



S.A.(MD).No.274 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.01.2025**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.274 of 2012

and

M.P.(MD)No.1 of 2012

Andaperumal

... Appellant

/Vs./

Minor.Divya

...Respondent

(The Minor respondent is represented
through her mother and next friend
Muthulakshmi)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 30.11.2011, made in A.S.No.56 of 2011 on the file of the Additional Sub Court, Tirunelveli, modifying the Judgment and Decree, dated 15.12.2010, made in O.S.No.251 of 2007 on the file of the Principal District Munsif Court, Tirunelveli.

For Appellant : Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi

For Respondent : No appearance



S.A.(MD).No.274 of 2012

WEB COPY

JUDGMENT

The present second appeal is preferred by the defendant against the Judgment and Decree dated 30.11.2011, passed in A.S.No.56 of 2011 on the file of the Additional Sub Court, Tirunelveli, modifying the Judgment and Decree, dated 15.12.2010, passed in O.S.No.251 of 2007 on the file of the Principal District Munsif Court, Tirunelveli.

2. The defendant in the suit is the appellant herein and the plaintiff in the suit is the respondent herein. For the sake of convenience, the parties shall be referred as plaintiff and defendant as per the ranking in the suit.

3. The plaintiff / respondent herein had filed the suit for declaration to declare the suit wall exclusively belongs to the plaintiff and with mandatory and permanent injunction, to remove the bathroom put up adjacent to the wall and also other construction. The Trial Court has rendered a finding that the wall exclusively belongs to the plaintiff and also granted the consequential prayer of mandatory injunction and permanent injunction directing the defendant to remove



S.A.(MD).No.274 of 2012

WEB COPY

the offending construction adjacent to the wall. Aggrieved over the same, the defendant has preferred an appeal in A.S.No.56 of 2011 wherein the declaration prayer was set aside and held the wall is a common wall belonging to both the plaintiff as well as the defendant. But confirmed the mandatory and permanent injunction. Aggrieved over the grant of mandatory injunction and permanent injunction against the defendant, the defendant has filed the present second appeal. The plaintiff had not preferred any appeal against the finding rendered by the Appellate Court that the offending wall is a common wall.

4. After hearing the submissions of the learned Counsel appearing for the defendant / appellant herein, this Court directed the defendant to clarify whether the leakage is there from the bathroom which was put up underneath the footsteps. The learned Counsel appearing for the defendant appellant herein has clarified there is leakage. The Learned Counsel had produced the photos and on perusing the same it is evident that leakage is on the plaintiff's side as well as on the defendant's side.



S.A.(MD).No.274 of 2012

WEB COPY

5. Therefore, this Court is not inclined to interfere with the Appellate Court as well as the Trial Court judgment wherein both the Courts have granted mandatory and permanent injunction to remove the bathroom against the defendant. As far as the declaration is concerned, the plaintiff has not preferred any appeal. Therefore, the wall is declared as common wall belonging both the plaintiff and the defendant. The defendant is permanently restrained from putting up any construction in the offending portion and is also directed to remove the bathroom alone, since there is leakage on both the sides. The bathroom shall be removed within a period of three months from the date of receipt of a copy of this judgment.

6. With the above said directions, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.01.2025

Index : Yes / No
NCC : Yes / No

Tmg



S.A.(MD).No.274 of 2012

WEB COPY

TO:

1. Additional Sub Court, Tirunelveli.
2. Principal District Munsif Court, Tirunelveli.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD).No.274 of 2012

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.274 of 2012

Dated:
10.01.2025