
(1910) 02 MAD CK 0070
In the Madras High Court

Saminada Sastrigal

APPELLANT

Vs

Pathma Bibi Ammal

RESPONDENT

Date of Decision : 21-02-1910

Acts Referred:

Citation : 7 Ind. Cas. 175 : (1910) 20 MLJ 716

Hon'ble Judges : Ralph Benson, J; Krishnaswamy Aiyar, J

Bench : Division Bench

Judgement

1. There were three matters involved in the suit. The first of them relates to the construction resting on the plaintiff's kosalai. The kosalai is part of the plaintiff's house. The plaintiff's and the defendant's houses belonged originally to one owner. He conveyed the houses and the grounds attached to them to different vendees. We must hold that the kosalai attached to the eastern house passed to the plaintiff, the purchaser. The decision in *Laybourn v. Gridley* (1892) 2 Ch. 53 : 61 L.J. Ch. 352 : 40 W.R. 474 proceeded upon the special facts of that case. It is no authority for the position that the kosalai of the adjoining house which overhangs the ground of the house first sold passes to the purchaser of that house. The kosalai then being the plaintiff's, is she entitled to the space above and beneath it? We think not. See *Corbett v. Hill* (1871) L.R. 9 Eq. 671 : 39 L.J. Ch. 517 : 22 L.T. 263 Can the defendant, however, raise a construction resting on the plaintiff's kosalai? No authority has been cited to us to show that this is not a trespass.

2. The next point raised in appeal, which is also made the subject of a ground in the memorandum of objections, is the Judge's direction that in execution, the defendant's privy is to be removed if it is adjacent to the plaintiff's wall. This is wrong. We must ask the District Judge to return a finding on the evidence on record on issue No. 3. The last six words of it are not quite intelligible. The Judge will re-frame the issue in accordance with the contentions of the parties.

3. The memorandum of objections raises a question as to the plaintiff's right to go into the defendant's house for repairing her wall. There is no force in this

contention.

4. The finding must be submitted within six weeks, and seven days will be allowed for filing objections.

5. (In compliance with the above order, the District Judge of Trichinopoly found that the defendant has put up his privy pial adjacent to the plaintiff's wall and that the defendant has thereby caused damage to the plaintiff.)

6. This second appeal and the respondent's memorandum of objections coming on for final hearing after the return of the finding of the Lower appellate Court, the Court delivered the following.

7. We accept the findings of the District Judge. We must, in accordance with our previous judgment and the findings now returned, modify the decree of the lower appellate Court as follows:

The following words in the decree, namely, from raising constructions in contact with the wall AB be refused, will be omitted and in their place, the following inserted, namely, from raising constructions on the portion marked yellow in the plaintiff's plan and which we have called XY, so as to prevent the fall of the eavesdropping from the plaintiff's roof.

8. We must also omit the portion of the lower Court's decree from that if it is found etc. to "contact with the wall," and insert the following in its place:

That the defendant be directed to remove the piala in his privy so as not to allow of the excreta coming in contact with the plaintiff's wall.

9. We must order the appellant to pay the costs of the respondent.

10. The memorandum of objections is dismissed but without costs.