

(1906) 07 MAD CK 0003
In the Madras High Court

Ulagappan Amalam and Others		APPELLANT
	Vs	
Chidambram Chetty and Others		RESPONDENT

Date of Decision : 26-07-1906

Acts Referred:

Citation : (1906) ILR (Mad) 497

Hon'ble Judges : Subrahmania Ayyar, J;Benson, J

Bench : Division Bench

Judgement

1. So far as the first defendant's appeal is concerned he having died and his legal representative not having applied to prosecute the appeal, it must be held to abate so far he is concerned.

2. As regards the second defendant's case we are unable to agree with the conclusion of the Subordinate Judge. There is positive evidence that

the second defendant was permitted by the first plaintiff and his father to construct the building now sought to be removed, and this evidence is

strongly confirmed by the to permission given by the first plaintiff to this defendant to cut down trees for use in the construction of the building,

exhibit II, the receipt granted for the payment made by the second defendant to the first plaintiff, corroborates the defendant's evidence on this

point. Exhibit B was an application by the first defendant to the plaintiff's father for leave to construct a house on the land in question, and was

made in September 1898, and the plaintiff's peishkar was at once directed to inspect and report on it. According to the plaintiffs, however, no

report was made until May 1900 (exhibit C). In the meantime the construction of the building had commenced and was completed about that date.

It is impossible to believe that, if permission had not been granted as stated by

the defendant, the construction of the house would have been allowed to proceed for so long a time without objection on behalf of the plaintiffs. It was urged that the absence of a written consent indicated that the alleged permission was not really granted. The evidence for the defendants is that they were told by the first plaintiff that they might go on with the building and that written permission would afterwards be given. This evidence is, in our opinion, probably true, and the delay in the institution of the suit for some two years after it was intended to bring a suit as shown by the endorsement on exhibit C (assuming that that document was in existence on the date it bears, which however we have reason to doubt), supports our view. Exhibit V shows that in March 1902 serious disputes had arisen between a large body of the tenants and the first plaintiff, and the present suit was commenced in that month. We think that the first plaintiff's denial of his permission to build was probably the outcome of this ill-feeling. On this ground alone the plaintiff's suit as against this defendant would have to be dismissed. But even if we had to come to a different conclusion on the question of permission, the mandatory injunction prayed for could not, in the circumstances of this case, be properly granted. That from the commencement the landlord was aware that the house was being built is clear. Having regard to the written application made by the first defendant in September 1898, the landlord must have known that the intended budding was not of a character suitable to an agricultural holding. It was therefore his duty not only to have objected to its construction but also to have taken legal proceedings to stop the progress of the work. He did nothing of the kind but allowed the building to be completed, and after completion he waited for two years before filing this suit asking for its demolition. The case of *Benode Comaree Dossee v. Soudaminey Dossee* ILR 16 Cal. 252 is a direct authority that in such circumstances a mandatory injunction should be refused. That case was recently followed in *Sankaralingam Cheltiar v. Stephen Augustus Ralli* S.A.Nos. 959 of 1901 and 64 of 1902 (unreported).

3. It was further urged before us that the second defendant not being himself the tenant, he was in the position of a wrong doer. We are unable to accept this contention. The first defendant was admittedly the holder of the *kudivaram* right and the second defendant had entered into an

agreement with him whereby the second defendant was allowed to build on the land.

4. We therefore reverse the decree so far as the second defendant and defendants Nos. 3 to 6 who claim through him are concerned and dismiss

the suit as against them with costs throughout.

5. The memorandum of objections is dismissed with costs.