



S.A.No.462 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	19.08.2025
<i>Pronounced on</i>	31.10.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.462 of 2019
and C.M.P.No.7529 of 2019

A.Anbalagan .. Appellant
versus

S.Sriram .. Respondent

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgment and decree dated 21.06.2018 made in A.S.No.164/2017 on the file of learned XVII Additional Judge, City Civil Court at Chennai modifying the judgment and decree dated 05.01.2017 made in O.S.No.455 of 2014 on the file of Principal XV Assistant Judge, City Civil Court at Chennai.

For Appellant : Mr.P.M.Bakthavatsalam

For Respondent : Ms.R.Bamini



S.A.No.462 of 2019

WEB COPY

JUDGMENT

The above second appeal arise out of the judgment and decree dated 21.06.2018 made in A.S.No.164/2017 on the file of learned XVII Additional Judge, City Civil Court, Chennai, modifying the judgment and decree dated 05.01.2017 made in O.S.No.455/2014 on the file of ^{xv} Assistant Judge, City Civil Court, Chennai.

2. The unsuccessful plaintiff is the appellant in this second appeal.

3. Facts of the case:

3.1. According to the plaintiff, the entire 'A' schedule property belongs to one Indiramani and five others measuring 1925 sq. ft. On 11.09.2000 the plaintiff has purchased the front portion (plot No.1) of the 'A' schedule property admeasuring 503 sq. ft., along with undivided 1/3 common passage measuring 263 sq. ft. On the same day one Chellapathy purchased the



S.A.No.462 of 2019

WEB COPY

middle portion (Plot No.2) of 'A' schedule property admeasuring 558 sq/.ft., along with undivided 1/3 common passage. On the same day, the defendant also purchased the corner portion (plot No.3) of 'A' schedule property measuring 561 sq. ft. along with undivided 1/3 common passage .

3.2. On 28.06.2001 by way of a registered sale deed the plaintiff purchased the portion belonging to Chellapathy. The defendant requested the plaintiff to rent out a portion in 'B' schedule property, as it would be convenient for him to put up construction in the 'B' schedule property. Hence, the plaintiff rented out a portion in the 'B' schedule property to the defendant. Thereafter, the defendant demolished the 'C' schedule property and started to construct without following the CMDA Rules and Regulations. He constructed a stair case in the undivided common passage. At that time, the plaintiff and his family were residing out of the suit property.



S.A.No.462 of 2019

WEB COPY

3.3 As per the sale deeds a common passage measuring 263 sq. ft., was in existence from the front portion of the plaintiff till the end of the defendant's portion and therefore, the plaintiff is entitled to 2/3 share and the defendant is entitled to 1/3 share and therefore, requested the defendant to demolish the stair case constructed by him in the undivided common passage. The defendant failed to consider the request made by the plaintiff. Hence, the suit.

4. On the other hand, the claim of the plaintiff was resisted by the defendant stating that the plaintiff had received Rs.42,000/- from the defendant and thereby relinquished his undivided shares in the common passage by means of an unregistered document dated 04.03.2007. The plaintiff is deliberately leaving the drainage water into the defendant's premises and common pathway. Hence, prayed for dismissal of the suit.



S.A.No.462 of 2019

WEB COPY

5.The trial Court decreed the suit by directing the defendant to pay the plaintiff a sum of Rs.30,000/- with interest at the rate of 12% per annum from the date of plaint till the date of realization and dismissed the suit with regard to the relief of mandatory injunction and permanent injunction. Aggrieved by this, the plaintiff preferred the appeal suit in A.S.No.164 of 2017 before the First Appellate Court. The first Appellate Court modified the decreed passed by the trial Court directing the defendant to pay a sum of Rs.50,000/- with interest at the rate of 12% per annum from the date of plaint till the date of realization. As far as the mandatory injunction and permanent injunction are concerned the First Appellate Court confirmed the judgement and decree passed by the trial Court.

6.Challenging the same, the plaintiff has preferred the present second appeal.



S.A.No.462 of 2019

WEB COPY

7.The learned counsel appearing for the appellant/plaintiff would submit that though the Courts below has rightly held the existence of common passage on the eastern side of the properties of the plaintiff and the defendant and that no one is entitled to put up constructions in the common passage obstructing its utility by other co-owners erroneously held that the plaintiff will not be benefited in any way even after the removal of the constructions and that the plaintiff can be compensated by money instead of removal of stair case put up by the defendant. The learned counsel would submit that, unless the relief of damage is claimed by the plaintiff, such a relief cannot be granted by the Courts below. The learned counsel would further submit that the trial Court has relied upon the judgment reported in **1997 2 MLJ 449** is not applicable to the facts of the case on hand. Hence, prayed for setting aside the judgment and decree passed by the Courts below.



S.A.No.462 of 2019

WEB COPY

8. On the other hand, the learned counsel appearing for the respondent/defendant would submit that the Courts below have arrived at a fair decision by observing that the stair case constructed by the defendant is not in the common passage and the same will not be a hindrance to the plaintiff. He would further submit that the stair case cannot be removed and if the same is removed the defendant will not be able to enjoy his property to his fullest utility. Hence, submits that there is no perversity or infirmity in the judgments passed by the Courts below which calls for interference by this Court.

9. Heard on both sides and records perused.

10. It is not in dispute that in the sale deeds marked as Ex.A2 to A5, the eastern boundary is shown as common passage and it is specifically mentioned that all the three purchasers are entitled to 1/3 undivided share in the common passage. It is also not in dispute that the plaintiff thereafter



S.A.No.462 of 2019

WEB COPY

purchased the middle portion of the 'A' schedule property from one Chellapathy. Hence, the plaintiff is entitled to 2/3 share in the common passage and the defendant is entitled to 1/3 share in the common passage. The Advocate Commissioner's report and plan marked as Ex.C1 and C2 reveals that the stair case has been constructed by the defendant in the common passage. The trial Court has observed that the plaintiff is not using the disputed portion and therefore held that he can be compensated by way of money. The trial Court as well as the First Appellate Court, applying the "doctrine of acquiescence" held that the plaintiff has not chosen to approach the Court of law immediately when the defendant started construction in the common passage and therefore, he his not entitled for the relief of mandatory injunction and permanent injunction. However, the Courts below directed the defendant to compensate the plaintiff by money by applying the principles laid down in a decision reported in **1997 2 MLJ 449** where this Court has held that the Court is competent to grant a general or other relief it may think just and necessary



S.A.No.462 of 2019

WEB COPY

though the same has not been sought for.

11.No doubt, the co-owners are not entitled to put up constructions in the common passage so as to obstruct its utility by other co-owners. According to the defendant, the alleged stair case was put up in the year 2006 itself and the same was not objected by the plaintiff, since he had received the amount from the defendant for putting up construction. Though, there is no pleadings about the laches and acquiescences in the written statement, the Courts below having found that there was no necessity for the plaintiff to enter into the common passage since the door of the plaintiff is situate on the northern side facing towards the street, and the stair case is situate only on the edge of common passage i.e., on the eastern side of the defendant's house, held that the plaintiff can be compensated by money instead of removal of stair case put up by the defendant. In most cases, a Court cannot grant a relief that has not been explicitly sought, as its primary roll is to adjudicate the issues presented by



S.A.No.462 of 2019

WEB COPY

the parties. The relief must be founded on the pleadings and prayers made by the plaintiff. The principle is that, a Court is bound by the pleadings, which is fundamental ensuring fairness and preventing a miscarriage of justice. By granting an unprayed relief, it would deny the opposing party the opportunity to resist or defend against the specific claim. However, there are recognized exceptions where Courts can "mould the relief" to do complete justice, especially in constitutional or complex civil matters. Despite the general rule, Courts, possess inherent powers to adapt or "mould" the relief sought to meet the ends of justice. This is not a matter of right but a discretionary power of the Court, typically exercised in specific circumstances. By granting the moulded relief, complete justice must be done. In the present case, the Courts below has rightly applied the principles laid down in the case reported in **1997 2 MLJ 449**, and moulded the relief considering the facts and circumstances of the case. No perversity or infirmity found in the findings of the Court below which warrants any interference by this Court. Therefore, I do not see any question of law much



S.A.No.462 of 2019

WEB COPY

less a substantial question of law in order to enable me to entertain this appeal.

12.In the result,

(i) the second appeal is dismissed. No costs. consequently, connected miscellaneous petition is closed.

(ii) The judgement and decree dated 21.06.2018 made in A.S.No.164/2017 on the file of learned XVII Additional Judge, City Civil Court, Chennai, is upheld.

31.10.2025

vsn/bga

Index: Yes/No

Speaking order / Non-speaking order



S.A.No.462 of 2019

WEB COPY

To

- 1.The XVII Additional Judge, City Civil Court at Chennai
2. The Principal XV Assistant Judge, City Civil Court, Chennai
- 3.The Section Officer, VR Section, High Court, Madras.



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S.A.No.462 of 2019

K.GOVINDARAJAN THILAKAVADI,J.

vsn

**Pre- delivery judgment made in
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31.10.2025