

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL**

PRESENT : Thiru V. AGAVITHAN B.A., B.L (HONS), M.C.L.

I Additional District Munsif

Nagercoil

Thursday, the 3rd day of March 2022

Original Suit No. 224/2018

T.Saroja Justus

rep.by her Power holder A.Regu Anantharaj

... Plaintiff

/Vs./

D.Lazarus

(Amended as per order passed in

I.A.No.1/2019 dated 15-7-2019)

... Defendant

This Suit came up before me for final hearing in the presence of Thiru.T.Shanumugam, Advocate for the Plaintiff and the Defendant called absent and set *ex parte* on 07-01-2020 and having stood over for consideration till this day, this court deliver the following:

JUDGMENT

1) This Suit has been filed by the plaintiff seeking for the following reliefs:-

a) mandatory injunction directing the defendant to demolish the unlawful construction constructed by the defendant on the plaint 'B' schedule property, which is mentioned in the rough plan as 'X' and 'Y' Green marked portion and in the event of failure on the part of defendant to do so the same may be done by the court by

appointing Advocate/Commissioner at the costs of the defendant;

b) decree for permanent prohibitory injunction restraining the defendant, or anybody claiming under him from constructing any structure on the plaintiff 'B' schedule property (or) from doing any act detrimental to the safety of plaintiff 'B' schedule property in any manner whatsoever;

c) for costs of the suit from the defendant;

d) Such other reliefs or reliefs, which may deem fit and proper in the nature and circumstances of the case may also be granted

2) Crux of the plaint :

That the plaintiff is the absolute owner of the plaintiff 'A' and 'B' Schedule properties an extent of 6.04 cents comprised in Re.Sy.No.E-1-156 of Vadasery Village. That on 25.08.2006 the plaintiff purchased the plaintiff schedule properties as per document number 1634/2006 of Vadasery Sub Registry. The plaintiff schedule property is a house and house site. In which a house is there towards north to south facing north. Encircling the plaintiff schedule property compound wall is there on 4 sides. After purchasing the plaintiff schedule property the plaintiff took possession and enjoying it without interruption of others. On the southern side of the plaintiff schedule property the defendant's house is there. In between the plaintiff 'A' schedule property and the defendant's house a compound wall is there towards east west. The height of the said compound wall is 10 feet and the length is 32 feet and 1 1/2 inch length, which exclusively belongs to the plaintiff, which separates the plaintiff 'A' schedule

property and the defendant's property, which is the plaint 'B' schedule property herein. In the south western corner of the plaint 'A' and 'B' schedule property a survey stone is there, which is lying on the southern side of the said 'B' schedule compound wall. Now the plaintiff is residing at U.K. along with her husband, who is working there. Now the defendant modernized his house. Taking advantage of the plaintiff's absence in the month of September 2018 the defendant constructed a wall on the plaint 'B' schedule compound wall and constructed staircase resting on the 'B' schedule compound wall and also constructed a cupboard in the plaint 'B' schedule compound wall and erected meter box and drawing water pipe line fixing in the plaint 'B' schedule compound wall, which is mentioned as 'X' and 'Y' Green washed marked portion in the rough plan annexed herewith. In the defendant's house the upstairs portion construction is going on. On 27.10.2018 the plaintiff came to India along with her husband to attend the funeral function of her mother-in-law. On 29.10.2018 on seeing the unlawful construction the plaintiff questioned about it with the defendant and requested to remove the unlawful constructions made in the plaint 'B' schedule property. But the defendant refused for that and used unparliamentary words and quarreled with the plaintiff. If the defendant is permitted to construct further on the plaint 'B' schedule property the plaint 'B' schedule compound wall would fall down within a minute and cause damage to the plaintiff's house. The defendant has no right even to touch the said wall, which exclusively belongs to the plaintiff. The plaintiff

reasonably apprehends that due to the unlawful construction of the defendant the plaint 'B' schedule compound wall would fall down at any time. If the defendant wants to modernize his house he ought to have constructed a separate wall on the southern side of the plaint 'B' schedule wall and he could do so without touching the plaint 'B' schedule wall. That even though the plaintiff strongly objected the unlawful construction the defendant does not stop the further construction and not demolished the unlawful construction made by him. So, under these circumstances the plaintiff has no other remedy except to approach this Honorable Court for a decree of mandatory injunction directing the defendant to demolish the unlawful construction constructed by the defendant on the plaint 'B' schedule property and for permanent injunction, restraining the defendant not to construct further on the plaint 'B' schedule property. Hence this suit.

3. Summons of this suit was duly served upon the defendant the defendant failed to appear in response to the summons for judgment. As such allegations made against the defendant have gone uncontroverted and unchallenged. Even though sufficient opportunity was granted to the defendant, the defendant failed to file his Written Statement in this Suit. Thus, for non-filing of the written statement and non-appearance of defendant before this Court on 07-01-2020, the defendant is called absent and set *ex parte*.

4) Points for Consideration:

1. Whether the plaintiff is entitled for the 'A' relief of mandatory injunction as prayed for?
2. Whether the plaintiff is entitled to the 'B' relief of permanent prohibitory Injunction as prayed for?
3. To what other reliefs and cost the parties are entitled to?

5) In order to establish the case, on the side of the plaintiff, the Plaintiff Mr. Regu Anandharaj was examined as P.W.1 and Ex. A.1 to Ex. A.5 and Ex. C1 and C2 documents were marked through him. On the side of the Defendant no evidence adduced and no exhibits were marked.

6. Decision Points 1, 2 and 3:

6(1) The plaintiff was examinationed-in-chief as P.W.1. he, has proved documents filed in support of his pleadings. He has reiterated substantial contents in the plaint in his evidence. He has duly proved documents filed in support of his pleadings. The plaintiff relies upon documents at Ex.A.1- General Power Deed , Ex.A.2 Sale Deed dated: 25.08.2006, Ex.A.3- Land Tax Receipt dated 02-11-2018, Ex.A.4-House tax receipt dated 26.07.2018, Ex.A.5- Chitta dated 02-11-2018, Ex.C.1.-Commissioner Report , Ex.C.2- Rough Plan, in support of his case.

6(2) As the defendant did not appear and defended the case, allegations in the plaint

have gone uncontroverted and unchallenged. I have gone through the documents produced in support of the claim, I do not find any reason to disbelieve case of the plaintiff. I do not find any reason to *prima facie* discard the documents produced in support of the claim of the plaintiff.

6(3) Thus, from evidence on record and supporting documents at Ex.A.1- Power Deed , Ex.A.2 Sale Deed dated: 25.08.2006, Ex.A.3- Land Tax Receipt dated 02-11-2018, Ex.A.4-House tax receipt dated 26.07.2018, Ex.A.5- Chitta dated 02-11-2018, Ex.C.1.-Commissioner Report , Ex.C.2- Rough Plan it can be safely held that the plaintiff is entitled to the relief of mandatory injunction and permanent injunction as sought for in this suit.

6(4) Even otherwise also I do not find that evidence adduced by the plaintiff affects the conscience of the court to discard the same in absence of cross examination. Evidence adduced and documents in support are sufficient to prove the case of the plaintiff. Hence, I hold that the plaintiff has successfully established his claim by adducing sufficient evidence. Accordingly, I answer point Nos. 1, 2 and 3 in the affirmative and in favour of the plaintiff.

7.Result :

In the result, this suit is decreed with costs as follows:

- (i) that there shall be a decree of mandatory injunction directing the defendant to demolish the unlawful construction constructed by the defendant on the suit 'B' schedule property, which is marked as 'EFCD'-red washed portion in the Commissioner Report and Plan, within one month from this date.
- (ii) that there shall be a decree of permanent injunction restraining the defendant, or anybody claiming under him from constructing any structure on the suit 'B' schedule property (or) from doing any act detrimental to the safety of the suit 'B' schedule property in any manner.
- (iii) the defendant is directed to pay the cost of suit to the plaintiff.
- (iv) the Commissioner Report and Plan shall form part of the decree.

Dictated by me to the Typist, directly typed by her in computer, corrected and pronounced by me in open Court, this the 3rd day of March 2022.

I Additional District Munsif,
Nagercoil.

1. Plaintiff side witness :

P.W.1 - A. Regu Anantharaj

2. Plaintiff side exhibits:

1.	Ex.A1	--	General Power Deed	Original
2.	Ex.A2	25-08-2006	Sale Deed in favour of the plaintiff	Certificate copy
3.	Ex.A3	02-11-2018	Land Tax Receipt	Original

4.	Ex.A4	26-07-2018	House Tax Receipt	Original
5.	Ex.A5	02-11-2018	Chitta	Certified copy
6.	Ex.C.1	27-10-2021	Commissioner Report	Original
7.	Ex.C.2	--	Commissioner Plan	Original

3. Defendant side witness & Exhibits : Nil

I.A.D.M.

Draft/Fair Judgment

O.S.No.224/2018

Dated 03.03.2022

IADM.Court, Nagercoil

