

THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 15.12.2016
PRONOUNCED ON : 20.12.2016
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S. A.No.594 of 2011
and
M.P.No.1 of 2011

M/s Prodex Technologies,
A registered Partnership
firm repled. by its Power of
Attorney Agent.

K.Mohan Shenoy,

having office at Door

No.15 (Old No.27),

Dr.Radhakrishnan Salai,

Mylapore, Chennai - 600 004. ...

Appellant

Vs.

1.LP.LP.An.Annamalai

S/o.LP.Periakaruppan

Chettiar, having office

at V Floor, "Sri Raja

Rajeswari Towers"

Nos.29-30, Dr.Radhakrishnan

Salai, Mylapore, Chennai-600004.

2. Chennai Metropolitan Development

Authority, represented by its

Member -Secretary,

having their office at

Thalamuthu Natarajan Building,

No.8, (New No.1), Gandhi-Irwin

Road, Egmore, Chennai - 600 008. ...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 22.06.2010 made in A.S.No.393 of 2009 passed by the learned VII Additional Judge, City Civil Court, Chennai confirming the Judgment and Decree dated 28.10.2008 made in O.S.No.3664 of 2001 passed by the learned VII Asst.Judge, City Civil Court, Chennai.

For Appellant : Mr.M.Balasubramanian

For Respondents : Mr.N.Sankaravadivel

JUDGMENT

Challenge in this second appeal is made by the plaintiff to the judgment and decree dated 22.06.2010 made in A.S.No.393 of 2009 on the file of the VII Additional City Civil Court, Chennai, confirming the judgment and decree dated 28.10.2008 made in O.S.No.3664/2001 on the file of the VII Assistant City Civil Court, Chennai.

2. The suit has been laid by the plaintiff for declaration and Permanent injunction.

3. The plaintiff is a tenant in respect of about 4743 sq.ft built up area in the first floor of Lakshmi Towers bearing old Door No.27, New Door No.45, Dr.Radhakrishnan Salai, Chennai - 4. The plaintiff has in this suit claimed that commensurate with the area in his occupation as the tenant in the above said premises, it is entitled to obtain 4 1/2 car parking space in the common area and according to the plaintiff, the first defendant, who is the builder-cum-developer of the premises/flats is liable to provide the above said car parking space to the plaintiff free of costs and inasmuch as the first defendant has denied the entitlement of the plaintiff to the above said car parking space, according to the plaintiff, it has been constrained to lay the suit.

4. The first defendant mainly contested the case contending that there is no privity of contract between the plaintiff and the first defendant regarding the provision of any car parking space much less 4 1/2 car parking space in the common area claimed by the plaintiff in the suit and according to the first defendant, as promoter after the construction of the building, he had handed over the same to the purchaser concerned and in such circumstances, the first defendant is not liable either in law or on facts to provide the car parking space in the common area as contended by the plaintiff and hence, the suit is liable to be dismissed.

5. As rightly found by the Courts below, the plaintiff has not established that it has privity of contract with the first defendant for the provision of any car parking space much less 4 1/2 car parking space in the common area as claimed in the plaint. At the foremost, the plaintiff has not established that it has been given lease of the property by its landlord including 4 1/2 car parking space claimed by the plaintiff in the suit. To establish that fact, as rightly argued, the plaintiff should have placed the lease agreement entered into between it and its landlord to enable the court come to the conclusion that the landlord has also leased out property to

the plaintiff inclusive of 4 1/2 car parking space, to which the plaintiff is now laying a claim. For the reasons best known to it, the plaintiff has not produced the lease agreement.

6. That apart, the plaintiff has not come out clearly as to from whom it has taken the property now in its occupation as a lessee. According to the plaintiff, it has taken the lease from one Karuppaiah. Per contra, according to the first defendant, the purchaser of the property, now, in the occupation of the plaintiff is one Kamalam Achi. However, to establish from whom, it had taken the lease of the property, now, in the occupation of the plaintiff, as adverted to earlier, neither it has produced the lease agreement nor took steps to examine its landlord to establish that it had been leased out the property inclusive of 4 ½ car parking space. Further, it is also the case of the first defendant that there is no arrangement between him and the purchaser of the property in the occupation of the plaintiff as to provision of any car parking space in the common area. Therefore, it could be seen that when the first defendant has disputed the entitlement of the purchaser to any car parking space in the common area, particularly 4 ½ car parking space as now claimed by the plaintiff, it could be seen that the case of the plaintiff that he is entitled to 4 ½ car parking space in the common area on the footing that he is a tenant of about 4743 sq.ft in the first floor of the building as such cannot be countenanced.

7. Therefore, it could be seen that as rightly found by the courts below, the plaintiff has also not established that the landlord had purchased 4 ½ car parking space from the first defendant and let out the same to the plaintiff under the lease agreement.

8. The plaintiff has also not taken steps to implead his landlord as a party to the proceedings. The plaintiff is claiming the right on the basis of his tenancy arrangement. Therefore, as rightly put forth by the first defendant's counsel, if at all, the plaintiff has any claim over the additional facility in the area inclusive of car parking space, the plaintiff has to lay his claim only as against the landlord and not as against the first defendant, who is only the builder cum developer of the property in question. The plaintiff claims that he has also paid certain maintenance charges for its occupation in the building. It has not been established that the so-called maintenance charges paid by the plaintiff is also inclusive of 4 1/2 car parking space in the common area. In such circumstances, it could be seen that the payment of maintenance cost put forth by the plaintiff, as such would not be entitle it to seek 4 1/2 car parking space in the common area, when, in particular, it has not been established by the

plaintiff that 4 1/2 car parking space had been purchased by the owner and the owner had let out the property inclusive of 4 1/2 car parking space to the plaintiff.

9. The plaintiff has alleged that the first defendant has not put up building in accordance with the rules and regulations of the CMDA and there are various violations in the building put up by the first defendant and further, according to the plaintiff, the violations have also been made in such a manner that action had been initiated against the first defendant with reference to the same. However, as rightly found by the Courts below, in this case, this Court is not concerned with the violations of the rules and regulations committed by the first defendant while constructing the building. As regards the above facts, it could be seen that separate proceedings had been initiated against the first defendant vis-a-vis the construction of certain floors without permit. But, in this case we are only concerned with the entitlement of the plaintiff of 4 1/2 car parking space in the common area. Therefore, it could be seen that the decisions relied on by the plaintiff counsel reported in AIR 1990 CALCUTTA 26 (Ratnamala Dasi and others V. Ratan Singh Bawa) and (1999) 6 SCC 532 (M.I.Builders Pvt. Ltd., V. Radhey Shyam Sahu and others) as also found by the courts below would not be applicable to the facts and circumstances of the present case.

10. The plaintiff has contended that the first defendant has not controverted its case by placing any material before the courts below and on that footing alone, it is argued that the plaintiff's case should be accepted. However, when the entitlement of 4 1/2 car parking space in common area has not been established by the plaintiff, it could be seen that the plaintiff cannot be allowed to pick holes in the defendant case and thereby, try to succeed its case without placing any material to establish his entitlement. Therefore, it could be seen that non examination of any witness on the part of the first defendant or production of any documentary evidence on the part of the first defendant as such would not automatically enable the plaintiff to get the reliefs sought for without the plaintiff making any foundation for obtaining the same.

11. The plaintiff has also not placed any letter of authority from the owner as to that the plaintiff is entitled to 4 1/2 car parking space in common area and that the owner had also purchased from the builder, the property inclusive of 4 1/2 car parking space. As found earlier, the maintenance charges paid by the plaintiff has not shown to be inclusive of the car parking space particularly 4 1/2 car parking space. Therefore, the plea put forth by the plaintiff that the first defendant builder had violated the Tamil Nadu Apartment Ownership Act,

1994, as such cannot be accepted in view of the afore sated reasons.

In conclusion, no substantial question of law is found to be involved in this second appeal. Resultantly, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sms

To

1. The VII Additional City Civil Court,
Chennai.
2. The VII Assistant City Civil Court,
Chennai.

+1 cc to M/s.M.Balasubramanian Advocate sr 74156

+1 cc to M/s.N.Sankaravadivel Advocate sr 74141

S. A.No.594 of 2011
and
M.P.No.1 of 2011

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