O.S.No. 213/95 is hereby partly decreed by declaring the plaintiffs right of fixation of windows in the eastern side AB wall;

4. that the suit is hereby decreed by granting the relief of permanent injunction thereby restraining the defendants from interfering with the plaintiffs exercise of such right;



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5. *that the suit is hereby decreed by declaring the right of the plaintiffs to use vacant space on the eastern side once in a year for repairing and white washing AB wall subject to condition that the plaintiffs shall give one week prior notice when they intend to do so and the plaintiffs shall do the repairing and white washing between 9 A.M. and 5 p.m., in a day and the work shall not exceed 4 days in a year;*

6. *that the suit is hereby decreed by granting the relief of permanent injunction for restraining the defendants and their men from interfering with the plaintiffs exercise of such right once in a year;*

7. *that the suit is hereby dismissed by negating the reliefs of permanent injunction and mandatory injunction as sought for in respect of X Y ditch;*



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***8. that the plaint rough plan is to form
part of the decree and;***

9. that there is no order as to costs.”

3. When the Second Appeal was taken up for hearing, the learned counsel for the appellant submitted that there is a subsequent development. He stated that the building of the plaintiff itself was demolished and it was reconstructed giving a set back of nearly 3 feet on the eastern side.

4. This Court had requested him to file a memo to capture the said events. Accordingly, the memo has been placed before me today.

5. A perusal of the same shows that the old superstructure had been pulled down and new superstructure had been raised. Therefore, in the light of the subsequent development, nothing survives to be adjudicated in the Appeal. Hence, the Second Appeal is dismissed as infructuous. Consequently, connected Civil Miscellaneous Petition is closed.



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6. The memo filed by the learned counsel shall form part of the records.

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Index :Yes/No

Internet:Yes/No

vsg

To

1. Principal District Judge, Namakkal.

2. District Munsiff, Trichengode.



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V. LAKSHMINARAYANAN, J.

vsg

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