



SA(MD)No.54 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 25/03/2025

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

SA(MD)No.54 of 2004

Ramalakshmi : Appellant/Appellant/
Defendant

Vs.

H.Rama
through her Power of Attorney
Agent Kalyana Sundaram : Respondent/Respondent/
Plaintiff

PRAYER:-Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in AS No.53 of 2003, dated 25/03/2004 on the file of the 1st Additional Subordinate Judge, Tirunelveli, confirming the judgment and decree passed in OS No.457 of 1999, dated 21/04/2003 on the file of the Principal District Munsif Court, Tirunelveli.

For Appellant : Mr.M.P.Senthil

For Respondent : Mr.S.Meenakshmi Sundaram
Senior counsel
for Mr.M.Sengu Vijay

J U D G M E N T

This Second Appeal is filed against the judgment and decree passed in AS No.53 of 2003, dated 25/03/2004 by the 1st Additional Sub Judge, Tirunelveli, confirming the judgment and decree passed in OS No.457 of 1999, dated 21/04/2003 by the Principal District Munsif, Tirunelveli.

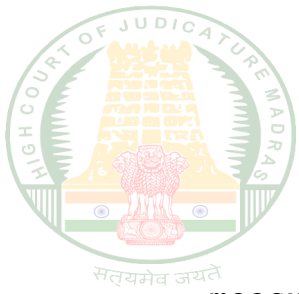


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2. The plaint averments in brief:-

The plaintiff purchased the suit plot No.51 on 24/07/1989 through registered sale deed from one Venkatasubramanian. The defendant purchased another plot lies on the south-west of plot No.51 from one Chandrasekaran on 01/02/1995. Along with the plaint, a rough sketch is annexed. Wherein the portion marked as 'ABCD' belongs to the plaintiff. 'EFGH' belongs to the defendant. The plaintiff and his family were not living in that area. Taking advantage of the same, the defendant encroached a portion of the suit property as indicated in read ink, in 1997 and constructed a wall measuring about 13-2/4 feet. That portion is shown as second schedule in the plaint, which is marked as 'QRST'.

3. Encroachment came to the notice only recently. The plaintiff requested the defendant to remove the construction in September 1997. The defendant agreed to measure the property and if any encroachment is made, he will remove the same. But later delayed. So, notice was sent on 05/03/1999. Reply was sent, which contains false averments. So, the suit is laid for declaration that the suit second schedule belongs to the plaintiff and for recovery of possession, costs.



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4.The statement:-The defendant purchased a plot measuring about 2499 square feet with specific boundaries. His vendor purchased the property on 08/07/1994. The vendor was allotted with property in a partition deed, dated 17/07/1979. So, the defendant and his predecessor-in-title were in exclusive possession and thereby, they prescribed title by adverse possession also. The plaintiff had full knowledge about the purchase, etc.

5.The plaintiff's property is shown as west northern boundary of the defendant's plot. In 1996, the defendant constructed a house and two shops. Construction was made after making proper measurement and approval from the Municipal Corporation. He constructed a compound wall around the property. So, the question of encroachment does not arise. The construction was known to the plaintiff in the year 1996 itself. At that time, no objection was raised by the plaintiff. Apart from that, other customary denials were made.

6.On the basis of pleading of both parties, the trial court framed the following issues:-

1.Whether the plaintiff is entitled to relief of declaration of



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title in respect of 2nd schedule property in the suit?

2.Whether the plaintiff is entitled to recover possession in respect of the 2nd schedule property from the defendant?

3.Whether the defendant has prescribed title by adverse possession over the property in the second schedule?

4.Whether the suit is bad for non-joinder of necessary parties?

5.Whether the right of the plaintiff is lost by way of laches and acquiescence?

6.To what other relief, the plaintiff is entitled to?

7.Before the trial court, on side of the plaintiff, one witness was examined and 8 documents marked. On the side of the defendant, 2 witnesses were examined and 7 documents marked. Court documents were marked as Exs.C1 to C6.



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8.The trial court decreed the suit as prayed for without any cost. Against which, the defendant filed appeal before the appellate court namely I Additional Sub Judge, Tirunelveli. The appellate court confirmed the judgement and decree passed by the trial court and dismissed the appeal with costs.

9.Against which, this second appeal is preferred by the defendant.

10.At the time of admission, the following substantial questions of law were framed:-

(a)Whether the findings of the Courts below are vitiated by its failure to consider the specific findings of the Advocate Commissioner reports under Ex.C-3 and C-4 and also the evidence of Advocate Commissioner as DW-2?

(b)Whether the courts below are right in holding that the appellant encroached a portion of the respondent's property especially when it is found on the basis of the report of the Advocate Commissioner under Ex.C-3 and C-4 that the construction are



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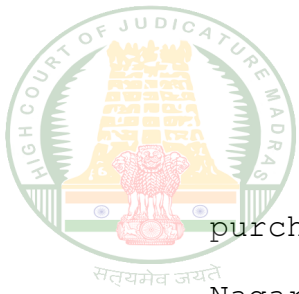
**within the extent purchased by the appellant
under Ex.B-1?**

**(c)Whether the courts below are right in
granting a decree for possession in any event
having regard to the proved fact that the
respondent acquiesced the construction from
the evidence of PW-1 is estopped by the
conduct of the respondent for seeking a
relief of possession by the reason of
provisions of the Transfer of Property Act?**

11.Heard both sides.

12.Before we enter into the main issue, the admitted facts may be kept in mind. The plaintiff's plot is situated in Plot No.51. He purchased the same on 24/07/1989 under Ex.A2. The defendant purchased his plot under Ex.B1 on 01/02/1995. The boundaries are mentioned as on the northern Plot Nos.51, 54 and 55. On the east, Plot No.52.

13.So, the date of purchase made by the parties shows that the plaintiff document under Ex.A2 is prior to Ex.B1. In the recitals under Ex.A2 reads that after



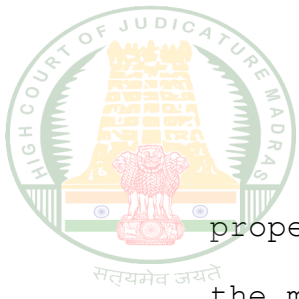
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purchase layout plots were made by naming as Sri Kamatchi Nagar. The total extent is mentioned as 2178 square feet. The measurements are noted as on east-west on the north 66 feet and north-south on both sides 33 feet. On the south of the plot, plot No.52 and predecessor-in-title's land is situated. It is stated that that portion was purchased by the defendant/appellant under Ex.B1.

14.Now, we will go to Ex.B1 measurement. The east-west on the north-south is 102 feet and north-south on the west is 23 feet, on the east, 26 feet. Total measuring about 2499 square feet, roughly comes to 5.73 cent.

15.At the time of argument, the learned counsel appearing for the appellant would heavily rely upon Ex.B1 measurement to show that as per the Commissioner's report and plan, what was purchased by the appellant exist on land. There was no excess in his hands. Probably the respondent plot was encroached by northern owner namely Plot No.50. As indicted in the Commissioner's report, the northern owner left one feet adjacent to the road, but encroached up one feet on the plaintiff's property on the south. Now the plaintiff wants to equalise the encroachment made by the northern owner with that of the



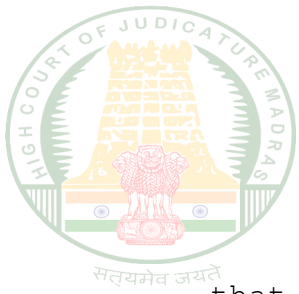
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property of the appellant situated on the south. This is the main point.

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16.Per contra, the learned Senior counsel appearing for the respondent would submit that the Commissioner visited the property twice. On those two occasions, the encroachment was noticed. We will go the point of delay and laches, acquiescence later. So, according to him, no objection was filed by the appellant for the second Commissioner's report. He would also indicate that an attempt was made by this court by directing the learned Government Advocate to take the assistance of the Taluk Surveyor to measure the property as per the title document of both sides. He has also filed the report, which also indicates the encroachment made by the appellant in the property of the plaintiff.

17.But the report filed by the Taluk Surveyor along with the sketch was not brought on record by the parties by filing proper petition under Order 41 Rule 27 CPC. So, without the document brought on record as additional evidence, it may not be proper on the part of this court to rely those documents. So, we can ignore the report and plan submitted by the Taluk Surveyor at the instance of this court.

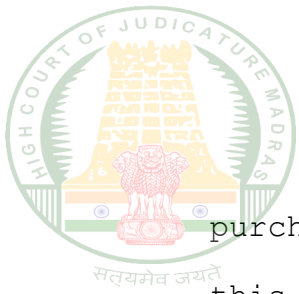


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18.Coming to the measurement mentioned in Ex.A1 with that of the Commissioner's report, there is clear indication by the Commissioner that northern owner encroached one feet in the plaintiff's property on the south. The defendant encroached a portion on the south of the plaintiff property. It is upto the plaintiff to take action against the northern side owner.

19.So, the question which arises for consideration is whether the respondent herein makes an attempt to equalise his loss of one feet on the south with that of the defendant's property on the south. In Ex.B1 eastern north-south measurement is mentioned as 26 feet and west 23 feet. The compound wall measures 26 feet on the east. But on ground, the distance between the plaintiff's Plot No.51 and Kamatchi Amman Kovil measures only 23 feet, which means that only 23 feet is available on site. But the defendant encroached 3 feet in Plot No.51. The encroached portion is marked on '**DEFG**' in the Commissioner's sketch. Since the property purchased by the plaintiff came into existence prior to the purchase made by the defendant, naturally he ought to have measured the property at that time of purchase. Whether, it is correctly available on ground. It appears that without ascertaining the same, the defendant has



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purchased the property and invited the trouble. With this, now let us go to the oral evidence.

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20.During the cross examination, suggestion was made to PW1 that the deficit extent might be included on the southern property.

21.But there is clear measurement in Ex.A2 that north-south on both sides measures 23 feet. So, there is no possibility for the deficit on the south that too in the form of 'L' shape. The physical feature now available on ground also *prima facie* indicates the encroachment made by the defendant.

22.Now we will go to the evidence of the defendant. He would deny that the compound wall on the east is 'L' shaped. But actually. as mentioned above, as per the Commissioner's report, it is 'L' shaped. He would say that as per the plan approval under Ex.B3, he constructed the building. But even for constructing the compound wall, he obtained permission. But that separate approval for the compound wall is not produced. Even if, we see that it was applied, the authorities would not have approved the plan for constructing the compound wall in 'L' shape. Even under Ex.B3, the compound wall is not



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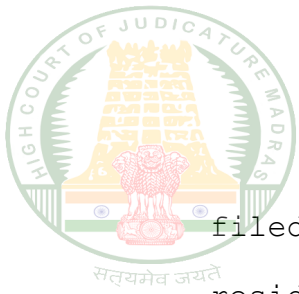
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shown. So, the contention on the part of the defendant that he was approved with plan for the construction of the compound wall is not correct on record. So, the discussion made above clearly indicates that the appellant has encroached the portion marked as 'DEFG' portion.

23.As mentioned above, since the defendant purchase is subsequent to the purchase made by the plaintiff, now he cannot say that the property deficit portion might available on the southern side. So, this contention is rejected outright. Since, there is concurrent finding by the trial court as well as the appellate court, nothing is brought on record to show that the findings are perverse or illegal, no interference can be made by this court at the second appellate stage. The trial court as well as the appellate court have appreciated the evidence on record regard in the light of the Commissioner's report in a proper perspective. So, the substantial questions of law (a) and (b) are answered accordingly.

Substantial question of law 'C':-

24.Now the delay, laches and acquiescence plea raised by the defendant. Against the plaintiff's case, Ex.B3 approval was granted on 04/01/1996. The suit is



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filed in 1999. PW1 would say that the plaintiff was residing in Chennai. So, the construction made by the defendant was not known to him. It was brought to his notice when measurement was made. At that time, encroachment was found, upon which, Ex.A5 notice was issued. Notice is dated 06/03/1999. Even though in the notice, the date is not mentioned. From the postal receipt, it is seen that it was issued on that date. Reply notice was sent by the defendant on 22/03/1999. After that, the suit was filed. To the cross examination, PW1 would admit that the construction made by the defendant was known to him from the beginning, till its completion. But measurement was taken in 1997. At that time only, the encroachment was found out.

25.Now in this context, we will go to the evidence of DW1. He would say that the construction commenced in 1995. It was completed before July 1996. But, as mentioned above, here the construction of the compound wall is the issue. As indicted above, there was no separate plan approval for the construction of the compound wall. It might have been constructed subsequent to 1996. Absolutely, there is no contra evidence on record to say that in 1997, when measurement was taken, the encroachment came to the notice of the plaintiff.



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Within two years, the suit is filed. So, the question of laches and acquiescence in those circumstances whether will arise must be answered in the light of the settled proposition of law on this aspect.

26. We can profitably refer to the judgment of the Hon'ble Supreme Court in ***THE CHAIRMAN, STATE BANK OF INDIA AND ANOTHER VERSUS. M.S JAMES (Civil Appeal No.8223 of 2009, dated 16/11/2021)***. Even though, the facts are different in that matter, but the statement of law applies. The relevant portion is extracted as under:-

*"Applying this principle of acquiescence to the precept of delay and laches, this Court in **U.P. Jal Nigam and Another v. Jaswant Singh and Another**, 16 after referring to several judgments, has accepted the following elucidation in Halsbury's Laws of England:*

"12. The statement of law has also been summarised in Halsbury's Laws of England, para 911, p. 395 as follows:

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(i) acquiescence on the claimant's part; and



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(ii)any change of position that has occurred on the defendant's part.

(2008) 8 SCC 648 15 (1979) 2 SCC 409 16 (2006) 11 SCC 464. Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

27.Regarding the delay & laches and acquiescence the following principle has been enunciated as under:-

"29.Before proceeding further, it is important to clarify distinction between 'acquiescence' and 'delay and laches'. Doctrine of acquiescence is an equitable doctrine which applies when a



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party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain.¹⁷ In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance,¹⁸ which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention.¹⁹ Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance.²⁰ However, acquiescence will not apply if lapse of time is of



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no importance or consequence. 17
See *Prabhakar v. Joint Director, Sericulture Department and Another*, (2015) 15 SCC 1. Also, see *Gobinda Ramanuj Das Mohanta v. Ram Charan Das and Suyamal Das*, AIR 1925 Cal 1107 See *M/S Vidyavathi Kapoor Trust v. Chief Commissioner Tax* (1992) 194 ITR 584 19 See *Krishan Dev v. Smt. Ram Piari* AIR 1964 HP 34 See "Introduction", UN Mitra, Tagore Law Lectures - Law of Limitation and Prescription, Volume I, 14TH Edition, 2016.

30. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards



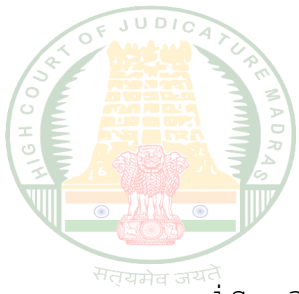
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from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person.²¹ Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation."

28. When we approach the present case of the appellant from the statement of law, I am of the considered view that section 41(g) of the Specific Relief Act is not attracted and the plaintiff cannot be non-suited, since the sequence of events, as indicated above, do not indicate the delay & laches and acquiescence of the plaintiff in seeking the relief.



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29.In the result,the 3rd substantial question of law is answered that the suit is not barred under the principles of delay & laches and acquiescence. So, the judgment and decree of the trial court as confirmed by the appellate court requires no interference.

30.In the result, this second appeal fails and the same is **dismissed** with costs, confirming the judgment and decree of the courts below.

25/03/2025

Index:Yes/No
Internet:Yes/No
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To,

- 1.The I Additional Sub Judge,
Tirunelveli.
- 2.Principal District Munsif,
Tirunelveli
- 3.The Section Officers,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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