

(1935) 10 MAD CK 0067
In the Madras High Court

Nidamarti Jaladurga Prasadarayudu

APPELLANT

Vs

Ladooram Sowcar and Another

RESPONDENT

Date of Decision : 17-10-1935

Acts Referred:

Citation : AIR 1936 Mad 687 : (1936) 43 LW 512

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—These two appeals arise out of a dispute between neighbours. S.A. No. 894 (O.S. No. 267 of 1923) relates to the suit brought by the present appellant claiming that the lane between the two properties is joint and should continue right along the northern boundary of his land and praying for an injunction directing the removal of structures encroaching on the appellant's land. S.A. No. 895 (O.S. No. 92 of 1923) arises out of the suit by the present respondents claiming exclusive property in the land leading to their house (which lane according to them ends at that house and does not continue westwards as alleged by appellant). Both the lower Courts have found that the respondents' case regarding the lane is proved and I see no reason to question the correctness of the inferences drawn from the recitals regarding boundaries in the title deeds of both sides. Nor can I accept the contention of the appellant that the trial Court erred in allowing the respondents to let in rebutting evidence, the burden on the issues regarding the (lane being upon them in one suit and upon the appellant in the other and the trial being held jointly.

2. The serious difficulty in this case relates to the form of the decree with reference to the two structural encroachments found to have been made by the respondents. These consist of (1) a small portion of the kitchen of respondent's house, measuring in all about 3-1/3 square yards, (2) more than 200 feet of wall built to the south of the disputed lane on a line which runs one or two feet inside the limits of appellant's land. It would appear from the findings of the lower Courts that both structures were built as a result of the uncertainty of the parties

regarding their rights and that there was no protest at the time of the building, but that there was not such acquiescence in acts of trespass as would support a case of equitable estoppel. As to the kitchen encroachment, the trial Court in view of all the circumstances and the smallness of the excess directed compensation at the rate of Rs. 10 per square yard to be paid to appellant. But an injunction was given for the removal of the wall. The lower appellate Court, observing that the present position of the wall caused no practical inconvenience, that the respondents were particularly anxious for it to remain, and that no effective protest was made during its construction, set aside the decree for an injunction regarding the wall and granted Rs. 500 as compensation to the appellant instead thereof.

3. Now it is a statutory rule that an injunction should only be granted when pecuniary compensation would not afford adequate relief. But I do not think it follows therefrom that a Court has always the power to grant pecuniary compensation for a wrong whenever an injunction is asked for. The Courts have recognized that, when the issue of a mandatory injunction would involve the removal of a completed structure which entails no inconvenience and only a slight invasion of the plaintiff's rights, not committed wantonly or after protest, pecuniary compensation is the more appropriate remedy. A good illustration is the case reported in *Lalji Dayal v. Vishvanath Prabhuram Vaidya* 1929 Bom 137, where a gallery projecting over the defendant's land was allowed to remain on payment of compensation, an injunction being refused. I am inclined to think that on the analogy of this and similar cases, the trial Court's decree regarding the projecting corner of the kitchen may be justified. But I am by no means convinced of the propriety of the lower appellate Court's decree regarding the wall, the effect of which is to enable the respondents by virtue of their encroachment to compel the appellant to cede title in a strip of land over 299 feet long and of a width varying between 1 and 2½ feet, including a number of trees. Of course the injunction granted by the trial Court involves the removal of the wall and consequent expenses to respondents but the appellants sued for possession as well as for an injunction; they have proved title and there is nothing except the inconvenience, and expense to the respondents which has prevented the lower appellate Court from granting the injunction. I have not been referred to any case in which a similar compulsory acquisition of a considerable strip of land has been effected under the guise of monetary compensation in lieu of an injunction; and I do not think that the lower appellate Court's decree in this respect is proper. Nor do I think that the lower appellate Court was justified in interfering with the trial Court's order regarding costs which seems to have been based on a reasonable consideration of all the circumstances. In the result, therefore S. A. No. 894 is allowed in part and the decree of the trial Court is restored. S.A. No. 895 is dismissed except that the trial Court's order regarding costs is restored. Respondents will pay the costs of the appellants in both appellate Courts in S.A. No. 894 and appellants will pay the costs of the respondents in both appellate Courts in S. A. No. 895. Leave to

appeal granted to both sides in both appeals.