

Suit for damages and mandatory injunction.

2. The averments contained in the plaint are briefly stated as follows:-

The suit property originally belonged to Manickam Chettiar, the paternal grandfather of the plaintiffs and under a deed of settlement dated 20.02.2006, Manickam Chettiar settled the ground floor in favour of T.Komala, his daughter-in-law and the plaintiffs and the first floor of the suit property was settled in favour of the third defendant and the second floor was settled in favour of another son viz., Vasu. Under the deed of settlement dated 24.01.2007 Vasu settled the second floor of the suit property in favour of the third defendant. Thus, the plaintiffs with their mother T.Komala occupied the ground floor and the third defendant became the owner of the first and second floor of the suit property. The parties are enjoying their respective portions of the suit property along with the common amenities. While so, the third defendant established a pillar in the ground floor to commence construction in the first and second floor and also in the open terrace without a sanctioned plan from the first defendant and the plaintiffs objected to the same and the third defendant threatened the plaintiffs and proceeded with the unauthorized construction. The defendants 1 & 2 also did not initiate any action as per law against the third defendant. The plaintiffs preferred W.P.No.11508 /2008 for a direction to the first defendant to

remove the illegal construction put up by the third defendant. In the above said writ petition, the Court directed the plaintiffs to approach the Civil Court for appropriate relief and disposed of the writ petition. The defendants 1 & 2, after inspecting the property, issued a provisional order dated 28.03.2008 under Section 256 (1) of the Chennai City Municipal Corporation Act, to show cause why the unauthorized construction should not be demolished. The third defendant, on receipt of the said notice, instituted O.S.No.4540/ 2008 on the file of the City Civil Court, Chennai, for the relief of permanent injunction. Ultimately, the said suit came to be dismissed on 08.09.2010. Even thereafter, the defendants 1 & 2 did not proceed to remove the unauthorized construction and alterations made by the third defendant. The plaintiffs sent a representation on 13.08.2011. But, no further action was initiated. The second plaintiff instituted W.P.No.27739 / 2011 against the defendants 1 & 2 for issuance of writ of mandamus to remove the alterations and illegal constructions in terms of the notice dated 28.03.2008. The Court by order dated 07.12.2011 observed that if there is any illegal construction, the Corporation is expected to take necessary action against the person, who is making such illegal construction. Pursuant to the same, the plaintiffs sent a notice through their counsel on 11.01.2012 requesting the defendants 1 & 2 for initiating action to remove the

illegal constructions and alterations. The second defendant inspected the site and issued notice dated 07.10.2011 to the third defendant under Section 56 r/w 85 of the Tamil Nadu Town and Country Planning Act 1971. Despite the receipt of the same, the third defendant failed to produce the approved plan and consequently, the second defendant issued the demolition notice on 28.02.2012. Despite the period stipulated under the said notice, the third defendant failed to comply with the same and the plaintiffs issued a notice dated 19.04.2012 calling upon the first defendant to remove the illegal construction forthwith. However, no concrete action followed. The third defendant has rented out the portions to various persons and further, the building has become weak and cracks appearing in the walls and the building and such portions would be a health hazard and accordingly, the second defendant had directed the tenants as well as the plaintiffs to discontinue the occupation of the property and accordingly, the plaintiffs vacated the ground floor in order to enable the defendants 1 & 2 to carry out the demolition of the unauthorized construction. Except locking and sealing the premises, no further action has been initiated by the defendants 1 & 2. It is learnt that the third defendant instituted the writ proceedings against the defendants 1 & 2. However, the same came to be dismissed. On account of the close proximity of the third defendant

with the defendants 1 & 2, no action was taken to demolish the illegal constructions and alterations and the plaintiffs have been deprived of their residence and are forced to stay in a rented premises due to inaction on the part of the defendants 1 & 2. The building has become unstable and required to be demolished. Inasmuch as the defendants 1 & 2 as well as the third defendant had not taken proper steps to demolish the illegal construction and the plaintiffs, thereby put to great loss and hardship and in respect of the same, the plaintiffs estimate the cost of damages at Rs.25,00,000/- to be given by the defendants 1 & 2 independently as well as by the third defendant independently and accordingly, the plaintiffs have come forward with the suit for appropriate reliefs.

3. The averments contained in the written statement filed by the defendants 1 & 2 are briefly stated as follows;

The suit is not maintainable either in law or on facts. The plaintiffs cannot maintain the suit without impleading the other co-owner viz., T.Komala and hence, the suit is liable to be dismissed for non-joinder of proper and necessary party. With reference to the unauthorized constructions put up by the third defendant, the defendants 1 & 2 issued notice under Section 256 of the Chennai City

Municipal Corporation Act and on receipt of the same, the third defendant instituted a suit in O.S.No.4540 /2008 on the file of the City Civil Court, Chennai and after the disposal of the said suit, notice under Section 56 r/w 85 of the Tamil Nadu Town and Country Planning Act, 1971, was issued on 07.10.2011 directing the third defendant to produce the sanctioned plan. Inasmuch as the third defendant failed to produce the sanctioned plan, the defendants 1 & 2 issued a demolition notice dated 28.02.2012 under the above said Act and despite the receipt of the same, the third defendant failed to comply with the said notice and notice dated 23.04.2012 was issued to the tenants/ occupiers and the plaintiffs to discontinue the occupation and thereafter, the officials of the Chennai Corporation had locked and sealed the unauthorized portions on 17.08.2011. In furtherance of the demolition notice, the entire third floor was demolished on 08.12.2012. The defendants are taking all the actions step by step as per the provisions of the Act. It is false to state that no action had been initiated by the defendants 1 & 2 to demolish the illegal construction and that the defendants 1 & 2 are liable to compensate the plaintiffs for the illusory damages sustained by the plaintiffs. There is no nexus or cause of action on the part of the plaintiffs for claiming damages from the defendants 1 & 2. The plaintiffs have not suffered any loss and hence, there is no cause of

action for the suit and the suit is liable to be dismissed.

4. On the basis of the above said pleadings, the following issues are framed for determination:

"1. Whether the plaintiffs have sustained damages on account of alleged inaction in discharging the statutory functions by the defendants 1 and 2.

2. Whether the defendants are liable to remove the illegal construction pursuant to the provisional order dated 28.03.2008?

3. Whether the suit is bad for non-joinder of necessary parties.

4. Whether the defendants 1 and 2 are liable to pay damages of Rs.25,00,000 as claimed by the plaintiff?

5. Whether the plaintiffs are entitled to claim mandatory injunction directing the defendants to remove the unauthorized construction in the 3rd floor and the alteration made in the 1st

and 2nd floor together with a pillar erected in the ground floor.

6. To what reliefs the parties are entitled to?"

5. In support of the case of the plaintiffs, PWs 1 to 5 have been examined and Exs.P1 to 25 have been marked. In support of the case of the defendants 1 & 2, DW1 has been examined and Exs.D1 and M.O.1 have been marked.

6. Issues 1, 2, 4 & 5

It is not in dispute that the ground floor of the suit property described in the plaint schedule belonged to the plaintiffs and their mother T.Komala. Similarly, it is not in dispute that the first and second floor of the suit property belonged to the third defendant. It is found that accordingly, the parties have been enjoying the respective portions of the suit property as per their title deeds. While so, inasmuch as the third defendant, who is the owner of the first and second floor of the suit property, had put up illegal and unauthorized constructions by establishing pillars and making alterations in the first and second floor and also the open terrace, it is noted that the plaintiffs objected to the same and according to the case of the

plaintiffs, inasmuch as no action has been initiated by the defendants 1 & 2 to stop the illegal construction put up by the third defendant, they were forced to prefer W.P.No.11508/2008 for a direction to the first defendant to remove the above mentioned illegal construction. However, it is found that the plaintiffs had been directed to approach the Civil Court for appropriate reliefs in the above said writ petition. It is also noted that notices under Section 256(1) of the Chennai City Municipal Corporation Act have been issued by the defendants 1 & 2 to the third defendant in particular, to show cause why the unauthorized construction should not be demolished and the same is marked as Ex.P2. The order passed in W.P.No.11508 of 2008 has been marked as Ex.P4. It is also noted that on receipt of the above said notice, i.e. Ex.P2, the third defendant instituted O.S.No.4540/2008 for the relief of permanent injunction against the first defendant and the plaintiffs. Ultimately, the said suit came to be dismissed on 08.09.2010, which could be seen from the document marked as Ex.P5, which is the judgement and decree passed in the said suit. It is found that thereafter, representation has been given by the plaintiffs to take action which is marked as Ex.P6. On 07.10.2011, the defendants 1 & 2 called upon the third defendant to produce the sanction plan as regards the offending constructions. It is also found that the second plaintiff has preferred W.P.No.27739/2011

for a writ of mandamus to remove the illegal construction against the defendants 1 & 2. However, the said writ petition came to be dismissed with an observation that if there is any illegal construction, the Corporation is expected to take necessary action against the person, who is making illegal construction. Thereafter, it appears that another notice had been given by the plaintiffs to the first defendant for necessary action. It is seen that demolition notice has been issued to the third defendant marked as Ex.P11 on 28.02.2012 under the Town and Country Planning Act, 1971. No action had been taken by the third defendant pursuant to the same and accordingly, it is noted that notice had been given to the occupants including the plaintiffs to discontinue the occupation of the property, which had been marked as Exs.P13 & 14. The writ petition preferred by the third defendant with reference to the same viz., W.P.No.13153/2012 and 23084/2012, have come to be dismissed. As regards the above facts, except the plea of inaction on the part of the defendants 1 & 2, there is no dispute between the parties.

7. According to the plaintiffs, following the notice to discontinue the occupation, they had vacated the premises and living elsewhere. It is stated that the plaintiffs are living in a rented accommodation at Pondicherry.

8. According to the plaintiffs, inasmuch as the defendants 1 & 2 as well as the third defendant had failed to remove the illegal constructions put up in the suit property, they had been forced to live elsewhere and as the defendants had persistently refused to remove the offending constructions, despite several notices issued by the plaintiffs, according to the plaintiffs, they had been put to great loss and hardship and therefore, the plaintiffs have come forward with the suit for damages and mandatory injunction after issuing the statutory notice marked as Ex.P22.

9. As adverted to above, as regards the action taken by the defendants 1 & 2 for removing the illegal constructions, it is found that the stage had reached up to the direction of the defendants 1 & 2 to the occupants to discontinue the occupation. It is also the case of the defendants 1 & 2 that the demolition of the third floor had been made on 08.12.2012. However, it is found that after the notice to the occupants to discontinue the occupation issued under Exs.P13 & P14, no further action had been initiated by the defendants 1 & 2 to remove the offending constructions.

10. It is the case of the plaintiffs that on account of inaction on the part of the defendants, they had been put to serious damages and

accordingly, have come forward with the suit claiming damages. The said case of the plaintiffs is seriously controverted by the defendants 1 & 2. According to them, there is no damage incurred by the plaintiffs as such and the defendants have taken adequate action to remove the offending constructions and hence, according to them, the plaintiffs are not entitled to obtain the reliefs sought for. In the light of the above defence set out by the defendants 1 & 2, it is for the plaintiffs to establish that they had sustained damages on account of inaction, if any, on the part of the defendants as put forth by them.

11. As seen from the evidence adduced on the part of the plaintiffs and also the documents marked in this case, it is found that in the proceedings initiated earlier to the suit as regards the removal of the offending constructions, the High Court as well as the City Civil Court have not found fault on the part of the defendants 1 & 2 in taking action against the offending constructions. It is found that the defendants 1 & 2 have taken suitable and necessary action to remove the offending constructions as per law by issuing necessary notices. It is also admitted that the third floor had been demolished by the defendants 1 & 2. However, the fact remains that after the issuance of the notice to discontinue the occupation, no further action seems to have been initiated by the defendants 1 & 2.

12. Be that as it may, as regards the claim of the plaintiffs for damages from the defendants, it has to be held that there is no material as such placed by the plaintiffs to show that they had been put to damages on account of any inaction of the defendants. It is found that on account of the lis initiated by the third defendant before the City Civil Court as well as High Court, the defendants 1 & 2 could not initiate immediate action against the offending constructions. On the other hand, it is found that the defendants 1 & 2 have been taking appropriate actions against the offending constructions as discussed above and it has come to the stage of issuance of the notice to the occupants to discontinue the occupation.

13. The claim of the plaintiffs that they had vacated the premises as such is disputed. Equally, the claim of the plaintiffs that they are residing in a rented building is also disputed. As regards the claim of the plaintiffs that they are residing in a rented premises at Pondicherry, there is no acceptable material as such. The evidence of PWs 2 to 4 cannot be straightaway accepted sans acceptable documentary proof. It is found that PWs 2 to 4 are closely related to the plaintiffs and as such their evidence that the plaintiffs are residing

in a rented building at Pondicherry cannot be accepted sans documentary proof. The plaintiffs having come forward with the suit for damages has to establish that they had sustained damages on account of alleged inaction on the part of the defendants in removing the offending constructions. However, when it is noted that the defendants 1 & 2 have taken appropriate actions as per law to remove the offending constructions and with reference to the same, on account of the lis initiated by the parties concerned including the plaintiffs as well as the third defendant, further quick action cannot be taken without following the procedures contemplated as per law, it cannot be held without proof that the plaintiffs had sustained damages on account of inaction on the part of the defendants 1 & 2. When the same is controverted by the defendants 1 & 2 specifically, it is for the plaintiffs to establish the same. However, it is found that the plaintiffs have failed to establish any nexus between so-called inaction on the part of the defendants 1 & 2 and the alleged damages said to have been sustained by them with reference to the same.

14. The counsel for the defendants, in support of his case, relied upon the decisions reported in ***CDJ 2012 MHC 5420 (Marappan & Others Vs. T.K.Ramasamy)***, ***CDJ 2013 DHC 1588 (Pramod Kumar Oberoi Vs. Indian Sugar & General Engineering***

Corporation & Others), and CDJ 2017 MHC 686 (The Chairman cum Managing Director, Neyveli Lignite Corporation Limited Vs. J.Angela & Another). The principles of law adumbrated in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

15. Considering the proposition of law on the question of awarding damages, inasmuch as it is noted that the plaintiffs as such have failed to establish that they had actually sustained any damages on account of the so-called inaction on the part of the defendants to remove the offending constructions, it could be seen that the plaintiffs cannot be granted the relief of damages, as such, as prayed for. As rightly put forth by defendants 1 & 2, the alleged damages suffered by the plaintiffs should have direct nexus with the alleged inaction on the part of the defendants as regards the subject matter and when it is noted that defendants 1 & 2, from the inception, had taken appropriate action to remove the offending constructions, it could be seen that the plaintiffs cannot seek any damages as such as prayed for. It is noted at this juncture that the plaintiffs have not approached the defendants 1 & 2 till the offending constructions are completed by the third defendant. Only on completion of the same, it is found that the plaintiffs have approached the defendants 1 & 2 as well as taken

further legal action. When it is noted that as regards the illegal constructions put up by the parties concerned on being apprised, the defendants 1 & 2 have taken due action pursuant thereto, considering the various lis instituted in the interregnum by the parties concerned, it cannot be held that the defendants 1 & 2 have not taken any action to remove the offending constructions. In such view of the matter, the claim of the plaintiffs that they had been put to damages on account of the alleged inaction on the part of the defendants 1 & 2 in removing offending constructions as such cannot be accepted.

16. As regards the evidence of Engineer examined as PW5, it has to be held that the testimony of PW5 is not helpful to the plaintiffs' case as regards the claim of damages. Further, as rightly put forth by defendants 1 & 2, the evidence of PW5 as regards the instability of the suit property as such could not be relied upon inasmuch as the defendants 1 & 2 have taken up necessary action to remove the offending constructions. I therefore hold that, resultantly, the evidence of PW5 is not germane to decide the issues involved in this suit.

17. In the light of the above discussions, I hold that the plaintiffs have failed to establish that defendants 1 & 2 have failed in their duties in taking action against the removal of the offending constructions. I hold that, consequently, the plaintiffs are not entitled to obtain any damages from the defendants as such.

18. The facts and circumstances of the case as well as the evidence adduced in the matter, without any ambiguity, point to the fact that the offending constructions had been put up in the suit property. Accordingly, it could be seen that actions have been initiated by defendants 1 & 2. With reference to the same, it has come to the stage of issuance of the notice to the occupants to discontinue the occupation. Thereafter, no further action seems to have been initiated. It is not made clear as to why no further action has been initiated with reference to the same. When it is found that the lis initiated by the third defendant with reference to the same have come to be disposed of and when there is no legal impediment, thereafter on the part of the defendants 1 & 2 to proceed further, pursuant to the issue of notices to discontinue the occupation to the parties concerned, it has to be held that defendants 1 & 2 have the duty and responsibility to complete the process and ensure that the offending constructions are removed in accordance with law. To the above

extent, it has to be held that the defendants 1 & 2 are liable to remove the offending constructions as per law. I therefore hold that the defendants 1 & 2 are liable to remove the unauthorized and offending constructions put up in the suit property in accordance with law and to the above extent, the plaintiffs are entitled to obtain the relief of mandatory injunction. Issues 1,2,4 & 5 are accordingly answered.

19. Issue No.3.

The defendants 1 & 2 have taken a plea that the suit is bad for non joinder of co-owner i.e. T.Komala, who is the mother of the plaintiffs. However, when it is found that the mother of the plaintiffs T.Komala have adduced evidence in support of the plaintiffs' case as PW4 and no grievance has been raised by her as regards the institution of the suit by the plaintiffs, it could be seen that PW4 has also lent her support to the plaintiffs in filing the suit. In such view of the matter, I hold that the failure of the plaintiffs in impleading their mother T.Komala as a party to the proceedings is not fatal to the plaintiffs' case. I therefore hold that the suit is not bad for non joinder of proper and necessary party as claimed by defendants 1 & 2 and accordingly, issue No.4 is answered.

20. Issue No.6

The defendants 1 & 2 are directed to remove the unauthorised

and offending constructions put up in the suit property in accordance with law in continuation of the action already initiated by them with reference to the same as expeditiously as possible. Accordingly, the plaintiffs are granted the relief of mandatory injunction. In other respects, the suit is dismissed. Considering the facts and circumstances of the case, there is no order as to costs.

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Index : Yes/No

Internet:Yes/No

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T.RAVINDRAN,J.

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