

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2018

Coram

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

O.S.A.Nos.50 to 59 of 2018
and
C.M.P.Nos.3310 to 3319 of 2018

O.S.A.No.50 of 2018

M/s.Sterling Garden and Foundations
Apartment Owners Association
rep. by its Secretary Muthukumar .. Appellant(in all)

Vs

- 1.Hyder Ali
- 2.Sadiq Ali
- 3.Pyareylal Sethiya
- 4.Shanthi Devi Sethiya
- 5.P.Rajendra Kumar Sethiya
- 6.P.Anil Kumar Sethiya
- 7.P.Pankaj Kumar Sethiya

8.The Sub Registrar,
Adayar, Chennai - 20.

9.The Collector,
Chennai District,
Singaravelar Maligai,
Rajaji Salai, Chennai - 1.

10.The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai - 3.

11.The Revenue Officer,
Greater Chennai Corporation,
Rippon Building, Chennai - 3.

12.The Executive Engineer,
Greater Chennai Corporation,
Zone 13, Adyar, Chennai - 20.

13.The Assistant Engineer,
Greater Chennai Corporation,
Division 172, Kotturpuram,
Chennai - 85.

14.The Area Engineer,
Chennai Metro Water Supply and
Sewerage Board,
No.42, Ist Main Road,
Indra Nagar, Adayar,
Chennai - 20.

15.The Assistant Engineer,
TANGEDCO,
No.24, Eri Karai Salai,
Kottur Garden, Chennai - 85.

16.The Inspector of Police,
J4 Kotturpuram Police Station,
Kotturpuram, Chennai - 85. ... Respondents (in all)

(O.S.As dismissed as against R2 to R7
vide order dated 02.04.2018 in
O.S.A.Nos.50 to 59 of 2018)

Prayer in O.S.A.No.50 to 59 of 2018: Appeal preferred under
Order XXXVI Rule 9 of O.S. Rules r/w Clause 15 of Letters
Patent against the order dated 12.01.2018 in O.A.No.1038 of 2017
to 1043 of 2017 in C.S.No.795 of 2017.

O.A. No.1038 of 2017:-

Original Application praying that this Hon'ble Court be
pleased to pass an order of interim injunction restraining the
first respondent, his agents, men or any one claiming under him
from proceeding with any construction in suit schedule-B
mentioned property hereunder pending disposal of the suit.

O.A. No.1039 of 2017:-

Original Application praying that this Hon'ble Court be
pleased to pass an order of interim injunction restraining the
first respondent, his agents, men or any one claiming under him
from accessing schedule-B mentioned property through Karunanithi
3rd Street, Kottur, Chennai-600 085 pending disposal of the suit.

O.A. No.1040 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the fifteenth respondent, his officers, subordinates, or anyone claiming under him from granting permanent electricity connection to the Schedule-B mentioned property hereunder from Karunanithi 3rd Street, Kottur, Chennai-600085 pending disposal of the suit.

O.A. No.1041 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the fourteenth respondent, his officers, subordinates or any one claiming under him from granting Water and Drainage Connection to the Schedule-B mentioned property hereunder from Karunanithi 3rd Street, Kottur, Chennai-600085 pending disposal of the suit.

O.A. No.1042 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the tenth respondent, his officers, subordinates or any one claiming under him from issuing completion certificate to the schedule-B mentioned property pending disposal of the suit.

O.A. No.1043 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the first respondent, his agents, men or any one claiming under him from alienating the suit Schedule-B mentioned property or any part thereof to third parties pending disposal of the suit.

A. No.7658 & 7659 of 2017:-

Application praying that this Hon'ble Court be pleased to pass an order vacating the order of 'Status Quo' dated 13.10.2017 passed in O.A. No.1041 & 1040 of 2017.

A. No.7660 & 7661 of 2017:-

Application praying that this Hon'ble Court be pleased to pass an order vacating the order of ad-interim injunction dated 13.10.2017 passed in O.A. No.1039 & 1038 of 2017.

CS.795/17 PRAYER:

The Plaintiff, therefore prays that this Hon'ble court may be pleased to pass Judgment and decree:-

- a) for permanent injunction, restraining the 1st Defendant his agents, men and any one claiming under him from accessing the B-Schedule property hereunder from Karunanithi 3rd Street, Kottur,

Chennai-85.

- b) To declaration that the sale deed dated 30.10.2006, bearing Document No.2231 of 2006 of SRO, Adyar, showing address as Old Door No.27, New Door No.14, Varadhapuram 2nd Street, Kottur, Chennai-85 and more fully described in the Schedule-B hereunder is fraudulent, null, void and inoperative.
- c) To declaration that the address of the B-Schedule property shown as Door No.1/B, Karunanithi 3rd Street, Kottur, Chennai-85 (previously Varadhapuram 2nd Street, Old Door No.27, New Door No.14) and the said portion of the sale deed dated 28.09.2011 bearing Document No.2024/2011 of SRO, Adyar is fraudulent, null and void and inoperative.
- d) To declaration that the address of Schedule-B property shown as Door No.1/B, Karunanithi 3rd Street, Kottur, Chennai-85 (previously Varadhapuram 2nd Street, Old Door No.27, New Door No.14) and said portion of the sale deed dated 3.2.2012, bearing Document No.206/2012 of SRO, Adyar is fraudulent, null, void and in-operative.
- e) For mandatory injunction, directing the 9th Defendant to cancel the Town Survey Land Register entry issued in favour of the 1st Defendant bearing No.SD/28/08-09/TR, dated 27.6.2016, pertaining to Schedule-B mentioned property.
- f) For mandatory injunction, directing the 10th Defendant to cancel the building plan approval, bearing PPA/101609/2014, dated 27.06.2014, showing site address as Door No.14/27, Karunanithi 3rd Street, (formerly Varadhapuram 2nd Street) Kottur, Chennai-85, issued to the 1st Defendant and more fully described in the Schedule-B hereunder;
- g) For mandatory injunction, directing the 11th Defendant to cancel the property tax assessment pertaining to Bill No.13-172-05442-000/09-138-0628-024, issued in favour of the 1st Defendant, showing the address as No.1B(1B), Karunanithi 3rd Street, Kottur, Chennai-85 and more fully described in the Schedule-B hereunder.
- h) For mandatory injunction directing the 14th Defendant to cancel the water and sewerage connection bearing CMC.No.13/172/05442/000, issued

in favour of the 1st Defendant, showing the address as 27, Varadhapuram 2nd Street, Kottur, Chennai-85 and more fully described in the Schedule-B hereunder.

i) For mandatory injunction, directing the 15th Defendant to cancel the electricity service connection in favour of the 1st Defendant for Schedule-B mentioned property showing its address as 1B or 27/14, Karunanithi 3rd Street, Kottur, Chennai-85.

j) For mandatory injunction, directing the 1st Defendant to restore the wall being the suit Schedule A and delineated in the sketch annexed herewith and reconstruct the same at his cost, failing which direct the 10th Defendant to restore the wall.

For Appellant ... Mr.B.Mohan in all the appeals

For Respondents.. Mr.V.Lakshmi Narayanan
for R1 & Rs
Mr.E.Manoharan,
Addl. Govt. Pleader for
R8, R9 and R16
Mr.N.Ramesh for R14
Ms.Karthika Ashok for R10 to R13
Others - No appearance

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

These appeals have been preferred by the appellant/plaintiff in the suit. The suit has been filed seeking comprehensive prayers ranging from permanent injunction, declaration and mandatory injunction. Pending the suit, applications have been filed seeking interim orders. Applications have been rejected by the learned single Judge on two grounds viz., the applicant has not approached the Court with clean hands and if the applications are allowed, access to public road would be curtailed viz., Karunanidhi 3rd Street. Challenging the same, the present appeals have been filed.

2.Learned counsel appearing for the appellant would submit that there was in fact a wall which is the boundary of

Karunanidhi 3rd Street. With the abovesaid wall, the first respondent did not have any access to Karunanidhi 3rd Street. The only access was through Varadapuram 2nd Street. At the time of seeking approval, Karunanidhi 3rd Street has been shown as Varadapuram 2nd Street by noting it as formerly. Therefore, the appeals will have to be allowed.

3. Learned counsel appearing for the first respondent would submit that there was no wall as alleged by the appellant. All along, the private respondents have been using public road viz., Karunanidhi 3rd Street, the suit filed is not maintainable. In any case, in view of the undisputed fact that the road being public, there is no case for granting interim orders.

4. Learned counsel appearing for the Corporation, placing reliance upon the report filed on behalf of respondents 10 to 13 as directed by this Court, would submit that there is no evidence to show that there was a wall in existence constructed earlier at the instance of the public authorities continuing till today. Thus, if at all, there was any wall, as contended by the appellant, it was not erected by the public authorities and factually the situation as on today is that the first respondent is having access to Karunanidhi 3rd Street without the existence of the wall. Reliance has been made on para 4 of the report, which reads as under:

4. It is submitted that on comparison with the Tahsildar's Report the compound and gate erected by the 1st respondent stands little away (40 sq.ft.) from the actual boundary, which is within the premises of the 1st respondent. Further, the property taxes, to the property are being assessed from the year 2012-2013 in the name of Hyder Ali, wherein also the Karunanidhi 3rd Street is the address mentioned for the property. The layout, where the petitioner's property and the disputed property is situated is an unapproved layout, where the roads are determined as public road, which can be accessed by any public. Further, it is stated that on perused of the documents at Sub Registrar Office, it is found that the parent documents in two prior transactions, shows the same boundary. The boundaries in the title deed shows that the disputed property has its frontage in the Karunanidhi 3rd Street, in this regard, a Certificate had been obtained from the Sub Registrar which is also annexed herewith.

5. By way of reply, learned counsel appearing for the appellant would submit that objections have been filed to the aforesaid report.

6. On a query raised by us, learned counsel for the contesting first respondent would fairly submit that there is no disturbance or interference on behalf of the private respondents for the appellant to have access including ingress and egress to the public road - Karunanidhi 3rd Street to be used by the appellant. It is further submitted by the learned counsel that the same position will have to be maintained by the appellant as well as its members towards the usage of the public road by the private respondents so that they can also have free access.

7. On a perusal of the order passed by the learned single Judge, we do not find any error warranting interference on merits. After all, while considering Order 39 Rules 1 and 2 C.P.C., we have to see the irreparable loss apart from prima facie case and balance of convenience. The learned single Judge took into consideration all the three factors and held that no case has been made out for granting injunction. A factual finding has been given that in the event of granting injunction, the first respondent would be virtually prevented from having access to the public road. Now there is no dispute on the fundamental fact viz., Karunanidhi 3rd Street is a public road and therefore, the first respondent can have access to his property. Secondly, as per the report of respondents 10 to 13, there is no wall as on today. Therefore, the only question to be considered in this appeal is the access that is available to the appellant. This issue also is not required to be gone into in view of the fair submission made by the learned counsel for the contesting respondent that the access, both ingress and egress will never be obstructed.

8. In such view of the matter, there shall be a limited injunction restraining the private respondents from preventing the members of the appellant from having access including ingress and egress to the Karunanidhi 3rd Street through its gate. Similarly, it is made clear that the appellant or its members shall also take appropriate steps not to prevent the access including ingress and egress of the private respondents from their respective properties to Karunanidhi 3rd Street. The petitions filed for injunction have been ordered accordingly and C.M.P.Nos.3310 to 3319 of 2018 stand disposed of. It is made clear that all the observations made by the learned single Judge as well as by us are only meant for the purpose of dealing with interlocutory applications alone and thus will not have any bearing in the main suit.

9.With the above observation, these Original Side Appeals are disposed of. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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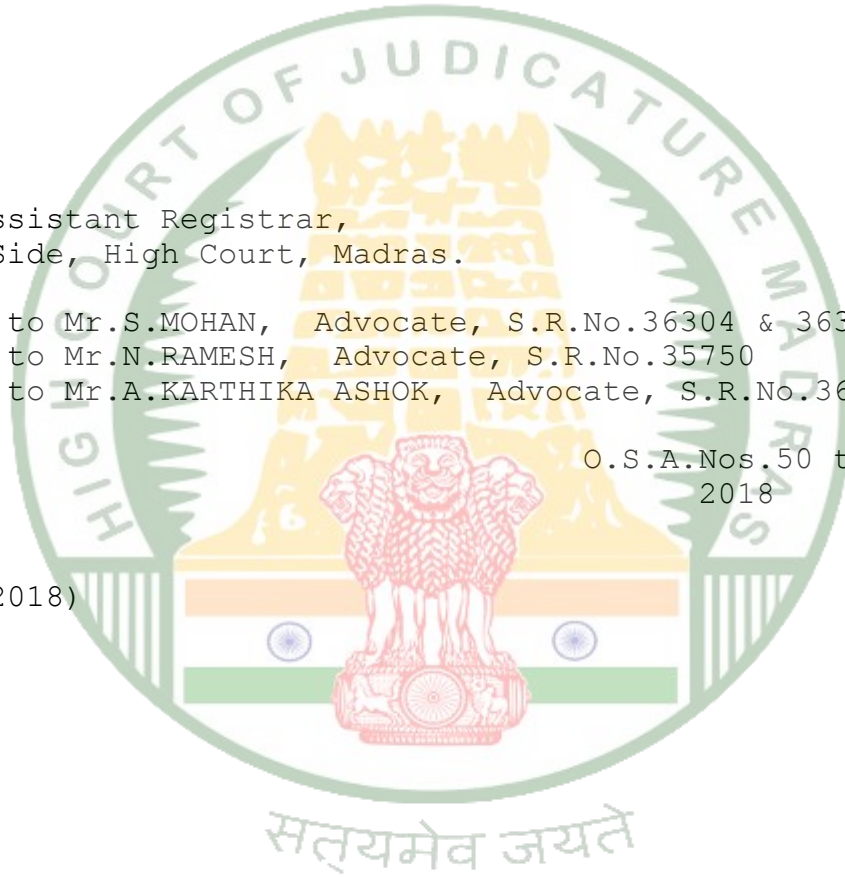
To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+4cc to Mr.S.MOHAN, Advocate, S.R.No.36304 & 36303
+1cc to Mr.N.RAMESH, Advocate, S.R.No.35750
+1cc to Mr.A.KARTHIKA ASHOK, Advocate, S.R.No.36237

O.S.A.Nos.50 to 59 of
2018

RV(CO)
TR(29/06/2018)



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