
(1964) 02 MAD CK 0029
In the Madras High Court
Case No : Second Appeal No. 1118 of 1960

N. Kamalammal Pillai

APPELLANT

Vs

S. Chakbavabthy and Others

RESPONDENT

Date of Decision : 05-02-1964

Acts Referred:

Citation : (1964) ILR (Mad) 730

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : R. Gopalaswami Ayyangar, for the Appellant; K.G. Srinivasa Ayyar, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—The husband of the Appellant and the first Respondent, own houses which are adjacent to each other divided, by a

common wall. The Appellant's house has got a first floor but that of the first Respondent has only an open terrace. The suit of the husband of the

Appellant was in effect to get a declaration which would enable him to have access to the southern wall in the first floor of his house, through a

staircase inside the first Respondent's house, so that he could effect repairs to the windows in his southern wall and also white-wash the same.

Both the Courts below have concurred in dismissing the suit on the view that the Appellant had not established any such right.

2. On behalf of the Appellant, it is argued that since she has no other access to her southern wall and that as she has an easementary right to light

and air through the windows in that wall, the Courts below should have given the declaration asked for by the Plaintiff. It is stated that there is no

other access to the southern wall and, therefore, the Appellant has an easement by necessity. On behalf of the Appellant reliance is placed on

Bhagavatula Subramanya Sastri v. Bhagavatula Lakshminarasimhan (1912) 16 L.C. 893 In that case all that was held was that a house owner in

order to repair his wall on his neighbour's side of the premises had the right to go to the other side of the wall on the land of his neighbour, the right

being in the nature of a necessary easement. But it was also pointed out in that case that such an easement did not extend to going over the

neighbour's roof for that purpose. But that is what the Appellant precisely wants in this case, namely, to have access, through the staircase, to the

open terrace of the first Respondent's house, so that she might effect repairs to her southern wall, and the windows on that wall. Apart from that,

the trial Court as a matter of fact found that there were other methods of attending to the repairs from within the property of the Plaintiff himself.

That finding is clearly fatal to the claim of easement of necessity.

3. The second appeal is dismissed with costs of the first Respondent. I am told that the third Respondent is dead and his legal representatives have

not been brought on record. The appeal as against the third Respondent will stand abated and is dismissed.