

(1926) 09 MAD CK 0004
In the Madras High Court

Ramasubbier

APPELLANT

Vs

Shenbagaratnam and Another

RESPONDENT

Date of Decision : 28-09-1926

Acts Referred:

Citation : AIR 1927 Mad 357 : (1927) 25 LW 154

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The first point is as regards the cornice of the defendant's house. The contention in the lower Court was that the defendant

was entitled to have the cornice projecting to the extent to which the foundation extended into the lane, The plaintiff is entitled under Ex. A, to a

breadth of 19 feet, 3 inches east to west including the site of the lane. According to the commissioner's measurement the breadth including the lane

is 19 feet, 4 3/4 inches. This difference is owing to the space left by the defendant when the western wall of his house was put up, that is, he left 1

3/4 inches space when he built the wall. That space the defendant is entitled to use for projecting his cornice. The plumb line from the western edge

of the cornice down to the ground, is 5 7/8 inches outside the defendant's wall. He is entitled to project his cornice to the extent of 3 inches

beyond his wall as he has left 1 1/2 inches at ground level and the rest at the basement, and anything beyond is an encroachment. The defendant

has, therefore, encroached on the plaintiff's land to the extent of 2 7/8 inches.

2. In the lower Court the defendant rested his case on the ground that the foundation extended into the lane and therefore he was entitled to have

the cornice projecting to the extent of the western limit of the foundation. The

commissioner's plan, dated 27th April 1923, makes the thing clear.

The mere fact that the defendant was able to extend his foundation into the plaintiff's land would not give him a right to project his cornice over the

plaintiffs' land. This is a case of trespass and the plaintiff is entitled to protect his rights by asking the Court to issue a mandatory injunction. Mr.

Ramaswami Aiyar's argument is that the plaintiffs have suffered no material damage and he could be compensated by damages and a mandatory

injunction need not be issued. No doubt, in the case of nuisance the plaintiff will have to make out substantial damage for getting relief. But where

there is an invasion of the plaintiffs' rights he is entitled to protect his property from invasion by his neighbours. I do not think therefore that this is a

case in which damages would be an adequate remedy. I agree with the Subordinate Judge in holding that a mandatory injunction is the proper

remedy. The plaintiffs will have a mandatory injunction against the defendant for the removal of the cornice to the extent of 2 7/8 inches. I modify

the decree of the Subordinate Judge to this extent.

3. The second point is as regards the right of the defendant to discharge the storm water falling on the roof of his kitchen on to the lane. The

Subordinate Judge has held that the defendant is not entitled to build his kitchen to the south of the lane and claim the right to discharge the roof

water of the kitchen on the plaintiff's land. The plaintiff acquired plot A of the plaintiff's plan from one Hanumantha Rao under Ex. A. Hanu mant

Rao was at that time the owner of plot C which is to the east of A. He purchased on the same day under Ex. B the plot D from the plaintiff. In Ex.

A there is a provision for Hanumantha Rao discharging the water from the eaves of his kitchen into the lane. There is nothing in Ex. B as regards

the right to discharge any water from any superstructure that might be built on plot D. Mr. Ramaswami Aiyar's contention is that both the

documents should be read together and the provisions in the one document must be taken to qualify the terms of the other. No doubt in ordinary

cases where persons either enter into one transaction evidenced by two documents both the documents should be read together in order to

understand the terms of the arrangement entered into by the parties. But in this case two different plots were the subject of sales under Exs. A and

B. When plot A was sold the vendor Hanumantha Rao reserved a right to

discharge the water of the eaves of his kitchen on to the lane. The lane mentioned in Ex. A could only mean the land that was to be left to the west of plot C and to the east of A. It could not possibly have meant any lane that was intended to be left to the west of plot D. If that was so the matter should have been made clear in Ex. B.

4. When two different plots are sold under two different documents it is not reasonable to ask the Court to read the terms of one document into

another. It cannot be said that the plaintiff consented to any burden being imposed on, her lane by reason of her selling the plot D to Hanumantha

Rao. When the burden is imposed on one plot the Court would not be justified in increasing the burden by extending it to quite a different plot. As

urged by Mr. Venkatarama Aiyar, could it be said that at the time when plot A was sold, Hanumantha Rao and the plaintiff agreed that a lane

through out the length of plots B and D should be left in order to enable Hanumantha. Rao to discharge the water of the eaves of his kitchen on to

the lane. I therefore agree with the Subordinate Judge in holding that the plaintiffs are entitled to the relief asked for in respect of this.

5. In the result the second appeals fail and are dismissed with costs with the modification already mentioned as regards the first point.