

KERALA HIGH COURT

Kelan Rayappan

Vs.

Yagappan Nadar

S.A. No. 842 of 1958, A.S. 972 of 1956 and O.S. 401 of 1950

(Varadaraja Iyengar, J.)

27.10.1958

JUDGMENT

Varadaraja Iyengar, J.

1. The second appeal is by the defendant in a suit for putting a boundary wall between the plaintiff's northern plot and defendant's southern plot and to remove portion of item 2 building belonging to the defendant to the extent it abuts into the plaintiff's plot. The plaintiff averred that there existed no common boundary and that the parties were not aware that item 2 had made at the time of its construction an incursion into plaintiff's plot. The plaintiff had got the property measured by the Taluk Office and the defendant's refusal to abide by it had rendered the suit necessary.

2. The defendant in his written statement asserted that there was a boundary till 2 years previously and situate some short distance further to the north than item 2 building and the plaintiff had demolished the wall with dishonest motive; that any how the defendant was willing to have the boundary fixed with the help of the survey plans and put up the dividing wall in place as so ascertained.

3. The trial court had the help of a Commissioner to ascertain the limits of the respective holdings, not only with reference with the Taluk Plan produced by the plaintiff but also survey plan, though of the defendant's holding alone produced by the defendant. The boundary was found ultimately in accordance with the Taluk Plan, so as to give rise to an inference that the defendant had built into the plaintiff's holding to a slight extent as claimed in the plaint and so decreed the suit. In first appeal before the court below the defendant's only complaint was that the Commissioner had not properly fixed the boundary with reference to the survey plan. But the Judge was able to overrule the contention of the defendant before him in the light of the data gathered by the Commissioner. There was of course a question of limitation and adverse

possession also raised by the defendant but it turned out to be not of much consequence because the defendant admitted that item 2 was built only 6 years before suit even less than the eight years which the plaintiff put for it.

4. In this appeal Learned Counsel for the defendant has canvassed a very interesting question as to how far the courts will entertain a suit for resolving a confusion of boundaries when the plaintiff is unable to say what exactly is his property. The rule in these cases is well settled by a long line of English authorities that as between the independent proprietors, confusion of boundaries per se does not furnish a ground for court's interposition unless some equity is super induced by the act of parties as some particular circumstances of fraud or confusion where one party has ploughed too near the other or the like. As stated by the Master of Rolls in *Speer v. Crawler*¹ you must lay a foundation for this species of relief not merely by showing that the boundaries are confused but that the confusion has arisen from some misconduct on the part of the defendant or those under whom he claims of which you have a right to complain and which render it incumbent on him to co-operate in re-establishing them. These authorities were referred to with approval and followed in *Kavasji v. Hormisji*², In *Appayya Bange v. Koraya*³, Madhavan Nair, J. applied the principle when the dispute arose between two co-sharers and the circumstances were suggestive of misconduct on the part of the defendant.

5. But the difficulty in this case in regard to the application of the above principle is that the properties of both the plaintiff and defendant are capable of specific allocation. They have definite extent and measurements on the side and bear distinct survey numbers. The mere fact that the boundary in between is not fixed does not mean that there is a confusion within the meaning of the rule. Indeed, the defendant himself had a specific case as to the location, different though from the plaintiffs and he was only unsuccessful in establishing it. It is also worthwhile to remember that the defendant was willing to abide by the court's finding as to the boundary, of course, as per the survey plan.

6. There is no complaint that the decree as passed is defective on any other ground. The result is the appeal fails and is dismissed with costs.

Dismissed.

¹(35-E.R 997)

³ A.I.R. 1931 Mad. 19

²29 Bom. 73