



S.A.(MD)No.312 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.08.2025

Pronounced on : 26.09.2025

CORAM

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

S.A.(MD)No.312 of 2019

and

C.M.P.(MD)Nos.6311 & 10990 of 2019

Jeyanthi,
W/o. Esakkimuthu,
125, Thirumalaisampuram,
Naagal Nagar,Dindugal Town,
Dindugal District

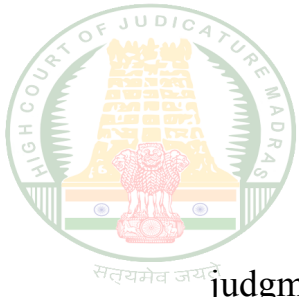
... Appellant/Respondent /Plaintiff

Vs.

Manikandan,
S/o. Pitchai Naidu,
49, Raju Nayakkar Compound,
Naagal Nagar,Dindugal Town,
Dindugal District.
Now Residing at-
Old No. 70, New No. 124,
Thirumalaisampuram,
Near Lalitha Bankers
Dindugal.

... Respondent/Appellant/Defendant

PRAYER in SA: The Second Appeal filed under Section 100 C.P.C., to set aside the judgment and Decree passed in A.S.No. 19 of 2017 on the file of the Principal Sub Court, Dindugal, dated 01.03.2019 reversing the



S.A.(MD)No.312 of 2019

judgment and decree passed in O.S.No. 710 of 2009 on the file of the Additional District Munsif Court, Dindugal, dated 23.01.2017 and thus render justice.

PRAYER in CMP(MD)No.6311 of 2019:

To grant an order of temporary injunction forbearing the respondent his men agents and servants from interfering with the appellant's peaceful possession and enjoyment of the suit schedule property and not to put up any construction and change the character of the suit schedule property the subject matter in OS.No.710 of 2009 on the file of the Additional District Munsif Court Dindigul pending disposal of this second appeal and thus render justice.

PRAYER in CMP(MD)No.10990 of 2019:

To vacate the interim injunction granted in CMP No.6311 of 2019 in SA No.312 of 2019 dated 12.11.2019 on the file of this Honourable Court and thus render justice.

APPEARANCE OF PARTIES:

For Appellant : Mr.N.GA. Natraj, Advocate

For Respondent : Mr.S.M.Thirunavukkarasu, Advocate

JUDGMENT

Heard.



S.A.(MD)No.312 of 2019

WEB COPY

2. This Second Appeal has been preferred against the judgment and decree dated 01.03.2019 passed in A.S. No.19 of 2017 by the learned Principal Subordinate Judge, Dindigul, whereby the judgment and decree dated 23.01.2017 in O.S. No.710 of 2009 passed by the learned Additional District Munsif, Dindigul, was reversed.

3. For convenience, the parties will be referred to by their ranks as in the trial court.

4. At the time of admitting the Second Appeal on 19.07.2019, this Court framed the following substantial questions of law for consideration, which are extracted verbatim below:

I. Whether the 1st appellate court was correct in allowing the appeal on the wrong notion as though the respondent is a co-owner along with the plaintiff, relying on the boundary recitals mentioned in the sale deed Ex A5, when it is not the case of the respondent that he is the co-owner?



S.A.(MD)No.312 of 2019

WEB COPY

II. Whether the 1st appellate court is correct in disallowing mandatory injunction when all the constructions except the impugned constructions described in the plaint are put forth during the pendency of the suit as per the Commissioner's report?

III. Whether the 1st appellate court is correct in not ordering mandatory injunction when admittedly all the impugned construction are made during the pendency of the suit either in the exclusive property of the Plaintiff or in a Co-owner's property; and thus committing an error of encouraging illegality being committed?

5. The appellant herein, who was the plaintiff before the Trial Court, instituted O.S. No.710 of 2009 seeking a declaration of title, a decree of permanent injunction, and a decree of mandatory injunction.

6. The suit schedule property measures East–West 47' and North–South 35', totalling 1645 sq. ft. The present dispute, however, is confined to a narrow strip of land measuring 47'x 2' (94 sq. ft.), forming the northern boundary of the plaintiff's property and the southern boundary of the defendant's property.



S.A.(MD)No.312 of 2019

WEB COPY

7. According to the plaintiff, under Ex.A5 he purchased the property measuring 47' x 35' . His building, however, extends only up to 33' North–South, leaving a strip of 2' on the northern side, which forms the lane in question. He contends that this 2' passage is also part of his purchase under Ex.A5 and that he is entitled to rights over the northern common lane as recited therein.

8. The defendant, on the other hand, claims title under Exhibits.A6 to A8. Originally, the property belonged to one Parvathi Ammal, who settled it in favour of her husband, Muthusamy Naidu, under Ex.A6. The extent of the property so settled measured East–West 100' and North–South 27'. The successors in title of Muthusamy Naidu sold the property to the defendant's mother under Ex.A7, describing it as measuring East–West 100' and North–South 28' on the western side and 29' on the eastern side. Thereafter, the defendant's mother in turn settled the property in favour of the defendant under Ex.A8. Thus the vendors of the defendant's mother had conveyed an extent larger than what they were lawfully entitled to, a fact which also stood admitted during the cross-examination of D.W.1.



S.A.(MD)No.312 of 2019

WEB COPY

9. The defendant further contended that the plaintiff had no direct access to the disputed strip of land and, therefore, could not assert any right over it.

10. The Trial Court, upon appreciation of the oral and documentary evidence, held that the 2' strip formed part of the plaintiff's purchase under Ex.A5, and accordingly decreed the suit in favour of the plaintiff by granting a declaration, a decree of permanent injunction, and a mandatory injunction directing removal of the constructions/encroachment.

11. On appeal, the First Appellate Court reversed the judgment of the Trial Court. Relying on the recital 'common lane' in Ex.A5, it held that the 2' passage constituted a common lane available to the plaintiff and two other owners on the western side, but not to the defendant. On that reasoning, it declined to grant a declaration in favour of the plaintiff and consequently refused both the declaration and the relief of mandatory injunction.



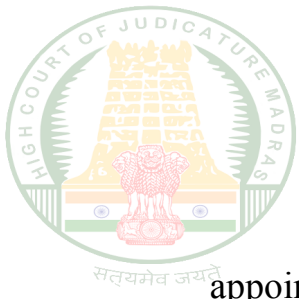
S.A.(MD)No.312 of 2019

WEB COPY

12. Upon consideration of the rival pleadings and the evidence on record, this Court is of the view that the approach adopted by the First Appellate Court is legally unsustainable for the following reasons:

(i) **Nature of the 2' passage** – The description in Ex.A5 shows that the plaintiff purchased property measuring 47' x 35' with a building thereon. The construction of his house admittedly extends only to 33' North–South axis, leaving the 2' strip. Thus the total extent of 35' claimed under Ex.A5 necessarily includes the said 2' lane. The recital of 'common lane' therein indicates that the passage was to be enjoyed commonly by the plaintiff and two others situated on the western side. At no stage has the defendant established any right over this passage. The First Appellate Court therefore erred in denying a declaration in favour of the plaintiff.

(ii) **Effect of Commissioner's reports** – The Advocate Commissioner inspected the suit property on three occasions, namely, 04.12.2009, 19.12.2009, and 06.02.2010, and filed reports. It is evident that subsequent to the institution of the suit, and even after the



S.A.(MD)No.312 of 2019

WEB COPY

appointment and first visit of the Commissioner, the defendant proceeded with further constructions. He raised a compound wall on the western side of the passage, projected sunshades into the lane, laid pipelines for discharge of drainage water, and otherwise encroached upon the common lane. These acts were recorded by the Commissioner as subsequent developments. The conduct of the defendant in carrying on construction despite caveat, police complaints, and the pendency of the suit is squarely hit by the doctrine of lis pendens under Section 52 of the Transfer of Property Act, 1882.

(iii) **Plea of acquiescence** – The First Appellate Court erred in invoking the principle of acquiescence. From the very inception, the plaintiff consistently opposed any construction in the passage by lodging police complaints, raising objections during the Commissioner's inspection, and resisting the same before the Court. In these circumstances, the doctrine of acquiescence is wholly inapplicable.

The observation of the First Appellate Court that the relief sought by the plaintiff is barred under Section 41(g) of the Specific Relief Act, 1963, on the ground of acquiescence, is wholly untenable. The evidence on record clearly establishes that the plaintiff, far from remaining



S.A.(MD)No.312 of 2019

WEB COPY

passive, had opposed the defendant's unlawful acts from the very inception. Immediately upon commencement of construction, the plaintiff lodged a complaint before the North Dindigul Town Police and obtained CSR receipt Ex.A11, which serves as contemporaneous proof of his objection. Anticipating further legal proceedings, the defendant himself filed a caveat under Ex.A13, thereby admitting his knowledge of the plaintiff's resistance. The plaintiff thereafter instituted the present suit without delay, and even after the appointment of an Advocate Commissioner and his first inspection, the defendant, in defiance of judicial process, persisted with the construction despite the plaintiff's protests. The plaintiff's conduct thus demonstrates continuous and consistent opposition at every stage, leaving no scope for waiver, consent, or "sitting by," which alone would constitute acquiescence within the meaning of Section 41(g).

A mere delay in asserting rights does not, by itself, constitute acquiescence. Furthermore, when the plaintiff has consistently registered protest, the restriction under Section 41(g) is inapplicable. In light of these principles, the finding of acquiescence by the first appellate court is untenable, and the plaintiff remains entitled to the equitable relief sought.



S.A.(MD)No.312 of 2019

WEB COPY

(iv) **Irreparable injury** – The constructions carried out by the defendant in the common lane are not structurally integral to the main building. They consist of independent additions such as sunshades, a western boundary wall, and pipelines. The removal of these structures would not result in any irreparable harm to the defendant. However, allowing them to remain would permanently obstruct the plaintiff and other co-owners from accessing and fully enjoying the use of the common lane.

(v) **Equitable considerations** – A party who knowingly undertakes construction on another's property during the pendency of legal proceedings cannot invoke the equitable jurisdiction of the court. The defendant's actions were high-handed and deliberate, and he cannot be allowed to retain the benefits derived from his wrongful conduct. Accordingly, the substantial questions of law framed in this second appeal are answered in favour of the appellant.



S.A.(MD)No.312 of 2019

WEB COPY

13. For all the reasons stated above, this Court holds:

a) The plaintiff is hereby declared to be the owner of the suit schedule property and also one of the co-owners, along with the other entitled parties, of the common lane measuring 47 feet $\times$ 2 feet situated on the northern side of his property.

b) The finding of the first appellate court denying declaration is set aside and the declaration granted by the trial court is modified as above.

c) The judgment of the trial court decreeing permanent injunction and mandatory injunction is restored.

d) The defendant is restrained from interfering with the plaintiff's use and enjoyment of the common lane by putting up construction or otherwise.

e) The defendant shall remove the constructions put up in the common lane, as identified in Ex. A12 in red colour, together with all other constructions made by the defendant in the said common lane, which have been recorded by the Advocate Commissioner in his report. (Commissioner's Report marked as C.W.2), within a period of three months from the date of this judgment.



S.A.(MD)No.312 of 2019

WEB COPY

14. In the result the Second Appeal is allowed. The judgment and decree of the first appellate court are set aside. The decree of the trial court is modified to the limited extent that the plaintiff is declared as co-owner of the common lane measuring 47' x 2'. All other reliefs of injunctions permanent and mandatory stand restored. No costs. Consequently, connected Miscellaneous Petitions are closed.

26.09.2025

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
LS

To

1.The Principal Sub Judge,
Dindugal.

2.The Additional District Munsif,
Dindugal.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

12/13



WEB COPY



S.A.(MD)No.312 of 2019

DR.A.D. MARIA CLETE,J.

LS

Pre-delivery Judgment made in
SA.(MD)No. 312 of 2019

26.09.2025