



S.A(MD)No.608 of 1999

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.608 of 1999 and
CROS.OBJ.No.43 of 2001

S.A.No.608 of 1999

1. Navaneetha Kannan Temple
at Keezha Marat Street,
Madurai.
Rep. by its Hereditary Trustee

2.Balasubramanian (died)
Name of the Trustee substituted in the place of
deceased Trustee K.Lakshmi Narayanan Chettiyar vide
CMP.No.3506/2006, dated 30.06.2006 by STJ)

3.B.Vasuki

4.Prasanna Kumar

5.Vigneshwaran

6.Gowtham
(Petitioners 3 to 6 are substituted in the
place of deceased Trustee vide
Court order, dated 14.10.2019 made in CMP.No.2164/2019
in S.A.No.608 of 1999 by JNBJ)

...Appellants



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-Vs-

1.V.V.V.Anandan (died)
2.A.Dinakaran
3.A.Mamallan
(3rd respondent is brought on record as LRS of the
deceased 1st respondent vide Court order, dated
11.03.2022 made in CMP(MD).Nos.2132, 2133 nd 2135 of 2022
in SA(MD).No.608 of 1999 by BPJ) ...
Respondents

CROS.OBJ.No.43 of 2001

1.V.V.V.Anandan (died)
2.A.Dinakaran Cross Objector / Respondents
3.A.Mamallan
(3rd Cross Objector is brought on record as LR of the
decease 1st Cross Objector vide Court, order dated
11.03.2022 made in CMP(MD).No.351 of 022 in Cro.Obj.No.43/2001)

Vs.

Navaneetha Kannan Temple
at Keezha Marat Street,
Madurai.
Rep. by its Hereditary Trustee
K. Lakshmi Narayana Chettiyar .. Respondents / Appellants

R1 B.Vasuki
R2. Prasanna Kumar
R3.Vigneswaran
R4. Gowtham
(R1 to R4 are substituted in the place of the deceased
K.Lakshmi Narayana Chettiyar vide Court, order dated 01.02.2022
made in CMP(MD).No.352 of 2022 in Cross.OBJ.No.43/2001 by RVJ)

PRAYER in S.A.No.608 of 1999: Second Appeal is filed under Section



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100 of the Code of Civil Procedure, against the judgment and decree, dated 02.07.1998 made in A.S.No.89 of 96, on the file of the Principal Subordinate Judge, Madurai, reversing the Decree and Judgment, dated 29.03.1996 made in O.S.No.110 of 1984, on the file of the Principal District Munsif, Madurai Town.

PRAYER in Cross.Obj.No.43 of 2001 : This Cross-Objection is filed under Order XLI Rule 22 of CPC, to set aside the decree and Judgment, dated 02.07.1998 made in A.S.No.89 of 1996, on the file of the Principal Subordinate Judge, Madurai, insofar it related to the grant of declaration modifying the Judgment, dated 29.03.1996 passed in O.S.No.110 of 1984, on the file of the Principal District Munsif, Madurai.

For Appellants

in S.A.No.608/1999 : Mr.S. Vellaichamy

For 2nd Respondent

in S.A.No.608/1999 : Mr.Chitra Venkatesan

For 3rd respondent

in S.A.No.608/1999 : Mr. G. Aravinthan

For Cross Objectors : Mr.G. Aravinthan

For Respondents in

Cross Objection : Mr.S. Vellaichamy

COMMON JUDGMENT



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The plaintiff in the suit is the appellant. He filed a suit for declaration that the suit “C” schedule Wall is a common wall and for injunction restraining the respondents from putting up a new wall and also for mandatory injunction directing the respondents to remove the windows, ventilators and additional constructions put up in “C” schedule property. The suit was decreed as prayed for. The respondents herein filed a first appeal and the same was partly allowed. The first appellate Court confirmed the decree for declaration and permanent injunction. But, however, reversed the decree in respect of mandatory injunction. Thus, the first appellate Court dismissed the suit insofar as the relief of mandatory injunction is concerned. Aggrieved by that portion of the decree, the appellants have come up by way of this Second Appeal. The respondents / defendants filed a cross appeal challenging the portion of the decree confirming the trial Court Judgment granting a decree for declaration and permanent injunction.

2. According to the appellants, the suit “A” schedule property belongs to them and the suit “B” schedule property originally belonged to the joint family consisting of respondents 1 and 2 and later on, “B”



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schedule property was allotted to the share of the second respondent. The suit “B” schedule property lies on immediate south of “A” schedule property belongs to the plaintiff. The southern wall of the plaintiff's house is described as “C” schedule property and is shown as “ABCDEF” in the plaint. It was further averred that “ABCDEF” Wall was a common wall jointly belonged to the appellants and the respondents. The suit “A” schedule property was purchased by the plaintiff under sale deed, dated 03.04.1937 and the same was marked as Ex.A1. It was contended by the appellants that the northern half of the Wall belonged to the appellants and the southern half of the wall belonged to the respondents. It was further averred that the respondents by colluding with the tenant and the appellants, surreptitiously raised the height of the wall in the portion of “BCDE” upto a height of 20 Ft., The respondents also increased the width of the wall on the northern side of “BCDE” portion by 9 inches and thereby, encroached the portion of the appellants' property. It was further averred that the respondents had put up four windows and one ventilator in the common wall illegally. The appellants, after acquiring the knowledge about high-handed and illegal acts of the respondents, issued telegraphic notices to the respondents calling upon them to remove the



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offending construction. However, without replying to the request of the appellants, the respondents tried to put up further construction. In these circumstances, the appellants were constrained to file a suit for declaration, permanent and mandatory injunction as prayed for.

3. The respondents herein filed a written statement denying each and every averments found in the plaint. The respondents further submitted that the constructions were put up in the year 1964 after due sanction from the Municipal authority. It was also contended by the respondents that the entire constructions were put up only with the full knowledge of the appellants and the appellants had consented to the act done by the respondents. It was also contended that the respondents have spent enormous amount in putting up the constructions and the fact that there was a long delay on the part of the appellants in filing the suit, after the constructions were over, amply proved the malafide intention of the appellants. The respondents have also raised a plea of prescriptive title by adverse possession. The respondents specifically contended that by exclusive possession and enjoyment of the suit property on their own for more than a statutory property, they had prescribed title.



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4. On these pleadings, the parties went to the trial, the hereditary trustee of the appellants' temple was examined as PW.1 and four documents were marked on behalf of the appellants as Exs.A1 to A4. The second respondent was examined as DW.1 and yet another witness was examined as DW.2 and 9 documents were marked on behalf of the defendants as Exs.B1 to B4. The Advocate Commissioner's report and plan were marked as Exs.C1 and C2.

5. The trial Court, on the basis of the oral and documentary evidence, came to the conclusion that the disputed wall in “C” schedule property was a common wall and hence, the respondents were not entitled to put up any construction without the consent of the appellants in “C” schedule property. It was also found that the construction put up by the respondents without the consent of appellants were liable to be removed and consequently, granted a decree as prayed for.

6. Aggrieved by the same, the respondents preferred an appeal in A.S.No.89 of 1996, on the file of the Principal Sub-Court, Madurai. The first appellate Court concurred with the findings of the trial Court with



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regard to the declaration of title and permanent injunction, but, however as far as the relief of mandatory injunction is concerned, the first appellate Court came to the conclusion that the alterations made by respondents in the suit schedule property were made only with the consent of the appellants and hence, the appellants were not entitled to a decree for mandatory injunction. Aggrieved by the said portion of the decree the appellants have come out with the present appeal. Aggrieved against the portion of the decree confirming the Judgment and decree for declaration and injunction, the respondents filed Cross Objection in Cross Obj. No. 43 of 2001.

7. At the time of admission, the following substantial question of law was formulated by this Court vide order, dated, 30.04.1999:

“Whether the lower appellate Court is right in reversing the well considered Judgment of the trial with respect to the prayer for mandatory injunction. When it concurred with the trial Court that “C” Schedule property is a common well and concurred with the other reliefs?”

8. Heard the arguments of the learned counsel appearing on



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either side and perused the materials on record.

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9. The learned counsel appearing for the appellants submitted that having concurred with material findings of the trial Court that disputed “C” schedule property Wall is a common wall of the appellants and respondents, the first appellate Court ought not to have refused to grant the relief of mandatory injunction in respect of alterations made by the respondents. The learned counsel further submitted that alterations made by way of new constructions were put up only in the year 1983 and therefore, there was no delay on the part of the appellants. According to the learned counsel for the appellants, the findings rendered by the first appellate Court as if the alterations were made by the respondents with the consent of the appellants was based on no evidence.

10. The learned counsel appearing for the respondents / Cross objectors contended that as per the title documents of appellants viz., Ex.A1, the appellants are not entitled to any portion of the suit Wall. The learned counsel further submitted that the portion of the wall was constructed in the year 1964 after obtaining permission from municipal



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authority as per Exs.B1 and B2 and hence, the appellants are not entitled to maintain the suit in respect of construction which was put up 20 years back. The learned counsel further submitted that even assuming the suit property can be treated as a common wall, still as co-owner, the respondents are entitled to put up further construction in the remaining portion.

11. The appellants traces their title under Ex.A1 - sale deed, the Courts below based on the recital found in Ex.A1 had given a factual finding that the Cross Objectors are estopped from asserting their right over the northern half of the suit common wall. Ex.A1 which was dated 03.04.1937. In view of the fact that Ex.A1 came into existence much prior to dispute between the parties, the recital found thereon cannot be ignored. In these circumstances, in the absence of any documentary evidence, on the side of the respondents to prove their exclusive right over the “C” schedule wall, the Courts below had given a factual finding that the appellants had proved their title as well as the possession over the northern half of the suit property and hence, they are entitled to declaration and injunction as prayed for. The said finding is based on appreciation of recital in Ex.A1



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filed by the appellants, as against the absence of any evidence on the part of the respondents. In these circumstances, I do not find any reason to interfere with the factual findings rendered by the Courts below with regard to the prayer for declaration and injunction.

12. The contention of the learned counsel for the respondents that the co-owner is entitled to put up a new construction in the common property cannot be accepted. The co-owner is not entitled to put up any construction in the common suit schedule property to the detriment of the other co-owner. Therefore, the Courts below are justified in granting the relief of injunction restraining the respondents from making any further construction in the suit “C” schedule property without the consent of the appellants.

13. The appellants have also sought for mandatory injunction seeking removal of the windows and ventilators put up by the respondents in the suit common wall. The said prayer of the appellants was not accepted by the first appellate Court mainly on the ground that the respondents put up constructions in the common wall in the suit “C”



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schedule property as per the approved plan obtained by him from Madurai Municipal Corporation in the year 1964, marked as Ex.B2. The Advocate Commissioner, who visited the property, in his report and plan mentioned that the constructions in the suit “C” schedule property appears to be a old one. It is also seen from the averments of the parties that the properties of both the parties are adjacent to each other and any new construction put up by the respondents in the suit “C” schedule property could not have been made without the knowledge of the appellants. Further, the appellants / hereditary trustee, when he was examined as PW.1, admitted the contents of Ex.B1, wherein, he admitted that the disputed wall was damaged and therefore, the electric service connection was disconnected and electric motor was handed over to the Madurai Corporation. He further admitted in Ex.B1 that the said wall was re-constructed. Therefore, the first appellate Court felt that the contention of the respondents that the new construction put up in “C” schedule property is with the knowledge of the appellants, cannot be faulted. Hence, the first appellate Court refused to grant the relief of mandatory injunction to the appellants on the ground of long delay in approaching the Court and also his failure to make objection to the construction made by the respondents at the earliest time.



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The relief of mandatory injunction is equitable one and the Courts are not bound to grant a decree for mandatory injunction unless, the party who seeks equitable relief approached the Court within a reasonable time, without any delay on his part. Therefore, I do not find any reason to interfere with the conclusion of the first appellate Court that the appellants are not entitled to a decree for mandatory injunction as prayed for.

14. In view of the discussions made, the substantial question of law formulated at the time of admission is answered as against the appellants and both the Second Appeal and Cross-objection are dismissed by confirming the Judgment and decree passed by the first appellate Court in A.S.No.89 of 96, on the file of the Principal Subordinate Judge, Madurai. In the facts and circumstances of the case, there will be no order as to costs.

30.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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S.SOUNTCHAR, J.

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To

1. Principal Subordinate Judge, Madurai.
2. The Principal District Munsif, Madurai Town.
3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

S.A.No.608 of 1999 and
CROS.OBJ.No.43 of 2001

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