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S.A.No.162 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.162 of 2020
and C.M.P.No.3431 of 2020

T.Vanajakshi

... Appellant

vs.

1.M.Jayanthi

2.Tarun Muruges

3.T.Muruges (Deceased)

4.Commissioner
Corporation of Chennai
Chennai 600003

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree made in A.S.No.107 of 2015 dated 19.01.2018 passed by the learned VII Additional City Civil Judge at Chennai reversing the Judgment and Decree made in O.S.No.6490 of 2012 dated 30.01.2015 by the VII Assistant City Civil Judge at Chennai.

For Appellant : Mr.S.Namasivayam

For R1 and R2 : Mr.K.S.Ananthakrishnan

For R3 : Died

For R4 : Not Ready in Notice



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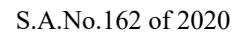
J U D G M E N T

The unsuccessful plaintiff in the suit is the appellant.

2. The plaintiff filed a suit seeking mandatory injunction directing the respondents 1 and 2/defendants 1 and 2 to permit her to enter ground floor of the suit property and also for permanent injunction restraining the defendants 1 and 2 from carrying out any construction in the suit property without her consent. She also sought for mandatory injunction directing the 4th respondent/Commissioner, Corporation of Chennai, to demolish the construction already made without written consent of the plaintiff.

3. The suit was decreed by the Trial Court as prayed for. Aggrieved by the same, the defendants 1 and 2 in the suit filed an appeal. The First Appellate Court reversed the findings of the Trial Court and dismissed the suit. Aggrieved by the same, the plaintiff has come before this Court.

4. For the sake of convenience, the parties are referred to as per their ranking in the suit.



6. It is further case of the plaintiff that the 3rd defendant married the 1st defendant in the year 1987 and the 2nd defendant was born in the year 1989. 1st defendant forced out the plaintiff from the suit property in the year



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1995 and since then, she has been residing elsewhere. It is the further case of the plaintiff that whenever she visited the ground floor, it was seriously objected by the 1st defendant. Around January 2011, in order to prevent the access of the plaintiff to ground floor, the defendants 1 and 2 raised the height of the compound wall and started illegal construction in the suit property without getting permission of the plaintiff, who is a co-owner of the suit property. Since the defendants 1 and 2 objected the plaintiff entering the ground floor of the suit property, she was constrained to file the above suit seeking reliefs mentioned above.

7. The suit was resisted by the defendants 1 and 2 by filing written statement. It is the case of the respondents 1 and 2/defendants 1 and 2 that plaintiff left the ground floor of the suit property in the year 1995 on her own volition and residing elsewhere. It is further stated that there is no illegal construction by the defendants 1 and 2 in the suit property and the car shed which had become dilapidated, required immediate attention and there was no illegal construction. It was also stated that the plaintiff instigated her son-3rd defendant to harass the 1st defendant and hence, the 1st defendant filed a case against the plaintiff, her daughter and 3rd defendant under the provisions of Protection of Women from Domestic Violence Act, 2005



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before the Metropolitan Magistrate Court, Saidapet. It is also stated that the defendants 1 and 2 never prevented the plaintiff from entering the ground floor of the suit property and the plaintiff used to visit the suit property only with the rowdy elements, so as to harass the 1st defendant.

8. It was also stated that the plaintiff never exercised her right of residence after the year 1995 and hence, she abandoned her right over the suit ground floor. It is also stated that if plaintiff is allowed to enter, she would create constant trouble to the 1st defendant, apart from law and problem. It is also stated that the 1st defendant alone resides in the suit property. It is further pleaded that there is a kitchen in the first floor of the suit property and the 1st defendant has been using the kitchen in the ground floor all along. On these pleadings, the defendants 1 and 2 sought for dismissal of the suit.

9. The plaintiff was examined as PW.1 and 5 documents were marked as Exs.A1 to A5 on her side. The 1st defendant was examined as DW.1 and 7 documents were marked on the side of the defendants as Exs.B1 to B7. The report submitted by the Advocate Commissioner was marked as Ex.C1.



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10. The Trial Court on appreciation of evidence available on record, came to the conclusion that the plaintiff was entitled to the reliefs as prayer for and decreed the suit. Aggrieved by the same, the defendants 1 and 2 preferred an appeal in A.S.No.107 of 2015 on the file of the City Civil Court, Chennai. The First Appellate Court reversed the findings of the Trial Court and allowed the appeal. Aggrieved by the same, the plaintiff has come before this Court.

11. At the time of admission, this Court formulated the following substantial question of law by order dated 13.03.2026:-

“Whether the First Appellate Court is justified in refusing decree for mandatory injunction prayed for by the plaintiff in the light of the terms of Family Settlement marked as Ex.A1, whereunder the ground floor of the suit property was allotted to the appellant/plaintiff with life interest?”

12. The learned counsel appearing for the appellant by taking this Court to Ex.A1-Family Settlement, submitted that ground floor of the suit property was allotted to plaintiff and she was given life estate with vested remainder to her son-3rd defendant. In such circumstances, the defendants 1 and 2 are not legally entitled to prevent the plaintiff from entering the suit



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property. The learned counsel also submitted that the First Appellate Court without properly appreciating the evidence available on record, came to an erroneous conclusion that there was no cause of action to grant prayers sought for by the plaintiff.

13. The learned counsel appearing for the respondents 1 and 2 would submit that the plaintiff left the property in the year 1995 and she has been residing elsewhere for the past several years and she abandoned her right of residence over the ground floor of the suit property. He also submitted that there is a kitchen in the ground floor and 1st defendant has been using the same for several years. Therefore, according to him, the prayers sought for by the plaintiff cannot be granted. He also submitted that defendants 1 and 2 cannot enter the first floor of the suit property without entering the ground floor. Therefore, he sought for dismissal of second appeal.

14. It is not in dispute the subject property originally belonged to husband of the plaintiff and father-in-law of the 1st defendant namely A.M.Thirunavukkarasu. He died intestate and thereafter, the family arrangement was entered among his heirs on 22.01.1987 namely the plaintiff, the 3rd defendant and daughter of the plaintiff.



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15. A perusal of Ex.A1 would indicate that ground floor of the suit property situated in Giri Road was allotted to the share of plaintiff for life estate with vested remainder to 3rd defendant. Likewise, the first floor in the suit property has been allotted to the share of 3rd defendant. The execution of Ex.A1-Family Arrangement has not been disputed by anybody and the same is a registered document. Therefore, it is clear that under Ex.A1 the ground floor of the suit property has been allotted to plaintiff. Therefore, during her life time plaintiff is entitled to use the same as life estate holder. The defendants 1 and 2 are not entitled to prevent the plaintiff from having access to ground floor of the suit property. The First Appellate Court negated the relief sought for by the plaintiff mainly on the ground that the allegation of the plaintiff that she was prevented by the defendants 1 and 2 from entering the suit property was highly undoubtful. Therefore, the suit was dismissed mainly on the ground that there was no cause of action for the suit.

16. It is seen from the records Exs.B5 and B6, the relationship between the plaintiff and the 1st defendant got strained and the 1st defendant preferred a domestic violence case against the plaintiff, her son and her



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daughter etc., under Ex.B5. Further, in the written statement, though 1st defendant claimed she has not prevented the plaintiff from entering the ground floor of the suit property, it was also stated that if the plaintiff was permitted to enter the ground floor, she would create lot of problems in the suit property. The strained relationship between the parties and the averments in written statement etc., establish the intention of the 1st defendant to oppose the entry of plaintiff into the ground floor of the suit property.

17. Taking into consideration, the plea raised by the 1st defendant in the written statement and also the strained relationship between them as established by Ex.B5, this Court comes to the conclusion that the cause of action pleaded by the plaintiff is true and she has been prevented from entering into the suit property. Therefore, the said finding by the First Appellate Court is liable to be set aside.

18. The learned counsel appearing for the respondents 1 and 2 would contend that the plaintiff abandoned her right over the suit property. Merely because the plaintiff is residing elsewhere different from the suit property, we cannot presume that her right over the suit property has been destroyed.



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Ex.A1 clearly proves ground floor of the suit property has been allotted to the plaintiff.

19. The limited estate conferred on the plaintiff will not be destroyed except by adverse possession. In the written statement the defendants 1 and 2 have not pleaded any adverse possession excluding the plaintiff from the suit property. In such circumstances, the submission made by the learned counsel for the respondents/defendants 1 and 2 that the plaintiff abandoned the right over the suit property cannot be accepted.

20. It is also stated that there is a kitchen in the ground floor, therefore, the 1st defendant shall be permitted to use the same. Under Ex.A1 the entire ground floor has been allotted to the share of the plaintiff. In such circumstances, the 1st defendant cannot claim that there is no kitchen in the first floor and hence, she shall be allowed to use kitchen in ground floor. If at all with permission of the plaintiff, she can use the kitchen, however, the 1st defendant cannot claim user of the kitchen as a matter of right.

21. It was specifically contended by the learned counsel for the respondents 1 and 2 that the defendants 1 and 2 have no access to first floor except through the ground floor. In the written statement filed by the



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defendants 1 and 2, no such plea has been raised by the defendants 1 and 2.

It is not the case of the defendants 1 and 2 before the Courts below that the ground floor of the suit property is the only access to the first floor. Even in her evidence, there is no suggestion to PW.1 that ground floor has been used as an access to the first floor.

22. In such circumstances, without any plea or evidence, the respondents 1 and 2 are not entitled to introduce new points at second appellate stage. In case the access to first floor is only through ground floor and the defendants 1 and 2 seek for easementary right, it is for them to workout their remedy in the manner known to law by seeking declaration and appropriate consequential relief. In the absence of any plea and proof, the point raised by the learned counsel for the respondents 1 and 2 cannot be countenanced.

23. In view of the discussion made earlier, the substantial question of law formulated at the time of admission is answered in favour of the appellant and against the respondents. The Judgment and Decree passed by the First Appellate Court is set aside in so far as prayer 'a' in the plaint is concerned. The Clause-I of the decree passed by the Trial Court is restored.



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24. As far as other prayers in the plaint are concerned, there is no evidence available on record to suggest the new construction has been put up by the defendants 1 and 2. Likewise, in case of any new construction without proper approval by the defendants 1 and 2, it is for the plaintiff to workout her remedy before the concerned Statutory Authority. Hence, Second Appeal stands dismissed in respect of other prayers in plaint.

25. With these clarifications, the Second Appeal is partly allowed and Clause-I of the decree passed by the Trial Court stands restored. In the facts and circumstances of the case, there will be no order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

26.03.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

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- 1.The VII Additional City Civil Judge,
Chennai.
- 2.The VII Assistant City Civil Judge,
Chennai.
- 3.Commissioner
Corporation of Chennai
Chennai 600003.



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S.SOUNTHAR, J.

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