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S.A. Nos.613 and 614 of 2017 and 696 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2024

DELIVERED ON :15.03.2024

CORAM:

**THE HON'BLE MR. JUSTICE P.B. BALAJI**

S.A. Nos.613 and 614 of 2017  
and 696 of 2019 and  
CMP Nos.15226 of 2017, 13220 of 2019 and  
5495 of 2021

K.Nambi

... Appellant in S.A.Nos.613 of 2017  
and 696 of 2019

1.K.Nambi

2.A.Jaffer Basha

... Appellants in S.A.No.614 of 2017

Versus

D.Kiruba

... Respondent in S.A.No.613 of 2017

1.D.Karpagam

2.D.Kavitha Perumal

3.D.Kiruba

4.G.Saraswathi

5.K.Rajagopalan

6.Mrs.T.V.Rosalind

.. Respondents in S.A.No.614 of 2017

1.K.Rajagopalan

1/36



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2.Jaffer Batcha

... Respondents in S.A.N.696 of 2019

1.K.Rajagopalan

2.Jaffer Batcha

3.G.Jayaraman

.. Respondents in SA No.696 of 2019

**Second Appeals 613 and 614 of 2017** filed under Section 100 of the Civil Procedure Code, against the decree and judgment passed in A.S. Nos.248 and 249 of 2015 dated 21.12.2016 on the file of XVIII Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 20.04.2015 in O.S.No.4606 of 2007 and 4148 of 2008 on the file of XIV Assistant Judge, City Civil Court, Chennai.

**Second Appeal No.646 of 2019** has been filed against the decree and judgment passed in A.S.No.244 of 2016 dated 05.12.2018 on the file of IV Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 07.04.2016 passed in O.S.No.3571 of 2008 on the file of XIV Assistant Judge, City Civil Court, Chennai.

For Appellant  
in all the appeals

: Mr.V.Raghavachari  
Senior Counsel for  
Mrs.V.Srimathi

For Respondent in  
S.A.No.613 of 2017

: Mr.A.Prabhakaran

For R.1 to R.3 in  
S.A.No.614 of 2017

: Mr.A.Prabhakaran  
R.4 – Died



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R.5 & R.6-Served-No appearance

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For R.1 in S.A.No.  
696 of 2019

: Mr.S.Thankasivan

For R.1 & R.3

R.2 – served-no appearance

### **COMMON JUDGMENT**

“**LIVE AND LET LIVE**” is the foundation on which the enjoyment of common areas in an Apartment Complex thrives. Unfortunately, like the case on hand, litigation pertaining to enjoyment of common areas has been on a steep rise.

2. The present litigation pertains to enjoyment of a car parking slot that has been purchased exclusively by one of the flat owners viz., the appellant herein.

3. The appellant is the unsuccessful defendant in O.S.No.4606 of 2007, where he suffered a decree for mandatory injunction to remove the grill gate measuring 15 x 10 feet put up by him in the common area, over the underground water sump situated; as one of the plaintiffs in O.S.No.4148 of



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2008, where the plaintiff had sought for permanent injunction restraining the defendants viz., the other flat owners, from entering into the suit property or making use of the same for any common amenities and to restrain them from interfering with the plaintiff's possession and enjoyment of his exclusive car park, where also he suffered a decree of dismissal of the suit.

4. The brief facts of the appellant/1<sup>st</sup> plaintiff's case in O.S.No.4148 of 2008 and as the defendant in O.S.No.4606 of 2007 is that he purchased one of the 8 flats constructed by the developer, together with proportionate undivided share in the land. It is his specific case that even though 8 flats were constructed, in respect of 4 flats, a separate application for planning permission was obtained showing Door No.87/1, Kothavalchavadi Street, and in respect of the remaining 4 flats, a separate approval was obtained showing the property as Door No.87/2, Kothavalchavadi Lane. According to the appellant, 4 flats were allotted to the builder, who, in turn, sold them to the interested purchasers, including the appellant. The original owners of the land were allotted 4 flats, which were forming part of planning permission sanctioned in respect of Door No.87/1, Kothavalchavadi Street.



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5. The further case of the appellant was that he purchased a flat bearing No.F-1 in First Floor with plinth area of 950 sq.ft together with an undivided share in the land to an extent of 553 sq.ft under a registered sale deed dated 21.03.2003. According to the appellant, an area of 310 sq.ft situate at No.87/1, Kothavalchavadi Sreet was reserved for car parking and out of the said 310 sq.ft, the appellant had purchased 115 sq.ft for his car park. According to the appellant, out of the plinth area of 950 sq.ft, 752 sq.ft was the flat measurement and share in the common area was 93 sq.ft and car parking area was 115 sq.ft, totalling to 950 sq.ft. Having purchased an exclusive car park, the appellant has every right to use the car parking area and according to the appellant, even during the time of construction, the developer constructed a short dividing wall, separating the common parking area and the appellant's private car parking area of 115 sq.ft. The appellant admitted to having put up a grill partition over the sump area, however, justifying his action on the ground that there was a continuous intrusion of others into his car parking area and there was a threat of safety to his vehicle. The appellant further contended that it did not in anyway, interfere with the



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usage of the sump.

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6. It is also contended by the appellant that the plaintiff in O.S.No.4606 of 2007 and his sister, who were entitled to 4 flats, constructed for the original owners of the property, had no right to use the sump situate at Door No.87/1, Kothavalchavadi Street and that there was no agreement or covenant in the sale deed executed in favour of the appellant which prevented him from installing the grill partition over the sump.

7. Per contra, it was the case of the defendants in O.S.No.4148 of 2008 and the plaintiff in O.S.No.4606 of 2007 is that the appellant had no right to put up a grill partition over the sump area and the sump area was common space, meant for enjoyment of all the flat owners and the appellant had high handedly usurped undivided share for his exclusive enjoyment and the same was impermissible in law and therefore, the permanent injunction as prayed for by the appellant was sought to be negated, while directing the appellant to remove the grill partition, put up by him, over the common sump.



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8. The parties went to trial and the trial Court, in and by common judgment dated 20.04.2015, after appreciating the pleadings, oral and documentary adduced by parties before it, and also relying upon the Advocate Commissioner's Report, decreed the suit in O.S.No.4606 of 2007, directing the appellant to remove the grill partition, put up in the common area within a period of three months and dismissed the suit for permanent injunction filed by the appellant in O.S.No.4148 of 2008. Aggrieved by the dismissal of his suit, as also the decree for mandatory injunction, the appellant filed A.S.No.248 of 2015 against the judgment and decree in O.S.No.4606 of 2007 for mandatory injunction and A.S.No.249 of 2015 against the judgment and decree in O.S.No.4148 of 2018.

9. The first appellate Court, on an independent appreciation of the oral and documentary evidence adduced before the trial Court, ultimately, concurred with the findings of the trial Court and dismissed the appeals. Aggrieved by the concurrent findings before the Courts below, the appellant preferred Second Appeal Nos.613 and 614 of 2017.



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10. Apart from the above two suits, there was one another suit in O.S.No.3571 of 2008, which had been filed by the fifth defendant in O.S.No.4148 of 2008, where, as plaintiff, he filed the said suit for the relief of permanent injunction to restrain the appellant and one Jaffer Batcha from interfering with the peaceful possession and enjoyment of his right in the common areas and common amenities, including hand pump, electricity and water supply in the suit property viz., No.87/1, Kothaval Chavadi Street, Saidapet, Chennai-600 015.

11. It is the case of this plaintiff that he was the owner of Flat No.G-1 in the ground floor at No.87/1, Kothaval Chavadi Street, Chennai-600 015 and alleging that the first defendant/owner of Flat No.5 in the first floor had put up an unauthorised grill partition over the sump area, preventing the other flat owners from enjoying the common area, especially the sump and hand pump, filed the suit, seeking for the relief of permanent injunction.

12. In the written statement, the appellant, as the first defendant, has



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pleaded the very same case that he had alleged as plaintiff in O.S.No.4148 of 2008 and as defendant in O.S.No.4406 of 2007. The trial Court decreed the suit and granted a permanent injunction as prayed for by the plaintiff in the suit in O.No.3571 of 2008. Pending the suit, the plaintiff included the relief of mandatory injunction as well, as the appellant filed an additional written statement justifying the installation of the grill partition and prayed for dismissal of the suit insofar as the relief of mandatory injunction also, as it was time barred.

13. The trial Court decreed the suit and as against the same, the appellant along with said Jaffer Batcha preferred an appeal in A.S.No.244 of 2016. The said appeal also came to be dismissed on 05.12.2018, confirming the findings of the trial Court. It is aggrieved by these concurrent findings that the appellant has preferred the 3rd Second Appeal in S.A.No.696 of 2019.

14. Even though there had two independent trials, since the issue involved in all the three appeals is one and the same, the three Second Appeals have been clubbed and heard together and a common judgment is



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being delivered.

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15. I find that S.A.No.696 of 2019 alone has been admitted on 08.07.2019, on the following substantial questions of law:-

*1. Whether the Courts below ought not to have made a distinction between rights accruing beneath the surface and common to all and exclusive right conferred on the built up area above the surface and whether the failure of the Courts to maintain such distinction had not resulted in displacement of legal rights?*

*2. Whether the Courts below are right in decreeing the suit in breach of the first defendant's legal right and title conferred on him under Ex.B.8, B.9 and B.10?*

*3. In the absence of the plaintiff not establishing an interference to his enjoyment of bailing water from the sump, does he have a cause of action, as against the defendant to use of the car park area?*

*4. When the plaintiff had not been conferred any right in the car parking area assigned exclusively to the*



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*first defendant, whether he could create his enjoyment?*

*5. Whether the non-inclusion of the other flat owners is not fatal to the maintainability of the suit?*

*6. Whether the order the Courts below is not against the principles laid down in S.A.No.320 of 2009, dated 04.06.2015?*

16. I have already mentioned that the issues being common and the relief of mandatory injunction also being prayed in O.S.No.4606 of 2007, in respect of which, S.A.No.613 of 2017 arises and the relief of permanent injunction sought for by the appellant in O.S.No.4148 of 2008, the same substantial questions of law would also become relevant for the purposes of deciding all the three second appeals.

17. I have heard Mr.V.Raghavachari, learned Senior Counsel appearing for Mrs.V.Srimathi, counsel for the appellant in all the Second Appeals, Mr.A.Prabhakaran, learned counsel for the sole respondent in S.A.No.613 of 2017 and for the respondents 1 to 3 in S.A.No.614 of 2017 and Mr.S.Thanka



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Sivan, learned counsel for the respondents 1 and 3 in S.A.No.696 of 2019.

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18. Besides noting the arguments advanced by the learned Senior Counsel for the appellant and counsel appearing for the respondents, I have also gone through the entire records viz., the plaint, the written statement, in all the three suits, oral and documentary evidence adduced by the parties before the trial Court in O.S.No.4606 of 2007 and O.S.No.3571 of 2008, the common judgment of the trial Court in O.S.No.4606 of 2007 and 4148 of 2008 and the judgment and decree in O.S.No.3571 of 2008 and also the common judgment in A.S.Nos.248 and 249 of 2015 and the judgment in A.S.No.244 of 2016.

19. In fact, before this Court also, an Advocate Commissioner has been appointed on 30.11.2022 and the Advocate Commissioner was called upon to note the obstructions caused over the sump and also measure the distance between the Apartment and the sump and to inform the Court if the structure put up over the sump is permanent and cannot be removed or whether it could be moved and whether it was convenient/inconvenient for opening and



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cleaning the sump.

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20. The learned Advocate Commissioner has visited the suit property and filed a Report along with photographs. The Advocate Commissioner has observed in his Report that the structure put up over the sump is an iron grill partition, covered with metal sheets and was of permanent nature which could not be moved and that it was not possible and very inconvenient for opening and cleaning the sump from one side alone viz., the portion marked as “B” in his Report and photographs. The Advocate Commissioner has divided the parking area in the Ground Floor into two portions “A” and “B”. In fact, he has also stated that the division has resulted only because of the iron grill partition covered by metal sheets put up by the appellant. The learned Advocate Commissioner also found that there was another separate main iron grill gate which was the only access to portion “A” from the road and another main iron grill gate for access to “B” portion.

21. The learned Advocate Commissioner also found a hand pump situate in “B” portion parking area. He also found that the portion of the iron



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grill partition, running over the sump was provided with two small doors in the bottom (17 x 37 inches) and (5 x 15 inches) and that both the doors have separate locking provisions and at the time of inspection, both the gates were not locked. The learned Advocate Commissioner has further observed that major portion of the sump to an extent of 18 inches fell on the left side of parking area i.e., “A” portion and minor portion 9 inches fell on the right side parking area of “B” portion and therefore, the sump could be opened only by opening the bigger iron grill gate partition and that it was not possible to lift the bigger opening lid of the sump from one side of iron grill partition alone. He also found that in view of the iron grill partition, installed by the appellant, it was not possible to open the sump without having access to the appellant's car parking area. The learned Advocate Commissioner also filed photographs showing the portions which he has referred to in his Report as “A” and “B”. He has also given measurements of the sump lid marking the same in the photographs taken from either side of the iron grill partition. I have taken note of the said Report of the Advocate Commissioner and also perused the photographs filed by him before this Court, in pursuance of the order passed by my predecessor on 30.11.2022.



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22. Learned Senior Counsel for the appellant would submit that insofar as the suit for permanent injunction, the said suit was not maintainable without a relief of declaration since the appellant had specifically denied the right of the plaintiff in his written statement. Further, he would also state that the property was virtually sub divided into two portions, viz., one having access from Kothavalchavadi Street and another was having from Kothavalchavadi Lane and two separate planning applications were made for construction of 4 flats each in these two door numbers and therefore, according to the learned Senior Counsel, the owners of Door No.87/1 cannot claim any right in Door No.87/2 and *vice versa*.

23. Learned Senior Counsel would also state that the developer was only the agent of the original land owners viz., the plaintiff in O.S.No.4606 of 2007 and others and therefore, the developer, being the agent of the plaintiff, would bind by his actions, the principals as well. According to the learned Senior Counsel, the developer had sold an exclusive car parking, measuring 115 sq.ft, to the appellant and therefore, he had every right to use the said



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115 sq.ft and there is absolutely no impediment for him to raise an iron grill partition, which was necessitated only for securing the car parking area and also for safety purposes.

24. Learned Senior counsel would also state that the first appellate Court has not assigned any reason whatsoever for confirming the judgment of the trial Court and in one page, the first appellate court, without any discussion, had concluded the first appeal and confirmed the judgment and decree passed by the trial Court.

25. Learned Senior Counsel would also invite my attention to Ex.A.8, which is an agreement of sale in respect of undivided share entered into by the land owners in favour of Jaffer Batcha, who had initially joined hands along with the appellant in filing O.S.No.4148 of 2008, though subsequently chose to accept the concurrent findings and it is only the appellant who has challenged the concurrent findings in the three suits by way of Second Appeal.



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26. Learned Senior Counsel would specially refer to the plan, annexed to the said agreement of sale thereunder, where there is a mention that Flat F.1 has a built up an area of 742 sq.ft and common area of 93 sq.ft and a car parking area of 115 sq.ft, totalling all 950 sq.ft. Therefore, learned Senior Counsel would contend that the plaintiffs in both O.S.No.4606 of 2007 and 3571 of 2008 are estopped from stating that the exclusive car parking could not have been sold to the appellant.

27. Learned Senior Counsel also would suggest that the appellant was ready to hand over one set of keys to the respondents so that they would be in a position to access the sump from inside of his car parking area and therefore, suitable direction may be issued in these Second Appeals. In any event, according to him, the judgment and decree passed concurrently would have to be necessarily set aside.

28. Per contra, Mr.S.Thankasivan as well as Mr.A.Prabhakaran, learned counsel for the respondents would state by referring to the sale deed and construction agreement of the appellant that there is no mention of any



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exclusive car parking area of the appellant in either the registered document or the construction agreement. Further they would contend that though Ex.A.8, which is marked through P.W.2, was in respect of a different apartment and it was not pertaining to the appellant's apartment and therefore, it would not be binding on the parties. Learned counsel would also state that even in the 'Specifications' column in Ex.A.2 construction agreement in favour of the appellant, there is no mention of any exclusive car parking and therefore, they would submit that car parking area is common for all. Learned counsel would also contend that the undivided shares pertains to the flat and the appellant cannot take advantage of any excess undivided share being conveyed in his favour to put forth an argument that it pertained to an exclusive car parking area.

29. Learned counsel would also invite my attention to the cross examination of the appellant in O.S.No.3571 of 2008, where he has stated that apart from the sale deed and construction agreement, he does not have any document in his favour, mentioning the exclusive car parking area and that in the construction agreement, there is no mention about 115 sq.ft car parking



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slot exclusively being allotted to him. He also referred to the Reports of the Advocate Commissioner in both the suits viz., O.S.No.4606 of 2007 as well as O.S.No.3571 of 2008. In the Report filed by the Commissioner appointed in O.S.No.3571 of 2008, he has concluded that the common area has been divided by the appellant by putting up tin sheets and he has found metro water line and drainage connection in the common area, over which, tin sheet is erected. In the Report in O.S.No.4606 of 2007, the Commissioner has stated that there are two water sumps with manhole cover and that they are located in the parking area facing Kothavalchavadi Street and that the sump located in the north eastern portion of the parking area serves 4 flats viz., G.1, G.2, F.1 and F.2 (87/1, 87/2, 87/5 and 87/6) and the other sump situate in the middle and north of the parking area caters to the remaining 4 flats G.3, G.4, F.3 and F.4.(87/3, 87/4, 87/7 and 87/8). The Commissioner has found that the grill partition has been put up above a wall of 1 ½ sq.ft height almost, in the middle of the parking area and that the said grill partition runs over the manhole of the sump and bisects in the ratio of 17 x 10 inches and that the said sump, which is covered by the grill partition caters to the plaintiff and three other flats situate in northern side viz., G.3, G.4, F.3 and F.4.



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30. The learned Advocate Commissioner has also found two small openable gates (which have been noticed by the Advocate Commissioner appointed by this Court as well) and he found both the small gates locked and after trying to open the same with different keys, finally, the appellant provided a key which opened the small gates. The Commissioner has also found that there are drainage lines and underground pipes running across the property from east to west to enable collection of drainage from all the flats and finally connecting it to the chamber located on the south west corner of the property. He also noted that the chamber is connected to the sewer line to Kothavalchavadi Street and there was no visible or obvious sign of any drainage connection being connected to Kothavalchavadi Lane situate on the north of the premises. Therefore he has also found that the metro water connection as well as drainage connection are only from Kothavalchavadi Street on the southern side.

31. The Advocate Commissioner also found that electricity service connection has been provided only from Kothavalchavadi Street through



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underground cable and electricity board pillar box has been located in the east west corner of the schedule premises and no electricity pole or electricity pillar box was found on the conservancy lane viz., Kothavalchavadi Lane on the northern side of the premises. More importantly, the learned Advocate Commissioner has noticed that the main access for all the 8 flats is only through 4 x 8 feet common way running south to north on the eastern side and there is only one small gate 4 feet width on the northern end of the said common way through which the conservancy lane (Kothavalchavadi Lane) situated on the northern side can be accessed. The Commissioner also filed photographs and rough plan along with his Report. From the plan and report, it is clear that for all practical purposes, even though two separate planning permissions were obtained, the entire apartment complex has been constructed as a single composite building with two flights of staircase to enable the first floor residents to reach their respective flats. There is no entrance to the property from the conservancy lane viz., Kothavalchavadi Lane which is a very narrow 11 x 9 feet lane. In fact, it is an admitted case of the parties that even the car parking area is only in Kothavalchavadi Street, thereby implying that the entrance of the apartment complex is only through



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Kothavalchavadi Street and not Kothavalchavadi Lane.

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32. I find from the plan filed by the learned Advocate Commissioner in O.S.No.4606 of 2007 that the sump which is situated on the north east corner of the car parking area caters to the flats on the southern side and the sump over which the iron grill partition has been installed by the appellant caters to the flats on the northern side. Admittedly, the development is not as per the sanctioned plan and what is on site is totally different from what has been initially approved by the planning authorities. Be that as it may, the owners have been enjoying their respective flats, together with proportionate undivided share in the land.

33. The arguments of the learned Senior Counsel, Mr.V.Raghavachari is that the appellant having purchased exclusive car parking area, which is also referred to in Ex.A.8, Agreement for undivided share of land and construction with Jafar Batcha would clinchingly establish the appellant's exclusive right over car paring area measuring 115 sq.ft.



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34. I have gone through Ex.A.8. It is admittedly not an agreement with the appellant herein. It is an agreement between the land owners and one of the flat purchasers by name Jafar Batcha. The Developer, M/s Rajpuvi Foundations is also a party to the said agreement. In the entire agreement, I do not find any reference to exclusive car parking area allotted either to the purchaser under Ex.A.8 or to the appellant. It is only a sketch which is annexed to the said agreement which speaks about the area and other details as already discussed with respect to Flat No.F.1, which has been purchased by the appellant.

35. Referring to this, Mr.V.Raghavachari, learned Senior Counsel states that no car parking area has been allotted to any of the other flat owners and therefore, when it is specifically mentioned that Flat No.F.1 has been allotted with a car parking area of 115 sq.ft and the land owners are parties of the said agreement, along with the developer, they are estopped from stating that the car parking area is a common area and cannot be claimed exclusively by the appellant.



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36. In this regard, I have perused Ex.A1 sale deed in favour of the appellant dated 21.03.2023 and also Ex.A2 Agreement of sale of undivided share of Land cum Construction, in favour of the appellant dated 07.02.2003. In Ex.A1 sale deed, the land owners have conveyed 553 sq.ft of undivided share of land in the total land measuring 3328 sq.ft.. Therefore, even viewing the title of the appellant, from the registered sale deed in his favour, it is seen that even though as contended by the learned Senior Counsel Mr.V.Raghavachari, two separate planning permissions were obtained for construction of four flats each, the undivided share in favour of the appellant has been carved out only from the total extent of land measuring 3328 sq.ft and not as per the two planning applications made, subdividing the total property into two, one facing Kothavalchavadi Street and the other one facing Kothavalchavadi Lane.

37. From Ex.A.2 Agreement for sale of undivided share of Land cum Construction, I find that there is absolutely no whisper about any car parking space being reserved or allotted to the appellant. The schedule “C” in the said agreement pertains to the flat in the first floor bearing “F-1”, measuring 950



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sq.ft plinth area, as per “Specifications”.

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38. In the “Specifications” also, I do not find any mention of exclusive car parking area allotted to the appellant. In fact, even though there is a rough plan attached to Ex.A.8 in favour of Jaffer Batcha, there is no such plan attached to Ex.A.2 agreement in favour of the appellant. One another circumstance that weighs against the appellant is that even in Ex.A.8, the plan cannot be relied on for two reasons. Firstly, the plan is not signed by any of the parties, including the land owners or the developer or the agent of the land owner, and infact even the purchaser Jaffer Batcha has not signed the said plan. Secondly, there is no demarcation of 115 sq.ft car parking area specifically shown or earmarked in the said plan and the entire car parking area of “22.3 x 14” alone has been shown. Therefore, even accepting the argument of the learned Senior Counsel that Ex.A.8/plan would come to the aid of the appellant, I am unable to countenance the said argument for the above reason.

39. With regard to the argument of the learned Senior Counsel for the



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appellant that in view of two separate planning permissions, one showing Door No.87/1 and the other showing Door No.87/2 and that the flat purchasers/allottees in one of these portions cannot claim any right in the other portion, as already seen above, the sale deeds convey undivided share only from and out of the entire land area and not as per the planning application or planning permission subsequently granted. Further, as rightly pointed out by the learned counsel for the respondents, the appellant himself has admitted that he does not have any document to substantiate his claim on his exclusive car parking slot of 115 sq.ft, excepting for the plan attached to Ex.A.8 agreement, which admittedly is not in his favour and as already found neither signed by any of the owners nor the developer also.

40. As regards to the arguments of the learned Senior Counsel that the first appellate Court has not given any reason whatsoever and has decided the appeal in a very cryptic manner, I have gone through the judgment of the first appellate Court in the common judgment of A.S.Nos.248 and 249 of 2016.

41. I find that the first appellate Court has referred to the admission of



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the appellant that there is no mention of car parking area in his agreement viz., Ex.A.2 and finding that the appellant did not produce any title deeds to prove the right over the common area and car parking area and also observing that he did not find any error or irregularity in the judgment and decree of the trial Court, dismissed the appeals.

42. Though as contended by the learned Senior Counsel V.Raghavachari, the judgment of the first appellate Court is cryptic, however, it has rightly narrowed down the point for decision in the appeal as to whether the appellant had established his right to an exclusive car parking area and finding that he has failed to do so and also finding that the judgment of the trial Court was not suffering from any error or irregularity, dismissed the appeals. Therefore, it cannot be said there merely because the judgment of the first appellate Court is cryptic, it necessarily has to be set aside.

43. These apart, I have taken note of the findings of the three Advocate Commissioners, who have visited the suit property at different points of time. All the three reports filed by the Advocate Commissioners, two before the



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trial Court and one before this Court recently, clearly show that the act of the appellant in putting up an iron grill partition has clearly infringed the rights of the respondents. I refer to the provisions of The Tamil Nadu Apartment Ownership Act, 1994 and the relevant provisions are extracted hereunder for easy reference:-

*“3(h)”common areas and facilities” unless otherwise provided in the Deed of Apartment, means*

- (1) the land on which the building is located;*
- (2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, terrace, compound walls, fire escapes, wells and sumps and entrances and exits of building;*
- (3) the basements, cellars, yards, gardens, parking areas and storage spaces;*
- (4) the premises for lodging of caretakers or persons employed for the maintenance of the property;*
- (5) water supply. Sewerage and drainage connections and the installations of central services*



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*such as power, light, gas, hot and cold water, heating, refrigeration, air-conditioning and incinerating;*

*(6)the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installationis existing for the common use;*

*(7) automatic fire detecting and alarm facilities necessary to warn the occupants of the property of the existence of the fire;*

*(8) such other community and commercial facilities as may be prescribed; and*

*(9) all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use.”*

*3(o) of the said Act defines limited common areas and facilities which is extracted hereunder:-*

***“3(o) “ limited common areas and facilities ”***

*means those common areas and facilities designated in the Deed of Apartment as reserved for the use of certain apartment or apartments to the exclusion of the other apartments;*

***Section 6 and 8 of the Act:-***



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***“6. Common areas and facilities.-***

*“(1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage specified in the Deed of Apartment and the limited common areas and facilities. Such percentage shall be computed by taking as the basis the extent of the plinth area available in the apartment in relation to the total extent of the plinth area available in the building.*

*(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities and in the limited common areas and facilities, if any, as expressed in the Deed of Apartment shall have a permanent character and shall not be altered without the consent of all the apartment owners. The percentage of the undivided interest in such common areas and facilities and the limited common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment whether or not such interest is expressly mentioned in the conveyance or other instrument.*



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*(3) The common areas and facilities and the limited common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof and any covenant to the contrary shall be null and void.*

*(4) Each apartment owner may use the common areas and facilities and the limited common areas and facilities in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.*

*(5) The necessary work of maintenance, repairs and replacement of the common areas and facilities and the limited common areas and facilities and the making of any additions or improvements thereto shall be carried out only in accordance with the provisions of this Act and the bye-laws.*

***(8) Certain works prohibited:-***

*No apartment owner shall do any work or put the*



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*apartment to any other use which would jeopardise the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament nor shall any apartment owner add any material structure or excavate any additional basement or cellar without previously obtaining the unanimous consent of all the other apartment owners.”*

44. From a conjoint reading of the above provisions, it is clear that the Act recognises a facility to be reserved for use of certain apartments to the exclusion of other apartments. A car park is also one such facility and there can be no second opinion about this. However, such limited exclusive facility reserved only for the appellant, ought to have been documented properly, either in the Agreement for sale of undivided share and construction or atleast in the Sale Deed or any other independent contract amongst the appellant, land owners as well as the developer. Admittedly, in the present case, there is no such agreement between the appellant and the land owners/developer. Thus, the appellant cannot seek to claim the benefit of an exclusive facility reserved only for himself, by way of a covered car park, as contemplated



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under section 3(o) of The Tamil Nadu Apartment Ownership Act, 1994.

Section 3 (h) (2) of the above act covers *foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, terrace, compound walls, fire escapes, wells and sumps and entrances and exits of building* and Section 3 (h) (5) covers *water supply, sewerage and drainage connections and the installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air-conditioning and incinerating.*

45. In terms of Section 8 of the Act, no apartment owner is entitled to carry out any work, which would jeopardise the soundness and safety of the property or reduce the value thereof or impair any easement or hereditament. It also prohibits any apartment owner from adding any material structure or excavate any additional basement or cellar without the previous and unanimous consent of all the other apartment owners.

46. Thus it is clear from the statutory provisions that the action of the appellant in putting up an iron grill partition is in violation of the provisions



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of the Tamil Nadu Apartment Ownership Act, 1994.

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47. Sharing of common amenities and facilities is the spirit of Tamil Nadu Apartment Ownership Act, 1994 and by such high handed and arbitrary actions of the appellant, by putting up an iron grill gate partition, it has resulted in the other owners not being able to even open the underground water sump from their side of the property, which too, has resulted only because of the said iron grill partition. Unless the water sumps and lines are maintained by regular cleaning and servicing, it is likely to lead to health hazards and it is really unfortunate that because of the installation of the iron grill gate partition, the rest of the owners barring two, have been rendered to be at the mercy of the appellant and the other owner, who, initially supported his cause and joined hands in filing the suit for permanent injunction.

48. I do not find any perversity, irregularity or material error in the concurrent findings rendered in these three sittings, warranting interference under Section 100 of the Civil Procedure Code.



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49. For the above reasons, all the substantial questions of law are answered against the appellant and all the Second Appeals stand dismissed.

No costs. Consequently, connected miscellaneous petitions are closed.

15.03.2024

Index: Yes/No  
Speaking Order/Non-Speaking Order  
sr

To

1. The XVIII Additional Judge, City Civil Court, Chennai
2. The XIV Assistant Judge, City Civil Court, Chennai.
3. The V.R.Section, High Court, Chennai.



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**P.B.BALAJI,J.**

sr

Pre-Delivery Judgment  
in S.A.Nos.613 and  
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15.03.2024