

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
12~10~2020	16~10~2020

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.A.No.238 of 2020 in C.S.No.156 of 2020

1. Mr.S.Sridhar
2. Mrs.S.Ganthimathi Sridhar

... Applicants

.Vs.

1. Mr.S.Sivashanmugam
S/o.A.K.K.Swaminathan
2. Mr.S.Kondappan,
S/o.A.K.K.Swaminathan
3. Mr.S.Ramakrishnan
S/o.A.K.K.Swaminathan

4. Mrs.Uma Devi,
W/o.S.Ramakrishnan

... Respondents

Prayer: Application filed under Order XIV Rule of O.S. Rules read with Order

39Rule 1 and 2 CPC for an interim injunction restraining the respondents/defendants and their men, agents, assigns and representatives from interfering with the applicants/plaintiffs peaceful possession and enjoyment of the common areas of the land described fully in the schedule to the Judge's Summons, especially interfering with the plaintiffs access to all common amenities and facilities, including the toilets and a room in the ground floor rear portion; and interfering with the plaintiffs right to make use of the common area to construct, at their cost, 2 covered car parks as stipulated in their subject Sale Deed dated 04.04.2005 pending disposal of the suit.

For Applicants : Mr.K.Ravi
for M/s.Rugan and Arya

For respondents : Mr.V.Anand

ORDER

This application has been filed for interim injunction to restrain the respondents and their men from interfering with the applicants peaceful possession and enjoyment of the common areas of the land described fully in the schedule to the Judge's Summons, especially interfering with the plaintiffs access to all common amenities and facilities, including the toilets and a room in the ground floor rear portion; and interfering with the plaintiffs right to make use of the

common area to construct, at their cost, 2 covered car parks as stipulated in their Sale Deed dated 04.04.2005 pending disposal of the suit.

2. Brief facts of the case of the applicant is as follows :

The applicant purchased an undivided share in the land measuring 1800.82 sq.ft. in the total extent of land measuring 4463 sq.ft. from the first and second defendants vide sale deed dated 04.04.2005. The sale deed also indicate that the vendor has right to put up construction in the first floor with maximum super built up area of 2685 sq.ft. above the existing ground floor building with the full rights of ownership inclusive of common amenities and all common usages free from all encumbrances. Similarly, it is also agreed between the vendor and the purchasers that they shall have right to put up construction to an extent of 2685 sq.ft. super builtup area covering the entire first floor over and above the existing building on the A schedule land and the sale is along with such rights in favour of the purchasers. The plaintiffs are provided with two covered car parking one behind the other in the ground floor area and the costs and expenses relating to the alteration and other works as required to be carried out in the frontage of the ground floor portion shall be done by the purchasers and the vendors in the

common areas and common amenities shall be borne by the vendors, the other co-owner Mrs.Umadevi and the purchasers in the ratio of 59.65 : 40.35 in accordance with their respective land holding. It is also agreed between the parties that in the event of either of the parties deciding to sell their share and interest in schedule A property or any portion thereof, together with rights attached thereto and the proportionate constructed area, the other party shall be given preference to purchase such property.

2.1 The plaintiffs after obtaining duly sanctioned plan had put up construction on the first floor with 2685 sq.ft. of building and have been living in the first floor from 2005 till date. At the request of the defendants, a single plan was submitted duly signed by the plaintiffs. The plaintiffs were given to understand that the third defendant had signed the plans as the power agent of the first and second defendants. Thus the plaintiffs believed that the third defendant at all times was acting for and on behalf of the first and second defendants. Some time in the middle of 2005, the third defendant informed the plaintiffs that the first and second defendants wanted to put up a construction on the second floor, above the plaintiffs' first floor, in proportion to the remaining UDS of 1174.52 sq.ft.

retained by the first and second defendants. Believing this to be true, the plaintiffs have signed on some plan documents and other letters as and when they were asked to by the third defendant, who made the plaintiffs believe that as the power agent he was handling all the plan approval procedures for construction on the second floor on behalf of the first and second defendants. However, the attitude of the third defendant started to act contrary to the terms and conditions in the sale deed and the third defendant is preventing the plaintiffs from using the common amenities and common area in the property. The second floor constructed by the defendants was leased out to commercial establishment without the consent or knowledge of the plaintiffs. The third defendant had also put up a service toilet and garden in the common area in the ground floor thereby preventing the plaintiffs from accessing the same and at the same time was illegally preventing the plaintiffs to put up a similar service toilet or even set up a small garden in the common area. It is his further contention that the third defendant has sold 900.41 sq.ft. undivided share and 2/3rd undivided share in the ground floor building in favour of the fourth defendant, who is the wife of the third defendant. Hence, this application.

3. It is the contention of the defendants that the suit itself is not maintainable. It is submitted that the sale in favour of his wife is only in order to clear the bank loan. As the applicants failed to purchase the remaining extent of 2/3rd share, he has sold the property to his wife. Further, several years prior to the sale, the third defendant had built the toilet and store room slightly removed from the larger building in the ground floor. The sale deed in favour of the plaintiff specifically excludes ground floor buildings. In fact, the applicants are only entitled to 150 sq.ft. for parking their two cars, which already has RCC roof. The cars of the applicants are long and hence, two cars could not be parked. The relief of the applicants for enclosed car shed, if put up, would consume large open space and the third defendant's cars cannot be parked there. In the year 2016, there were exchange of notices and as per the applicants even parking 3 cars is a hindrance to the free passage. Therefore, the contentions of the applicants is not maintainable. Hence, prayed for dismissal of this application.

4. The learned counsel appearing for the applicant submitted that though several issues have been mediated, with regard to the car parking, the matter has not been settled. It is his contention that the plaintiff is the owner of specific extent

in the 'A' schedule property in UDS 1800.82 sq.ft. It is his main contention that the purchasers namely the applicants are provided with two car parking one behind the other in the ground floor area and the costs and expenses relating to the alteration and other works as required to be carried out in the frontage of the ground floor portion shall be borne by the purchasers and the vendors in the other common areas and common amenities shall be borne by the vendors in the ratio 59.65:40.35. Hence, it is his contention that when a specific area has been sold as car parking, now the third defendant has sold the remaining 1/3rd share in the A schedule property to his wife. Thereafter, the third defendant had put up construction in the second floor and some plan approval has also been obtained. Further, the defendants are restraining the plaintiffs from using the common amenities and also two covered car parking which is provided in the sale deed in their favour. Hence, it is his contention that unless the defendants are restrained by way of an Order of injunction, the plaintiffs will be put to irreparable loss and injury and prayed for interim injunction till the disposal of the suit.

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5. Whereas the learned counsel for the respondents would submit that in the

sale deed area ear marked for car parking is only to an extent of 150 sq.ft. and the plaintiff is taking advantage of some developments in the ground floor for which they are not entitled to, claiming right to park cars. Further in the commissioner report, the car parking area of the plaintiffs is very much available. Whereas the plaintiffs want to park their long cars which is not feasible in the area covered as car parking. Hence, submitted that the injunction is not maintainable.

6. Heard both sides and perused entire materials available on record.

7. The suit has been filed for various reliefs including specific performance to execute sale deed in respect of 1174.52 sq.ft. out of undivided share in the land described in A schedule property. In nut shell, the suit has been laid to claiming preferential right for purchase of the undivided share in the land and an alternative consequential relief of declaration also sought to cancel the sale deed dated 11.05.2005 executed in favour of the fourth defendant besides claimed damages of a sum of Rs.1.5 crores towards loss of opportunity to the plaintiff and permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the common areas of the land in Plot No.207, Old

No.22, New No.12, 7th Main Road, Raja Annamalaipuram, Chennai. The suit itself has been filed for enforcing certain preferential rights. According to the defendants, the plaintiffs have not shown any interest to purchase the property. Therefore, in order to clear the bank loan and to mobilize the amount, they had sold the property.

8. Be that as it may. Whether or not option was exercised or the plaintiff has waived such right, are the matter for evidence. All these things cannot be gone into in this application. It is relevant to note that the plaintiff has purchased an undivided share in land measuring 1800.82 sq.ft. in the total extent of land measuring 4463 sq.ft. from the first and second defendants represented by the third defendant. The sale deed filed in the typed set when perused, indicate that an undivided share has been purchased, namely 1800.82 sq.ft. UDS was purchased together with the right to put up construction in the first floor with maximum super built up area 2685 sq.ft. over and above the existing ground floor building with the full rights of ownership inclusive of common amenities and all common usages free from all encumbrances. The plaintiff is given exclusive right to construct on the first floor after obtaining sanction from the appropriate authorities and

architectural works in the first floor. Similarly, it is also agreed that purchasers are provided with two covered car parking one behind the other in the ground floor and the costs and expenses relating to the alteration and other works as required to be carried out in the frontage of the ground floor portion shall be borne by the purchasers. The manner in which the expenditure has to be borne is also mentioned in the sale deed.

9. The pleadings of the plaintiffs itself indicate that subsequent to the purchase of the property, plans were obtained and constructions were put up. The Advocate Commissioner has also been appointed by this Court to note down physical features. The advocate commissioner filed a report indicating that only two cars can be parked within the covered area and one can can be parked in the small area on the left of the main parking area and there is no cover for the third car. Similarly, in page 11 of the report of the Advocate Commissioner, the Commissioner has also noted down sit out measuring 15.8 x 11 in the ground floor. It is the contention of the learned counsel for the applicants that this area is originally designated as car parking area. As per the sanction plan, filed as

document No.4, though it appears to be designated as car parking area, the report of the advocate commissioner indicate that a sit out has been put up and the area ear marked as car parking has already been encroached.

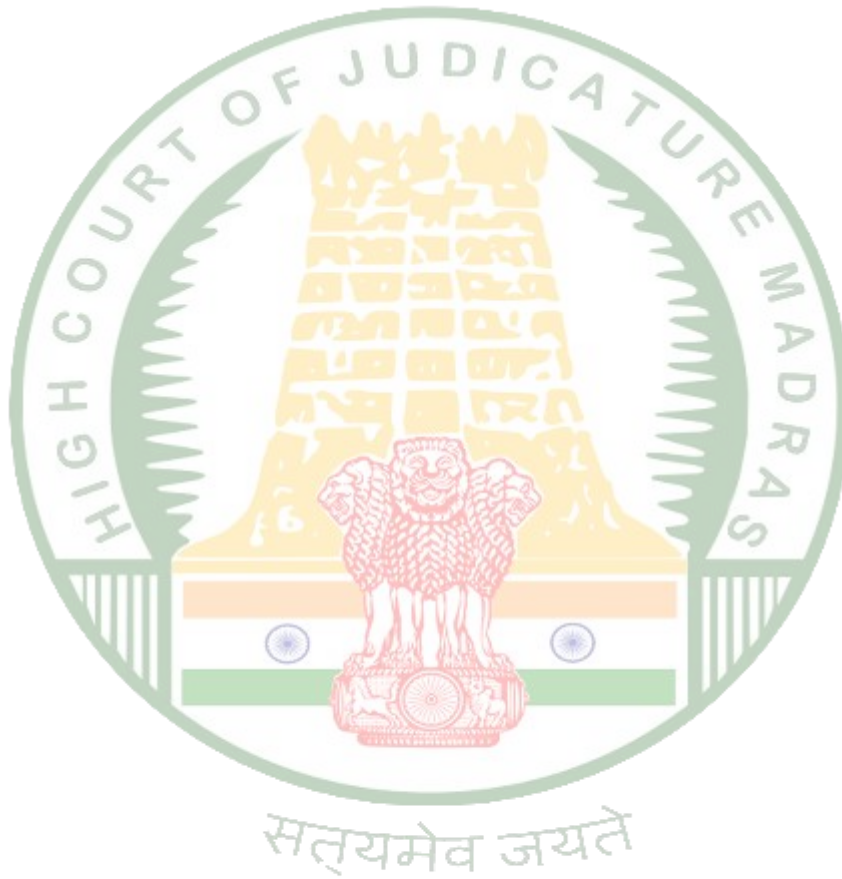
10. Admittedly, construction is also put up by both sides in the first floor and second floor and sanction plans have also been obtained from the authorities. In such view of the matter, this Court is of prima facie view that having regard to the nature of the dispute, particularly the alleged encroachment by the defendants over the alleged area ear marked for the car parking, injunction cannot be granted. Though the commissioner report is not a proof of evidence at this stage, the commissioner report prima facie indicate that cars cannot be parked as claimed by the petitioner. In such view of the matter, this Court prima facie is of the view that since the area is already said to have been encroached, injunction cannot be granted at this stage. Whether or not car parking area is comprising of 150 sq.ft. alone or more than that has to seen only in the evidence and not on the basis of mere submissions of the plaintiffs. In such view of the matter, this Court is not inclined to grant injunction. It is also made clear that the view recorded by this Court is only a prima facie view and the facts and allegations has to be

independently proved in the trial.

11. Accordingly, this application is dismissed.

16.10.2020

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N. SATHISH KUMAR, J.
VRC



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