



S.A.No.542 of 2017
& C.M.P. Nos.13252 & 13253 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.542 of 2017

and

C.M.P. Nos.13252 & 13253 of 2017

V.S. Ramadas HUF,
Represented by its Kartha
V.S.Ramadas,
Old No.27, New No.44,
Plot No.S-47, Flat No.1B,
First Floor, Chitrakoot Apartments,
First Avenue, Shastri Nagar, Adyar,
Chennai 600 020

...Appellant

Vs.

1. Ramaniyam Real Estates Limited,
Represented by its Authorised Signatory,
Suresh V. Nathan,
having its office at No.11,
2nd Main, Gandhi Nagar, Adyar,
Chennai 600 020.

2. Rabin Singh

... Respondents



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Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 24.11.2016 passed in A.S. No.12 of 2016, on the file of the XIX Additional Court, City Civil Court, Chennai, upholding the decree and judgment dated 08.01.2015 passed in O.S.No.2088 of 2013, on the file of the IV Assistant Judge, City Civil Court, Chennai.

For Appellant : Ms.Vasudha Thiagarajan
For R1 : Mr.S. Sundaresan
For R2 : No appearance

JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed the present second appeal.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3.The case of the plaintiff in a nutshell is as follows :

3.1. The plaintiff purchased a flat in Chitrakoot Apartments, Adyar, Chennai, from the first defendant and he was allotted car park



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No. 9. Since it was not a fully covered car park, he requested the first defendant to allot him a covered car park vide his letter dated 17.10.2000 (Ex.A4). Accordingly the first defendant allotted car park No.1 as is shown in Ex.A5 sketch. However, the second defendant, who is the owner of one of the flats, is claiming right over the said car park and also preventing the plaintiff from parking his car. Therefore, the plaintiff filed the suit in O.S. No.2088 of 2013 before the IV Assistant Judge, City Civil Court, Chennai, for a permanent injunction restraining the defendants 1 and 2 from interfering with his peaceful possession and enjoyment of car park No. 1.

4. The first defendant, the developer of the flat, remained absent before the trial court and was set *ex parte*. The second defendant resisted the suit by way of filing a written statement. According to the second defendant the car park No.1 was allotted to him and that he has been in possession and enjoyment of the same.



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5. On the basis of the above pleadings, the trial Court framed the following issues :

- i. *"Whether the plaintiff is entitled for a permanent injunction as prayed for?*
- ii. *Whether there is cause of action for filing of the suit?*
- iii. *To what other relief the plaintiff is entitled?"*

6. In the trial Court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A5. The second defendant examined himself and marked Ex.B1 and Ex.B2

7. After full contest, the learned IV Assistant Judge, City Civil Court, Chennai, dismissed the suit filed by the plaintiff, vide his decree and judgment dated 08.01.2015, on the following grounds:-

- i. In the construction Agreement and in the Sale Deed (Ex.A1 and Ex.A2), there is no mention about the allotment of car park No.1 to the plaintiff.



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ii. The plaintiff mainly relies on Ex.A5 sketch to show that the first defendant allotted covered car park No.1 to him. However, a perusal of Ex.A5 sketch shows that there is a material alteration and therefore, the same cannot be relied upon. The second defendant and his wife were allotted car park 1 to 3 as per the construction agreements dated 23.07.1998 (Ex.B1 and Ex.B2). The plaintiff did not question the genuineness of these two documents.

iii. Since the plaintiff has not proved that he was allotted car park No.1, the suit filed by him deserves to be dismissed.

8. Aggrieved over the decree and judgment passed by the trial court, the plaintiff filed an appeal in A.S. No.12 of 2016, before the XIX Additional Court, City Civil Court, Chennai. The learned XIX Additional Judge, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the trial court vide her decree and judgment dated 24.11.2016, as against which the present second appeal is filed.



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9. The second appeal was admitted by my learned predecessor on the following substantial questions of law:

"(a) Whether the Courts below are right in construing Ex.A5 in and by which the appellant was allotted a covered Car Park on payment of consideration?

(b) Whether the conclusion reached by the trial Court, as confirmed by the Appellate Court, is legally valid despite the fact that no documentary evidence has been produced by the 2nd respondent to substantiate the same?

(c) Whether the conclusion reached by the trial Court as confirmed by the Appellate Court suffers from perversity and non-consideration of the relevant documents, which vitiates the judgment of the decree rendered by the Courts below?

(d) Are the Courts below right in regativing the plea of the Appellant despite overwhelming evidence to substantiate the acquisition of the covered Car Park pursuant to a Sale Deed under Ex.A2 backed up by handing over and taking over Agreement dated 28.01.1999 under Ex.A3 executed in favour of the appellant?

(e) The Courts below ought to have noticed that a valid covered car park has been allotted in respect of the suit



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schedule mentioned property under Ex.A3 and A5 and in such circumstances, non-production of the relevant documents and evidence to rebut the claim the 2nd respondent has failed to produce any material documents and, in such circumstances, whether the judgment and decree rendered by the Courts below are substantial in law?

(f) The Courts below ought to have noticed that the construction Agreement under Ex.A1 and the Sale Deed under Ex.A2 and handing over and taking over Agreement Ex.A3 would categorically prove and establish handing over and taking of the Car Park, and in such circumstances, whether the conclusion reached by the trial Court, as confirmed by the Appellate Court, is legally valid despite the fact that no documentary evidence has been produced by the 2nd respondent to substantiate the same?

(g) Whether the judgment and decrees rendered by the Courts below are sustainable in law in the light of Exs.A4 and A5?"

10. Heard Ms.Vasudha Thiagarajan, learned counsel for the appellant and Mr.S. Sundaresan, learned counsel for the first respondent.



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11. The plaintiff has purchased a flat developed by the first defendant Ramaniyam Real Estates Limited. According to the plaintiff he was allotted one open car park and at his request he was allotted covered car park No.1 as is seen from the sketch Ex.A5. Both the courts below had rendered a finding, based on evidence, that there is a material alteration in the sketch Ex.A5. A bare perusal of Ex.A5 shows that all car parking slots mention the names of the respective owners of the flats. However, in car park No.1, the name of the owner is struck down in blue ink and the plaintiff claims that car park No.1 was allotted to him by the first defendant.

11.1.The first defendant did not contest the suit and was set *ex parte*. The second defendant had adduced the construction agreements (Ex.B1 and Ex.B2) executed by the first defendant in his favour as well as his wife. In the said construction agreements, three covered car parks were allotted to the second defendant and his wife. The first appellate court had in fact analysed Ex.A5 and observed thus:



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Moreover, a keen look into Ex.A5 diagram, it is seen that all car parkings slots mentions the names of the respective owners thereof. As it was stated by the plaintiff, originally car slot No.9 was allotted to the plaintiff V.S. Ramadas his name finds place in slot No.9, marked in green colour. Similarly, Flat No.2 2 and 3 which was allotted to the 2nd defendant bears his name. In all probability, this slot No.1 also should have borne the name as Robin Singh which had been clearly struck with blue ball point pen. The second defendant in support of his contention has marked Ex.B1 to Ex.B3, a thorough perusal of which shows that in the construction agreement in clause No.12.6, it is stated that "1 covered car park will be allotted". Similarly, in Ex.B2 also the construction agreement in favour of the 2nd defendant clause No.12.6 mentions "2 covered car park will be allotted". Therefore, the defendants have probabilsed that slot No.1 also was allotted to them. In the circumstances, when the neighbouring slots 2 & 3 falling in one line was also allotted to the second defendant. Therefore, the appellant finding fault with the judgment of the trial judge cannot be countenanced."



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One Viswanathan, who is an employee of the first defendant and also one of the owners of the flats was examined as P.W.2. However, he did not support the case of the plaintiff. His evidence is extracted as under:

"வரைபடத்தில் கார் பார்க்கிங் எண்-1 ராமதாஸ்'க்கு ஒதுக்கப்பட்டுள்ளதாக காட்டப்பட்டுள்ளது. அந்த வரைபடம் என்னுடையது தான், ஆனால் அதில் உள்ள குறியீடு மட்டும் எனக்கு சந்தேகமாக உள்ளது."

.....

"வா.சா.ஆ.5 வரைபடத்தில் கார் பார்க்கிங் எண்.9 ராமதாஸ் என்பவருக்கு ஒதுக்கீடு செய்யப்பட்டது. அதற்கு ஈடாக கார் பார்க்கிங் எண்.1 ஒதுக்கீடு செய்வதற்கு வாய்ப்பு உள்ளது. அவ்வாறு ஒதுக்கீடு செய்தால், அது சம்பந்தமாக ஒரு உறுதி கடிதம் நாங்கள் வழங்கியிருப்போம்."

11.2. The suit was filed by the plaintiff and he has to establish that he has a right over car park No.1 (covered car parking) as stated by him. When there is a material alteration in Ex.A5, it is not safe to conclude that the plaintiff was allotted car park No.1 as claimed by him. Both the courts below had analysed the evidence on record threadbare



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and had come to a definite conclusion that the plaintiff has not adduced acceptable evidence to prove his right over car park No.1. The findings of both the courts below are based on facts and evidence and therefore, this Court cannot interfere with the same. There is no substantial question of law involved in the present second appeal and hence the same stands dismissed.

12. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently connected miscellaneous petitions are also closed.
- ii. The decree and judgment dated 24.11.2016 passed in A.S. No.12 of 2016, on the file of the XIX Additional Court, City Civil Court, Chennai, and the decree and judgment dated 08.01.2015 passed in O.S. No.2088 of 2013, on the file of the IV Assistant Judge, City Civil Court, Chennai, are upheld.

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WEB COM Speaking/Non-Speaking order
bga

To

1. The XIX Additional Judge, City Civil Court, Chennai,
2. The IV Assistant Judge, City Civil Court, Chennai
3. The Section Officer, VR Section, High Court, Madras.



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