

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

SECOND APPEAL No.1365 of 2018

14.09.2018

Between:

Smt.Dr.Raghupatruni Surya Prabha

..Appellant

and

The Greater Visakhapatnam Municipal Corporation,
Visakhapatnam

..Respondent

Counsel for the appellant: Mr.N.Ashwani Kumar

Counsel for the respondent: --

The Court made the following:



JUDGMENT:

This Second Appeal is filed against concurrent judgments of the Courts below, whereby the relief of injunction restraining the respondent, which is Municipal Corporation, from interfering with the appellant's possession, use, occupation and enjoyment of the suit schedule property – a residential flat - G-I in a group house/building, including the demolition of any portion thereof.

2. It is the pleaded case of the appellant that she purchased the suit schedule flat under registered sale deed, dated 30.07.2010, from Kalidindi Venkatanarayana Raju and others, for a valuable consideration; that the flat owners lodged a complaint before the respondent Corporation about existence of ground floor flat and that on such complaint, one person claiming to be the staff of the respondent Corporation came to the suit schedule flat and informed the appellant that the flat will be demolished at any time.

3. The respondent Corporation filed a written statement before the trial Court, wherein it was averred that as per the approved plan, dated 21.12.2005, total ground floor, except one small room for watchmen, was earmarked for parking purpose and that the suit schedule flat was constructed in the parking place without permission.

4. The trial Court framed the following issues.

1. Whether the plaintiff is entitled to permanent injunction as prayed for?
2. To what relief?

On appreciation of the oral and documentary evidence, the trial Court held that the appellant, knowing fully well that the suit schedule flat is not approved in the sanctioned plan, purchased the same and that the appellant, in her evidence as P.W.1, admitted that the respondent Corporation approved the building plan for the ground floor only for construction of watchman room and the remaining area was reserved for car parking. On the strength of the said admission, the trial Court has dismissed the suit. The lower appellate Court has confirmed the judgment of the trial Court.

5. Mr.N.Ashwani Kumar, learned counsel for the appellant, has submitted that so far, the respondent Corporation has not initiated proceedings under Section 452 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') and that therefore, both the Courts below had committed error in declining injunction. I do not find any merit in this submission. Admittedly, as the suit schedule flat is not part of the approved plan, the appellant is not entitled to an injunction restraining the respondent Corporation from taking any action against the suit schedule flat, including its demolition. The appellant has filed the suit only on the apprehension that the respondent Corporation may demolish the

suit schedule flat. Evidently, the appellant wanted to preempt any action by the respondent Corporation by filing the suit in anticipation of such action. As the law requires the respondent Corporation to take action only by following the due procedure, there is no warrant to presume that the respondent Corporation would demolish the suit schedule flat without following the procedure envisaged by the Act. Both the Courts below have, therefore, rightly declined to grant injunction. Hence, I do not find any substantial question of law for interference with the concurrent findings rendered by the Courts below.

6. The Second Appeal is, accordingly, dismissed.

7. As a sequel to dismissal of the Second Appeal, I.A.No.2 of 2018 filed by the appellant for interim relief stands dismissed as infructuous.

14th September, 2018
GHN

C.V.NAGARJUNA REDDY, J