



S.A(MD)No.328 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.12.2025

DELIVERED ON : 28.01.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**S.A.(MD).No.328 of 2019
and
C.M.P.(MD)No.6780 of 2019**

1.Indira
2.Pitchai Murugan
3.Venkatachalam @ Raj
4.Parvathi @ Padma
5.Ramaiah @ Ravi
6.Annamalai @ Aruna
7.Senthil Arumugam

: Appellants/Respondents/
Defendants

Vs./

Prema

: Respondent/Appellant/
Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 05.03.2018, made in A.S.No.128 of 2017, on the file of the Subordinate Court, Tiruchendur, reversing the judgment and decree, dated 22.02.2013 made in O.S.No.133 of 2011, on the file of the District Munsif Court, Tiruchendur.



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4. The plaintiff's case in short is as follows:

WEB COPY (a) The suit I schedule property is owned by the plaintiff. The plaintiff settled the I schedule property in favour of her son Ramkumar, vide settlement deed dated 20.03.2002 and subsequently the said Ramkumar executed a settlement deed dated 18.09.2009 settling the said property in favour of her mother – plaintiff. The defendants' property is situated on the south of the plaintiff's I schedule property. A wall available in the ground floor in between the properties of the plaintiff and the defendants is a common wall with a width of 1 ½ feet. When the plaintiff was attempting to make constructions in the western side of I schedule property, the defendants objected for making any constructions on the common wall. The plaintiff's son had constructed the first floor building by putting their wall on the northern half portion of the common wall and the said northern wall is shown as suit II schedule property. The plaintiff's son Ramkumar entered into an agreement with the defendants on 13.08.2003 in respect of the suit wall wherein it has been specifically shown that II schedule wall was owned by the plaintiff's son and that the defendants are not entitled to make any constructions on the said wall.

(b) The defendants attempted to make constructions on the suit II schedule wall during January 2010 and since the same was objected, they have stopped



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their constructions, but again the defendants made constructions on 06.05.2011, despite the objections of the plaintiff. The defendants have raised their constructions on the suit II schedule wall and since the defendants are not having any right over the suit II schedule wall, the plaintiff was constrained to file the above suit claiming declaration that the suit II schedule wall is belonging to her and for mandatory injunction for removal of the construction made on II schedule wall by the defendants.

5. The defence of the defendants in short is as follows:

The plaintiff's suit is not maintainable either under law or on facts. The plaintiff contentions regarding the suit II schedule wall, execution of agreement dated 13.08.2003 and the constructions on the suit II schedule wall are all false and untenable. The defendants had already completed their constructions with Government approval. The plaintiff has absolutely no right or possession over the defendants' property. The plaintiff has created a document with an ulterior motive and the same is illegal and unenforceable. The defendants have purchased their property vide sale deed dated 04.02.1985 and they have been in possession and enjoyment of the property similar to that of their predecessor in title. The plaintiff has no cause of action to file the suit. Hence, the suit is liable to be dismissed.



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6. The learned trial Judge, upon considering the pleadings of both sides recasted the issues which are as follows:

- “1. Whether the 2nd schedule property absolutely belongs to the plaintiff?*
- 2. Whether the defendant made any encroachment upon the 2nd schedule property?*
- 3. Whether the plaintiff is entitled to get the decree of declaration as prayed for?*
- 4. Whether the plea for mandatory injunction is sustainable?*
- 5. What about the suit cost?*
- 6.To what other relief?”*

7. During trial, the plaintiff examined her husband Thiru.T.R.Balasubramanian as P.W.1 and exhibited 3 documents as Exs.A.1 to A.3. The defendants examined the fifth defendant as D.W.1 and one Senthil Arumugam, photographer as D.W.2 and exhibited 10 documents as Exs.B.1 to B.10. The learned District Munsif, Tiruchendur considering the pleadings and evidence both oral and documentary and on hearing the documents of both sides, passed the judgment dated 22.02.2013, holding that the plaintiff has failed to



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prove her case, dismissed the suit with costs. Challenging the said judgment and decree, the plaintiff had preferred an appeal in A.S.No.128 of 2017. The learned Subordinate Judge, Tiruchendur, upon considering the materials available on record and on hearing the arguments of both sides, passed the impugned judgment and decree dated 05.03.2018, setting aside the judgment and decree of the trial Court and granted the reliefs of declaration and mandatory injunction as sought for. Aggrieved by the impugned judgment and decree, the defendants have preferred the present appeal.

8. At the time of admission, the following Substantial Questions of Law came to be formulated:

"(i) Whether the suit for mandatory injunction for removal of alleged encroachments is maintainable in the absence of a specific schedule in the plaint showing the alleged encroachment, its length, breadth, height and east-west and north-south measurements in view of Order 7 Rule 3 of C.P.C., 1908 since material particulars are absolutely lacking?

(ii) Whether the failure of the First Appellate Court in not drawing an adverse inference under Section 114(g) of the Indian Evidence Act, 1872 against the plaintiff for her failure to examine herself



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and her settler who is a party to Ex.A2 has vitiated the hearing of the trial and the First Appeal to the detriment of the defendant?"

9. The learned Counsel for the appellants/defendants would submit that the suit was filed on 16.09.2011, that the plaintiff pleaded in the plaint that the defendants have made constructions over II schedule property on 06.05.2011, despite objections of the plaintiff, that if the defendants had commenced constructions from 06.05.2011, the plaintiff would have immediately rushed to the Court and file her suit, but the plaintiff had casually preferred the plaint only in August 2011 and presented the same only on 16.09.2011, that even assuming for arguments sake that the defendants had put any constructions over II schedule property, the plaintiff was all along watching the construction from 06.05.2011 till 16.09.2011, for about four months and 10 days, that the plaintiff has not sent any letter or notice showing her objections and she did not lodge any police complaint and that after the first floor building had been raised, the plaintiff filed the suit with oblique motive of blackmailing the defendants and that the silence of the plaintiff from 06.05.2011 till the filing of the suit watching the constructions clearly amounts to acquiescence and hence, the relief of manatory injunction claimed by the plaintiff is barred by the doctrine of acquiescence.



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10. The learned Counsel would further submit that the defendants cannot put up their northern first floor wall over II schedule property, that the ground floor wall would be at 11 feet in height and the southern I floor wall of the plaintiff would have been built on the northern half portion of the ground floor common wall, that the southern wall of the plaintiff both inclusive of ground floor and first floor will be about 22 feet in height, that if the defendants have constructed their northern wall over and above, the southern wall of the plaintiff, it has to be commenced at 22 feet height and would end at 33 feet height, that therefore, the contention of the plaintiff is quiet improper and against even common sense and that the defendants have constructed their first floor northern wall on the north half of the ground floor common wall.

11. The learned Counsel would further submit that the agreement in Ex.A.2 dated 13.08.2003 had been entered into between the plaintiff's son Ramkumar and the defendants, but the said Ramkumar had not been examined as witness, that when the language of the agreement is contentious, the plaintiff ought to have examined the party to the document to explain its language, that clauses 1 to 4 of the agreement referred to a concrete hollow block wall measuring 100 feet in length and half feet in breadth constructed on the backyard of Ramkumar's house,



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that the remaining clauses in the said agreement are ambiguous and doubtful, whether it refers to the suit disputed wall and that since the said Ramkumar did not enter into witness box, adverse inference has to be drawn against the plaintiff for withholding best evidence.

12. The learned Counsel would further submit that the plaintiff has not pleaded about any damage caused to their building or injury occurred to anybody by the construction of first floor by the defendants and the very fact of no damage falsify the case of the plaintiff and corroborates the stand of the defendants, that the observations of the first appellate Court that Ex.A.2 agreement is admittedly in respect of the disputed wall, is incorrect and the learned first appellate Court had proceeded on such misconception, that the defendants have raised serious objections to the Commissioner's report and plan, but the first appellate Court has not considered the objections, that the Commissioner's report would also reveal that the defendants had constructed their northern wall only on the south half of the ground floor common wall and they have not constructed their first floor wall over II schedule property and that therefore, the impugned judgment and decree of the learned first appellate Court are liable to be interfered with.



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13. The learned Counsel for the respondent would submit that there is no dispute relating to the identify of the suit II schedule property ie., the first floor wall of the plaintiff and hence, the objection of the defendants for want of adequate particulars relating to II schedule property is not sustainable, that the defendants have filed a written statement with bald defence and without any material particulars, that though the defendants in the written statement had taken a stand that Ex.A.2 agreement was fraudulently executed, but during trial, they have admitted the execution of Ex.A.2 agreement, that once the agreement is admitted to have been executed, the burden of proof regarding the contents of the document is shifted to the person, who denies the same, that though the burden of proof of denial of the contents of Ex.A.2 is on the defendants, they have not discharged their burden, that the first appellate Court has given a clear finding that contrary to Ex.A.2 agreement, the defendants have chosen to put up the wall by putting a pillar adjacent to the wall of the plaintiff, thereby violating the terms and conditions of Ex.A.2 agreement.

14. The learned Counsel would further submit that the arguments now advanced have not been pleaded in the written statement and hence, any amount of evidence without pleadings are of no use and that since the defendants have



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not shown any Substantial Questions of Law that have arisen in the Second Appeal, the appeal is liable to be dismissed.

15. It is not in dispute that the suit I schedule is owned by the plaintiff and the property situated on the south of I schedule property is owned by the defendants and that the East West wall existed in between the properties of the plaintiff and the defendants on the ground floor is a common wall having the breadth of 1 ½ feet. It is also not in dispute that when I schedule property was owned by the plaintiff's son earlier, he constructed first floor building by resting their southern wall on the half portion of the common wall ie., ¾ feet leaving ¾ feet on the southern side. It is the main contention of the plaintiff that her son Ramkumar entered into an agreement with the defendants on 13.08.2003 under Ex.A.2 in respect of the suit disputed wall and another wall.

16. As rightly pointed out by the learned Counsel for the plaintiff, the defendants in their written statement have specifically denied and disputed Ex.A.2 agreement and according to them, the said agreement was fraudulently created by the plaintiff, but the fifth defendant as D.W.1 in his evidence would admit the execution of Ex.A.2 agreement. But according to the defendants,



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Ex.A.2 agreement is only with respect to hollow block wall constructed on the back side and is not connected with the suit disputed wall.

17. At this juncture, it is necessary to refer the clauses 5 to 7 hereunder for better appreciation:

“5. 1 – வது பார்ட்டி தனது முதல் மாடியில் கட்டியுள்ள தேன்புற சுவரை தனது எல்கையில் கட்டியுள்ளதால் 2 – வது பார்ட்டி மற்படி சுவற்றில் வைத்து எவ்வித கட்டுமானத்தையும் செய்யக்கூடாது. 2 – வது பார்ட்டி தனது டேத்தில் முதல் மாடியா அதற்கு மூடியா கட்டிடம் கட்ட விரும்பினால் வடபுறம் உள்ள 1 – வது பார்ட்டி தேன்புறம் கட்டியுள்ள சுவற்றை ஒட்டி மூர்மான வகைக்கு புள்ளி வைத்து 1 – வது பார்ட்டியின் சுவற்றிற்கு எவ்வித மூதாரமும் ஏற்படாமல் சுவர் எழுப்பி கட்டிக் கொள்ள மூண்டியது.

6. மற்படி ரு பார்ட்டிகளும் னேமல் தட்கள் கட்டும் மல்மாடி பகுதியில் பொது சுவருக்கு பக்கபலமாக தட்கள் பகுதியில் தூண் எழுப்பி கட்டுமான பணிகள் செய்து கொள்ளுமூண்டியது.

7. மற்படி ரு நபர்களும் கீழ்தளத்தில் மற்றும் மல் தளத்தில் உள்ள பொது சுவற்றில் பராமத்து பணியா அல்லது கட்டுமானபணியா செய்வதற்கு முன்பு மூரடியாகுவா அல்லது பங்சாயத்தார் முலமாகுவா ஒருவருக்கு ஒருவர் தெரியப்படுத்திக்கொள்ள மூண்டியது.”

18. No doubt, the plaintiff is not a party to Ex.A.2 agreement. However



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when the I schedule property was owned by the plaintiff's son Ramkumar, the said agreement came to be entered into between him and the defendants. The learned Counsel for the defendants would mainly contend that, since they dispute that the said agreement relates to the disputed wall, the plaintiff ought to have examined her son Ramkumar and that as the plaintiff has withheld material evidence, an adverse inference is liable to be drawn against her under Section 114(g) of the Indian Evidence Act.

19. As rightly contended by the learned Counsel for the plaintiff, though the defendants disputed the very genuineness of the agreement in the written statement, the fifth defendant in his evidence has specifically admitted the execution of Ex.A.2 agreement between the plaintiff's son and themselves. As further pointed out by the learned Counsel for the plaintiff, a cursory perusal of Ex.A.2 agreement would reveal that the Clauses 1 to 4 refer only to a concrete hollow block wall measuring 100 feet in length and 1/2 feet in breadth constructed on the rear side of the plaintiff's house property. However Clauses 5 to 7 specifically relate to the wall now in dispute. Therefore, there is no ambiguity or doubt in the contents of Ex.A.2 agreement and consequently, the non-examination of the plaintiff's son cannot be treated as material and hence, no adverse inference can be drawn against the plaintiff.



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20. Even prior to the filing of the suit, the defendants had constructed a first-floor building on their property and, admittedly, have rested their northern wall on half portion of the common wall, measuring $\frac{3}{4}$ feet. No doubt, since it is a common wall and the plaintiff has put up his southern wall on half portion of the said common wall, the defendants are also entitled to make use of the common wall by putting up their northern wall on the remaining half portion thereof. It is not in dispute that the plaintiff had constructed a parapet wall to a height of two feet on either side of the upstairs portion of the first floor. The principal grievance of the plaintiff is that the defendants have raised their northern wall over and above the plaintiff's parapet wall, thereby violating the terms of Ex.A.2 agreement.

21. As already pointed out, since the plaintiff's son had raised their south wall on the half portion of the common wall, which is shown as II schedule property, is admittedly owned by the plaintiff. In Ex.A.2 agreement, there is a specific clause under Sl.No.5 that the defendants cannot put any constructions on the south wall of the first floor portion of the plaintiff. As rightly contended by the learned Counsel for the plaintiff, the learned Advocate Commissioner has specifically noted in his report and plan that the defendants have put up their



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northern wall on the parapet wall of the plaintiff and the relevant portion is extracted hereunder:

“.....

6. ஆணையர் வரைபடத்தில் குறிப்பிட்டுள்ளபடி இ முதல் மாடியின் மூலத்தளத்தின் தென்புற கைப்பிடி சுவரின் மூலம் இ அதாவது D1 யில் நேந்து H1 வரை உள்ள கைப்பிடி சுவரின் மூலம் புதிதாக சுவர் கட்டப்பட்டுள்ளது. : புதிதாக கட்டிய கைப்பிடி சுவரின் உயரம் சுமார் 4 1/2 அடியாகும். : சுவரின் D1 ல் நேந்து Z வரை உள்ள பகுதியை தவிர மற்ற பகுதி பூசப்பட்டாமல் காணப்பட்டது. : கட்டப்பட்ட சுவர் ஏற்கெனவே பூசி இ வெள்ளையடிக்கப்பட்ட தென்புறம் உள்ள கைப்பிடி சுவற்றின் மூலம் அப்படியே வைத்து கட்டப்பட்டு காணப்பட்டது.. : சுவர் பிரதிவாதியின் வீட்டு சுவரின் கீழ் நேந்து கட்டி வரப்பட்ட சுவராகும். பின் அந்த சுவர் வாதியின் முதல் மாடியின் கைப்பிடி சுவரின் மூலம் வைத்து மூர்த்தி கட்டப்பட்டு காணப்பட்டது. மூலம் : பிரதிவாதியின் வீட்டுச் சுவர் எனது வரைபடத்தில்

DGHJல் குறிப்பிட்டுள்ள தகர செட்டின் தென்புறம் உள்ள சுவற்றை மிகவும் ஒட்டி இ தகர கூரையை நெறித்து மூலநாக்கி கட்டப்பட்டு காணப்பட்டுள்ளது.”

22. No doubt, as rightly pointed out by the learned counsel for the defendants, objections were filed to the Commissioner's report. However, admittedly, the defendants did not file any application to scrap the



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Commissioner's report marked under Exs.C.1 and C.2, nor did they seek a re-visit by the Commissioner or the appointment of a fresh Commissioner. It is also pertinent to note that the defendants themselves have produced photographs depicting the properties of both parties and the lie of the walls. As rightly contended by the learned counsel for the plaintiff and as rightly observed by the learned first appellate Judge, the said photographs would clearly show that the defendants have made constructions on the parapet wall of the plaintiff, as stated by the learned Advocate Commissioner. In fact, the photographs produced by the defendants only corroborate the observations of the learned Advocate Commissioner regarding the constructions made by them. Considering the above, as rightly observed by the learned first appellate Judge, the construction of the northern wall on the parapet wall of the plaintiff is clearly in violation of the terms of Ex.A.2 agreement and is illegal.

23. According to the plaintiff, the defendants attempted to put up construction on the II schedule property in January 2010 and, upon objection, temporarily stopped the construction. However, it is alleged that they again commenced construction on 06.05.2011, despite the plaintiff's objections. As rightly pointed out by the learned counsel for the defendants, it is evident from the plaint that the same was prepared in August 2011, whereas it was presented



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before the District Munsif Court, Tiruchendur only on 16.09.2011, nearly four and a half months thereafter.

24. The learned counsel for the defendants would submit that, since the plaintiff remained silent and was all along watching the construction for nearly four and a half months, the same would amount to acquiescence and, therefore, she is not entitled to the relief of mandatory injunction. No doubt, such a defence was not specifically raised in the written statement. However, the plea of acquiescence, being an equitable principle rooted in estoppel, relates to the conduct of the plaintiff and the fairness of granting relief. Courts are entitled to consider the issue of acquiescence in a suit for mandatory injunction seeking

demolition of a construction, even in the absence of a specific plea in the written statement. Section 41(g) of the Specific Relief Act provides that an injunction cannot be granted to prevent a continuing breach in which the plaintiff has acquiesced. Acquiescence implies silent assent, standing by, or positive inaction while the other party, acting in the belief that the plaintiff has no objection, spends money and proceeds with construction on the land or common property. If the plaintiff had knowledge of the construction, had an opportunity to object or prevent it, but nevertheless remained inactive for several months while the



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structure was being put up, the Court is entitled to treat such conduct as acquiescence.

25. It is apposite to refer to the well-settled equitable principle that “equity aids the vigilant and not those who sleep over their rights.” In the present case, as already pointed out, even according to the plaintiff, the defendants commenced construction as early as 06.05.2011; however, the suit came to be filed only on 16.09.2011. Though the plaintiff has alleged that she raised objections, it is not her case that she issued any letter or legal notice objecting to the said construction. The plaintiff has also not demonstrated that the construction was in progress as on the date of filing of the suit. On the contrary, as already noted, the defendants have specifically stated in the written statement that the construction had been completed even prior to the filing of the suit.

26. It is pertinent to note that a mandatory injunction is a discretionary and exceptional remedy under Section 39 of the Specific Relief Act, granted either to prevent the breach of an obligation or to compel the performance of a necessary act. Such relief is generally granted only when the injury complained of is irreparable and cannot be adequately compensated by damages. It is well settled that a mandatory injunction can be granted only when the plaintiff has acted



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promptly, the violation is clear and deliberate, and the restoration sought would not cause disproportionate hardship to the opposite party. The Hon'ble Supreme Court has repeatedly held that where a party stands by and permits another to alter the existing state of affairs by raising construction, a mandatory injunction should ordinarily not be granted and compensation would be an adequate remedy. In the present case also, having allowed the defendants to proceed with the construction with full knowledge and having approached the Court after a delay of four and a half months, the plaintiff is clearly guilty of acquiescence. Granting a mandatory injunction at this stage would, therefore, cause disproportionate hardship to the defendants, and the injury, if any, suffered by the plaintiff is capable of being compensated in terms of money. However, the learned first appellate Judge, without considering the settled legal position in its proper perspective, has granted the relief of mandatory injunction and, as such, the same is liable to be interfered with.

27. As per the Advocate Commissioner's report and plan, the length of the disputed wall running east-west measures 85.5 feet, and along the entire extent, the defendants have constructed their northern wall over the parapet wall belonging to the plaintiff. No doubt, the suit was instituted in the year 2011 and the proceedings have been pending for the past fourteen years. Taking into



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consideration the above aspects, including the extent of encroachment, the nature of the construction made, and the consequential injury caused to the plaintiff, this Court is of the view that the ends of justice would be met by directing the defendants to pay a compensation of Rs.1,00,000/- (Rupees One Lakh only) to the plaintiff. Considering the other facts and circumstances of the case, this Court further holds that the defendants are liable to be mulcted with costs throughout. Accordingly, the Substantial Questions of Law are answered.

28. In the result, the Second Appeal is partly allowed and the judgment and decree of the first appellate Court, insofar as it grants the relief of mandatory injunction is set aside. The defendants are directed to pay a compensation of Rs.1,00,000/-(Rupees One Lakh only) to the plaintiff within a period of four weeks from the date of receipt of a copy of this judgment. The defendants are further directed to pay the costs to the plaintiff throughout. Consequently, the connected Civil Miscellaneous Petition is closed.

28.01.2026

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

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To:

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- 1.The Subordinate Court, Tiruchendur.
- 2.The District Munsif Court, Tiruchendur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN
S.A.(MD).No.328 of 2019

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