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Rev.Aplc.(MD) No.115 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **28.10.2024**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Rev.Aplc (MD)No.115 of 2024

M.Selvapakyam Thangam

... Petitioner/Appellant

Vs.

Vel Nadar

... Respondent/Respondent

Prayer: Review Petition filed under Order 47 r/w Section 114 of C.P.C., to review the judgment and decree dated 18.11.2021 passed in S.A.No.591 of 2021.

For Appellants

: Mr.R.Pon Karthikeyan

For Respondent

: Mr.S.Kadarkarai

ORDER

This review application has been filed by one M.Selvapakyam Thangam to stay the operation of the judgment and decree dated 18.11.2021 in S.A(MD)No.591 of 2021.

1/12



Rev.Aplc.(MD) No.115 of 2024

WEB COPY

2. The respondent in the review application has filed a suit in O.S.No.381 of 2010, on the file of the District Munsif Court, Thoothukudi seeking for the relief of injunction against the petitioner herein. The trial Court after hearing the matter in merits decreed the suit in favour of the respondent on 02.09.2014. Aggrieved over the same, the petitioner preferred an appeal in A.S.No.115 of 2014, on the file of the Sub-Court, Thoothukudi. The appellate Court also dismissed the appeal on 11.04.2019. Aggrieved against the said judgment and decree, the petitioner filed second appeal in S.A(MD)No.591 of 2021 before this Court.

3. The plaintiff stated that he had 64 links and he do not accept 60 links and he has stated that he had 64 links which has been appropriately proved by the Commissioner by measuring the property and submitted his report and both the Courts below have come to the conclusion that the plaintiff is entitled for 64 cents. It was found that the respondent is constructing the compound wall within his boundaries and it is only a



Rev.Aplc.(MD) No.115 of 2024

WEB COPY

compound wall which would not be constructed not beyond the height of 5 feet, which would not obstruct any light or air which pass through the said appellant's property. As both the parties had discussion with their clients and both of them also agreed for constructing a compound wall within the boundaries of the respondent to an extent which has been constructed adjacent to the stair case on the southern side.

4. In view of the above, this Court by judgment dated 18.11.2021 passed the following order:-

"In order to put an end to the issue which is pending for a long period, this Court is of the view that both the parties should adhere to the directions issued and no further dispute to be brought in before the Court and both should live in peace and it is also directed that the plaintiff and the defendant after constructing the compound wall shall not indulge in wordy quarrel or back bickers. Both the parties shall not cause any inconvenience to each other. The construction of the compound wall in Northern side is over and it is only on three sides. No merits has been considered by this Court and only based on the compromise entered into between them, it shall be constructed upto 5 feet only."



Rev.Aplc.(MD) No.115 of 2024

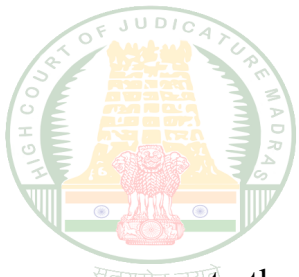
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5. The review applicant would submit that the second appeal was disposed of on 18.11.2021 on the basis of compromise. In fact, no compromise was entered between the petitioner and the respondent in the second appeal.

6. The learned counsel appearing for the respondent would submit that the petitioner has put up a asbestos sheet more than that 10 feet, by obstructing the respondent's right and light and hence, this Court directed the parties to appear before this Court.

7. Both parties appeared before this Court. In order to quietus the issue, this Court directed the respondent to construct a compound wall at 3 feet and put up Grill for 2 feet.

8. Today, when the matter is taken up for hearing, the learned counsel appearing for the petitioner would submit that the petitioner did not accept the order of this Court, and hence, he returned back the bundle



Rev.Aplc.(MD) No.115 of 2024

to the petitioner and reported 'No instruction'.
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9. The respondent filed an affidavit stating that based on the order of this Court he has put up a construction on the compound wall on 21.10.2024 by using hollow blocks, up to a height of 3 feet. But the petitioner along with her husband has pulled down the said construction and has threatened the respondent and his family members. The respondent feeling agitated the respondent has approached the jurisdictional police station and filed a complaint about the aforementioned incident. When the police came to enquire about the same, the petitioner has high handedly stated that she will not allow the respondent to put up the construction till 28.10.2024.

10. In view of the above, this Court is inclined to dismiss the Review Petition on the ground that there is no error committed on the face of record and in view of the above stand taken by the petitioner, this Court is inclined to pass orders on merits and the Second Appeal is taken up for disposal.



Rev.Aplc.(MD) No.115 of 2024

WEB COPY

11. The stand taken by the petitioner was that she has not given consent for entering into compromise with the respondent and withdrawn the vakalath given to the learned counsel and filed a review Petition stating that they have to contest the matter and the respondent counsel stated the case cannot be contested once again on merits when the matter has been compromised earlier based on the submission of the counsel.

13. It is pertinent to point out that once the petition for review is dismissed, no application for clarification should be filed, much less with the change of advocate-on-record. This practice of changing the advocates and filing repeated petitions should be deprecated with heavy had for purity of administration of law and salutary and healthy practice, as per decision of **Hon'ble Supreme Court reported in AIR 1997 Supreme Court 1005 [Tamil Nadu Electricity Board and Anr Vs. Raju Reddiar & Anr]**.

14. The High Court of Allahabad in the decision reported in 2023



Rev.Aplc.(MD) No.115 of 2024

AHC 207672 [Jag Mohan Agarwal Vs. Sudeep Harkauli] has held in
Paragraph No.19 as follows:-

“19. From the perusal of aforesaid judgments, intention of the Courts are very much clear that in case such review applications are entertained, it would be unending process with permission to opening of new Pandora Box. Undoubtedly, if the case is filed and argued by a counsel, he is the only person to file review application for the reasons that he is aware about the facts and grounds argued before this Court. This cannot be agitated by a subsequent counsel who has no concern with the matter till the final disposal of the case. Therefore, such practice of engagement of new counsel for filing review / recall / modification must have been depreciated. Further, granting such permission would be gross misuse of process of law and an attempt to raise new arguments for re-hearing of case on merits.”

15. It is seen from the photographs produced by the parties that the petitioner had put up asbestos sheet as the compound wall to the height of more than 10 feet and it affects the light and the air to the respondent. It is also further seen that on earlier occasion, this Court directed the



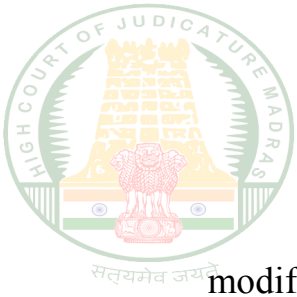
Rev.Aplc.(MD) No.115 of 2024

WEB COPY

respondent to put up a compound wall by using hallow blocks up to the height of 3 feet and grill upto 2 feet. The petitioner and her husband pulled down the same and threatened the respondent highhandedly, for which, a police complaint was also given against the petitioner.

16. It is further seen that as both the courts have stated that originally both the parties does not have any measurement of the said area, however, they have measured the property and as per Ex.P.4, they have agreed the extent of land. Further, only in order to give a quietus to the issue and to arrive peace and harmony between the parties and taking note of the fact that the respondent is illiterate, this Court is inclined to pass the following order:-

17. This Court is of the view that the compound wall is necessary to put an end to this issue. Hence the respondent is directed to put up a compound wall up to 4 feet and if necessary, they can put up the grill to an extent of 1 feet, which will be 5 feet to enable the light and air pass through, which will definitely bring the dispute down. Except the said



Rev.Aplc.(MD) No.115 of 2024

WEB COPY

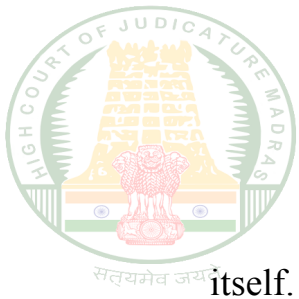
modification, the Judgment passed in S.A.(MD) No.591 of 2021 dated 18.11.2021 shall remain unaltered.

18. The Inspector of Police, Muthiahpuram Police Station, Muthiahpuram, Thoothukudi District is directed to give police protection to the respondent for constructing the compound wall.

19. That apart, even on merits, the Second Appeal deserves to be dismissed. The O.S.No.236 of 1994 was filed by the defendant and also the said lands were surveyed by the surveyor and the agreement was entered into between the parties and in which the plaintiff was entitled to 8 ½ cents and the defendant was entitled to 3 ¼ cents, as per Ex.P.4, which was also admitted by the defendant and the defendant now cannot claim that he has more links of land and try to over power the plaintiff.

20. It is also seen that the plaintiff started constructing compound wall only in his land and not in the defendant's land and there cannot be another action for the same fact, which was dealt in O.S.No.236 of 1994

9/12



Rev.Aplc.(MD) No.115 of 2024

WEB COPY

itself. In that suit itself it has been made clear that the land belongs to the plaintiff and hence it is res-judicata. Also, only after measuring the property, the same was accepted into by way of agreement and now parties cannot go back in their words. Further it is seen that the petitioner's case is without any valid evidence and materials and the defendant's statement that commissioner's report was not read over to her is not proper as they are teachers working in the Education department and they cannot claim such ignorance. Further, only as per agreement, the stair case has been constructed in the land in dispute and when both accepted the same and acted upon, now the defendant after many years cannot claim that the stair case are coming into the lands of the defendant against the agreement. Further, the trial court as well as appellate court has come to the conclusion that the defendant is not entitled for the claim made by her and the plaintiff is entitled to the prayers sought. The defendant is estopped from claiming once again which was already the subject matter of O.S.No.236 of 1994. Hence, even on merits, this Second Appeal has to be dismissed. The Review is not maintainable even on merits and the question of law raised by the defendant are not



Rev.Aplc.(MD) No.115 of 2024

WEB COPY

accepted and to be held against the defendant. It is already seen that the only document Ex.B4 will speak about the agreement entered into and hence this claim is held against the defendant. Further, the averment that taking advantage of the order of the Second appeal, the respondent is picking up a quarrel, all these things are factual aspects, which this Court cannot interfere with.

21. Accordingly, this review application is dismissed. No costs.

28.10.2024

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WEB COPY



Rev.Aplc.(MD) No.115 of 2024

V.BHAVANI SUBBAROYAN.J,
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Rev.Aplc(MD)No.115 of 2024

28.10.2024

12/12