

Munuswami Chetti and anr. Vs. Muniswami Chetti and ors.

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Court : Chennai

Decided On : Feb-13-1948

Reported in : AIR1948Mad477; (1948)1MLJ395

Appellant : Munuswami Chetti and anr.

Respondent : Muniswami Chetti and ors.

Judgement :

ORDER

Govinda Menon, J.

1. The lower appellate Court is not justified in thinking that a person can abate a nuisance with a bona fide intention. Section 36 of the Easements Act clearly enacts that notwithstanding Section 24 of that statute a dominant owner cannot himself abate a wrongful obstruction of an easement. Though Sadasiva Aiyar, J., in Re Dharmalinga Mudaliar I.L.R. (1914) Mad. 57, was of the view that where a wall built by a complainant on a public road was pulled down by the accused in the bona fide exercise of their right of way, the accused were not guilty of mischief or criminal trespass, a later Bench decision of this Court reported in Narasimhalu v. Nagur Sahib (1933) 66 M.L.J. 31 : I.L.R. 57 Mad. 351 following Emperor v. Zipru (1933) 66 M.L.J. 31 : I.L.R. 57 Mad. 351 and other decisions lays down the contrary view in view of the express provision of Section 36 of the Easements Act. In this case the finding of the lower Court is that the land where the wall was built

belonged to the com-plainant, but that the accused had been exercising a right of way when the wall was demolished by them. Therefore the reason given by the lower appellate Court for setting aside the conviction cannot stand.

2. But sitting as a Court of revision in a revision against an acquittal at the instance of a private party I feel I shall not be justified in ordering a re-hearing of the appeal especially since the offence is a technical one and the parties are very near relations. The fine imposed by the trial Court was only Rupees ten (Rs. 10) and it is not necessary in view of the trivial nature of the fine and the insignificance of the offence that a re-hearing of the appeal should be ordered.

3. This revision is dismissed.

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