

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.464 of 2018

Mr.S.Balaji

..Appellant/3rd Defendant

Vs.

1.M.S.A.Jayaraj

..1st Respondent/Plaintiff

2.The Managing Director
Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.

3. Susheel Parikh ..2 & 3 Respondents/1 & 2 Defendants

Prayer : First Appeal filed against the Judgment & Decree dated 19.01.2018 passed in O.S.No.10783 of 2010 on the file of the IV Additional City Civil Court, Chennai.

For Petitioner : Mr.S.Udhayakumar

For Respondents : Mr.B.Narayanan Cav for R1

ORDER

The appeal suit is filed against the Judgment and decree dated 19.01.2018 passed in O.S.No.10783 of 2010 on the file of the IV Additional City Civil Court, Chennai.

2. The third defendant is the appellant and the first respondent/Mr.M.S.A.Jayaraj, instituted a suit for permanent injunction and for mandatory injunction as well as to issue certain directions. Six reliefs were sought for in the plaint and the suit was contested between the parties. The Trial Court considered the issues elaborately and granted the relief as such sought for in the plaint by the plaintiff. Thus, the third defendant is constrained to move the present appeal suit challenging the said decree.

3. The issue in nutshell to be considered is that whether the co-owner is entitled to use the common area for his exclusive usage that too in an apartment without the consent of all other co-owners residing in that Colony. When such dispute arose regarding the usage of common area in an apartment, the suit came to be instituted.

4. This Court is of the considered opinion that in a common living, more specifically, in flats in Chennai city, such disputes are common and it is to be noted that all co-owners are duty bound to respect the rights of each co-owner for the purpose of peaceful living in flats/apartments.

5. Undivided shares are registered with reference to each co-owner. There cannot be any demarcation of specific land for such co-owner. This being the modern concept, in the matter of apartments, it is necessary that all such co-owners respect the usage of common area allotted for usage of all concerned. Thus, one co-owner cannot have any exclusive right in respect of common areas. Common areas are to be made available for the usage of all other co-owners in the manner approved and there cannot be any encroachment of common area by any one of the co-owner. If at all any specific usage of common area is required by a co-owner, then it is necessary that consent of all other co-owners must be obtained in writing, then alone, they are entitled to use such common area in a particular or specific manner and not otherwise.

6. Considering the nature of the disputes and perusal of the findings arrived by the trial Court, this Court do not find any perversity or infirmity as such in considering the issues raised before the trial Court. However, this Court thought it fit that such issues are to be resolved between co-owners as they continue to reside in the same apartment and an animosity need not be created which would result in losing the peaceful living in apartments. Under these circumstances, the respective learned counsels appearing on behalf of the appellant as well as the respondent also extended their co-operation for arriving a consensus between the parties and suggestions were made that an alternate car parking may be identified for the usage of the appellant in any other common area available in the Colony. Accordingly, efforts were taken both by the appellant as well as by the first respondent in consultation with other co-owners, who in turn, also agreed to provide car parking in the common area, which is already available. It is brought to the notice of this Court that one car parking has already been identified for the usage of the appellant and other co-owners also given their consent for such usage. Under these circumstances, the disputes in this appeal suit can be resolved.

7. Under these circumstances, the appellant filed an affidavit stating that the place identified by the first respondent in consultation with other co-owners is agreeable to him and he will park the car hereinafter in the newly earmarked area, which is a common area.

8. So also, the first respondent filed an affidavit stating that earmarked is also a common area, which is unallotted in favour of any one of co-owner and therefore, the

appellant is at liberty to park his car in unallotted area, which is available in colony. In view of the fact that the appellant also agreed to shift the car parking in newly unallotted area, the issues are resolved between the parties. The parties have made a submission that in view of the fact that the issues between them are resolved, the demolished wall, which was prevailing originally, is to be restored by way of re-construction.

9. It is brought to the notice of this Court that the third respondent has also made certain alteration by demolishing the original compound wall and by putting up a grill gate. It is made clear that all such demolished portion of the original wall is to be restored by re-constructing the same and status quo ante in this regard is maintained in all respects. The co-owners have no right to demolish any compound wall and occupy the common area, which is made available for common use of all co-owners. In this regard, it is to be noted that wherever such alterations are made affecting the rights of co-owners that also to be cleared.

10. Rights and duties are in-separable. When a person claims right equally, he has to keep in mind that duties are also to be performed. Under these circumstances, the parties to the litigation must realize that, when they are claiming the rights in respect of their undivided share, they are duty bound to respect the undivided shares, which are all made available for common usage of all the co-owners. In the absence of any such mutual respect between the co-owners, it would be very difficult to live in apartments in the modern days. Respect the feelings, sentiments, rights by each other is of paramount importance for the purpose of avoiding unnecessary disputes.

11. This being the facts and circumstances now placed, adjudication of the entire issues as well as the grounds raised in the appeal suit became unnecessary. The parties have arrived a consensus and filed their respective affidavits in order to restore the original position and to maintain peace and exercise their powers as per the deed of sale and the agreement and in accordance with rules and regulations. Accordingly, the following orders are passed:

(i) The appellant is directed to remove Grill Gates and other connected infrastructure, if any, within a period of 15 days from the date of receipt of a copy of this judgment. The said area meant for common usage must be made available for usage of all other co-owners.

(ii) The appellant is directed to construct the demolition portion of the compound wall and restore the original position within a period of 15 days from the date of receipt of a copy of this judgment.

(iii) The third respondent is directed to remove all the gates including car parking gates abutting the common area and restore the original compound wall within a period of 15 days from the date of receipt of a copy of this judgment.

(iv) The first respondent is directed to remove the Grill Gates put up by him both in front and backside of his house and and restore the same to its original position, enabling all the co-owners to use the common area. The first respondent is directed to remove the said Grill Gates, within a period of 15 days from the date of receipt of a copy of this judgment.

(v) The respective parties are directed to complete the restoration works and report before this Court. It is made clear that the approval is granted for residential usage and all the co-owners are expected to use their respective portion allotted for residential usage and not to violate the rules and regulations in this regard and in the event of any such violation, the Association as well as individual co-owners are entitled to institute an appropriate action in this regard.

12. Accordingly, the issues raised between the parties were settled by way of compromise and the appeal suit stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

ssb

To

1. The IV Additional Judge,
City Civil Court,
Chennai.

2. The Section Officer,
VR Section,
High Court, Madras-104

+1cc to Mr.S.Udhayakumar, Advocate SR.No.17970

+3cc to Mr.B.Narayanan, Advocate SR.No.17628

A.S.No.464 of 2018

SSD(CO)

GMV (27/04/2021)

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