

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Thursday, the Twentieth day of February Two Thousand Twenty

PRESENT

THE HON`BLE MR JUSTICE S.M. SUBRAMANIAM

CMP NO.11707 OF 2018

IN AS.464 OF 2018

MR.S.BALAJI

[PETITIONER]

Vs

1 M.S.A.JAYARJ

[RESPONDENTS]

2 THE MANAGING DIRECTOR
TAMIL NADU HOUSING BOARD,
NANDANAM, CHENNAI-35.

3 MRS.SUSHEEL PARIKH

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay the operation of the decree and Judgment passed in OS.No.10783/2010 dated 19/01/2018 on the file of the IV Additional City Civil Court, Chennai (in CMP.11707/18) pending disposal of the above First Appeal 464/18.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.S.UDHAYAKUMAR Advocate for the petitioner and of M/S.N.NARAYANAN Advocate (Caveator) on behalf of the respondents the court made the following order:-

The appeal suit is filed against the judgment and decree dated 19.01.2018 passed by the learned IV Additional Judge, City Civil Court, Chennai in O.S.No.10783 of 2010.

2. The dispute arose on account of the fact that the appellant has demolished a portion of the common Compound Wall and put up a big grill gate for parking his car in front of his flat.

3. The admitted facts are that the appellant as well as the respondents are co-owners and the car parking area, now under the usage of the appellant, is the common area allotted for the usage of all co-owners residing in that flat.

4. The first respondent / plaintiff instituted a suit for permanent and mandatory injunctions. After adjudication, the suit was decreed in favour of the plaintiff. The third defendant filed an appeal suit.

5. The learned counsel appearing on behalf of the appellant mainly contended that the appellant is parking his car in the said area continuously. However, the learned counsel for the first respondent/plaintiff disputed the said parking by stating that he has no right to park his car as the said area is the common area falls within the undivided share allotted in favour of all co-owners. Thus, he has no right to park his own car in the said area, more specifically, by demolishing the common Compound Wall and putting up a big grill gate and a car shed by asbestos sheet.

6. This Court is of the opinion that it is a settled proposition that any common area allotted in favour of co-owners, a single owner cannot have any separate right and the common area must be made available for the usage of all co-owners, who all are holding undivided share in respect of the property in question. Thus, the very usage of common area is available to all co-owners and no obstructions can be made by any one of the owners and any such obstructions cannot be permitted and therefore, this Court is not inclined to grant stay of the judgment and decree as the appellant has no right to park his car in the common area meant for the usage of all co-owners, who all are holding undivided share in the suit property.

7. Thus, the appellant cannot use the said common area as his car parking and with reference to the parking of the car belongs to the appellant, he is at liberty to discuss with other co-owners and arrive a decision. In respect of the common area, no individual co-owner has got any right to tamper with the common area by demolishing the Compound Wall or to put up any grill gate. Thus, the appellant should remove the car park as well as the first respondent shall remove the grill gate put up without the consent of all co-owners.

8. Accordingly, the present Civil Miscellaneous Petition stands dismissed. Post the Appeal Suit No.464 of 2018 under the caption 'For Orders' on 26.02.2020.

-sd/-

20/02/2020

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE REGISTRAR,
CITY CIVIL COURT, CHENNAI.

C.C. to M/S.S.UDHAYAKUMAR Advocate on payment of necessary charges

Order
in
CMP.11707/2018
in
AS.464/2018

Date :20/02/2020

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
SDR 16.08.2018
SM 24/02/2020



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