



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-02-2026

CORAM

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

SA No. 1008 of 2013

and

M.P.No.1 of 2013 & M.P.No.1 of 2014

R.Vijayakumar Alias
Murali S/o Late Munusami,4/1 New 15 Appu St,
Nungambakkam, Chennai 34

..Appellant(s)

Vs

Tmt.Ruckmani
W/o K.Lakshmi Narayanan 4/2 New 13 Appu St,
Nungampakkam, Chennai 34

..Respondent(s)

PRAYER: This Second Appeal filed against the judgment and decree dated 22.4.2013 made in A.S.No.503 of 2009 on the file of the II Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 03.12.2008 made in O.S.No.3579 of 2006 on the file of the V Assistant Judge, City Civil Court, Chennai.

For Appellant(s): M/s. K. Govi Ganesan

For Respondent(s): M/s. A.Abdul Khader



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JUDGMENT

Heard.

2. This second appeal is filed by the defendant in A.S. No.503 of 2009. It challenging the concurrent judgments by which the first appellate court (II Additional Judge, City Civil Court, Chennai) dismissed the appeal on 22.04.2013 in A.S.No.503 of 2009 and thereby affirmed the judgment and decree of the trial court (V Assistant Judge, City Civil Court, Chennai) in O.S. No.3579 of 2006 dated 03.12.2008

3. For convenience, the parties are referred to as they were arrayed before the trial court.

4. The plaintiff instituted the suit seeking a mandatory injunction and a permanent injunction in respect of a common passage. She stated that she resides at Door No.4/2, Appu Street, Nungambakkam, Chennai-600034, and that the defendant resides at Door No.4/1 on the same street. She traced the title to Nagarathinam Ammal under a sale deed dated 30.06.1923, followed by a settlement deed dated 23.11.1968 in favour of five persons, including Lakshmi Kanthammal (the defendant's mother) and Rajamanickammal (the plaintiff's grandmother). She also referred to Rajamanickammal's death on 18.04.1977 and the subsequent devolution of her interest.



5. According to the plaintiff, the partition deed dated 28.03.1990 divided the properties into five portions. She was allotted Schedule “A” (Door No.4/2), the defendant was allotted Schedule “B” (Door No.4/1), and a common passage measuring about 500 sq. ft., described as Schedule “C”, runs along the eastern side for common use and for access from Appu Street.

6. The plaintiff’s grievance is that the defendant encroached upon Schedule “C” by putting up constructions and projections, particularly on the eastern side of Door No.4/1. She alleged that this work was commenced on the night of 21.03.2006 when she was away. She stated that she lodged complaints on 22.03.2006 with the F3 Nungambakkam Police Station and with the Assistant Engineer, Corporation of Chennai (Division 73), but that no effective action was taken. Contending that the encroachment obstructed access and affected light and air, she sought a decree directing removal of the encroachment and a permanent injunction restraining any further construction in the common passage.

7. The defendant contended that the plaintiff had not come to court with clean hands and had suppressed material particulars, particularly regarding when the alleged construction was put up. He denied that any recent construction was commenced on 21.03.2006. He further asserted that the plaintiff herself had erected sunshades and a two-floor balcony projection over the common passage, and therefore was not entitled to discretionary relief.



8. He maintained that the passage is meant for common use and that his construction does not obstruct free ingress and egress. He also contended that the plaintiff is vague about the nature, height, and extent of the alleged projections, and that the allegation of obstruction is only imaginary.

9. He further relied on an alleged family understanding or arrangement among the co-sharers under which sunshades or roofing could be put up so long as there was no obstruction. He asserted that the construction began in July 2003, not in 2006, and that it followed the line of an earlier compound wall. He also referred to a suit filed by neighbours in O.S. No.4109 of 2003, which was dismissed on 20.01.2006, and claimed that the present suit was filed only to harass him. In addition, he raised objections regarding maintainability, including the contention that declaratory relief and appropriate court-fee were required, and he disputed the correctness of the schedules and measurements.

10. The Trial Court proceeded on the basis that the common passage flowed from the title arrangement and the partition, and that, being common, it had to remain available as a passage for all those entitled to use it. The suit was thus treated as one seeking to protect the common right of way and prevent obstruction caused by the unilateral acts of one co-owner.

11. On the basis of the Commissioner's observations and the materials on record, the Trial Court held that pillars had been put up in the common passage and that RCC roofing had been laid so as to cover or occupy the passage,



leaving only a reduced width for use. Proceeding on that footing, it concluded that the defendant's work amounted to an encroachment and obstruction in a common passage, that such unilateral appropriation could not be permitted, and accordingly granted a mandatory injunction directing removal of the offending construction. It also granted a consequential permanent injunction restraining its continuance or any further obstruction, and thereby decreed the suit.

12. The First Appellate Court reconsidered the plaintiff's case that the passage was common under the partition arrangement and that the defendant had narrowed or obstructed it by erecting pillars and laying RCC roofing. It placed significant reliance on the Commissioner's report and plan to ascertain the nature and extent of the construction in the passage, namely, the presence of pillars and roofing which effectively occupied the passage area and reduced the space available for free movement. Agreeing with the Trial Court, it held that one co-owner cannot appropriate a common passage by putting up construction and that a co-sharer is entitled to have the passage restored and preserved for ingress and egress. On that reasoning, the appeal was dismissed and the Trial Court's decree was affirmed.

13. Aggrieved by the concurrent judgments, the defendant filed this second appeal contending that the decrees are contrary to law and the evidence on record. He asserted that the courts below failed to consider material oral and documentary evidence, misconstrued admissions, and placed undue reliance on



the Advocate Commissioner's report. He further argued that the plaintiff's claim is inequitable because, according to him, the common passage had already been reduced or encroached upon by other co-owners. He also disputed the finding that the construction was put up only in 2006, maintaining instead that it was raised in July 2003. He questioned the completeness and evidentiary value of the Commissioner's report and contended that the plaintiff ought to have proved the absence of permission or sanction and sought declaratory relief. In addition, he pleaded that the suit is barred by limitation and that the plaintiff is not entitled to a mandatory injunction in view of alleged similar encroachments by the plaintiff and others.

14. It is well settled that, in a second appeal under Section 100 of the Code of Civil Procedure, interference is permissible only if a substantial question of law arises. This Court cannot function as a third fact-finding court by reappreciating the evidence or reweighing concurrent findings of fact.

15. Learned counsel for the appellant/defendant confined his submissions to the issue of maintainability on the ground of limitation. The Trial Court dealt with the question of limitation in detail and held that the suit, having been filed within three years of the alleged construction, was within time. Before the courts below, the defendant had pleaded that the construction was put up in 2003 and that, therefore, the suit filed in 2006 was barred by limitation. That contention was rejected by applying Article 113 of the Limitation Act 1963.



The appellant's counsel now argues that the invocation of Article 113 was incorrect and that Article 84 of the Limitation Act, 1963 is the appropriate provision. The defendant did not dispute that the suit schedule property is a common passage, used by the sharers.

16. Article 84 of the Limitation Act applies only where property earmarked for a particular purpose has been abandoned and is being used for an entirely different purpose. In the present case, the defendant has put up certain constructions in the common passage, causing obstruction and inconvenience, but the property continues to be used as a common passage. In such circumstances, Article 84 has no application. The proper provision is Article 113, and therefore the concurrent findings of the courts below do not call for interference.

17. Accordingly, the second appeal is dismissed at the admission stage. There will be no order as to costs. As a consequence, the connected miscellaneous petition, if any, stands closed.

27-02-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

MFA



To

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1. (II Additional Judge, City Civil Court, Chennai)

2. (V Assistant Judge, City Civil Court, Chennai)



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DR.A.D.MARIA CLETE, J.

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