

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.09.2020

Pronounced on : 11.09.2020

CORAM

THE HONOURABLE MR. JUSTICE **C.V.KARTHIKEYAN**

A.No.1797 of 2020

in

C.S. (Comm. Div.) No.374 of 2017

1.G.R.Apparaj
President,
Chinthadripet Fish & Perishable
Products Traders Society,
No.24, Arunachala Naicken Street,
Chinthadripet,
Chennai – 600 002.

2.B.Ganapathi
3.M.Mohammed Ali
4.P.Ramadoss
5.G.R.Apparaj
6.K.Basker
7.M.C.Ravi
8.S.Anbarasan
9.K.R.Kalaimani
10.J.T.Jalal

2 to 10 having shops at
No.24, Arunachalam Street,
Chinthadripet,
Chennai – 600 002.

...Applicants/Plaintiffs

Vs.

1.C.R.Kasthuri
W/o.Late C.R.B.Ramesh Babu

2.Sarayou Basanth
W/o.Late C.R.Basanth Babu

3.B.Saaru Rupa
D/o.Late C.R.Basanth Babu

4.B.Hema Rupa
D/o.Late C.R.Basanth Babu

1 to 4 are residing at
E-2, Yelan Apartments,
No.10, Railway colony 4th Street,
Aminjikarai, Chennai – 600 029.

5.J.M.H.Imran Khan,
S/o.J.M.Haroon
No.7, Vijayaraghava Lane,
T.Nagar, Chennai – 600 017.

...Respondents/Defendants

Prayer:- This application filed under Order XIV Rule 8 of the Madras High Court O.S Rules R/w. Section 151 of C.P.C., prayed to direct the 5th respondent / 5th defendant herein to restore the common passage in between the 19 shops dug by him in gross violation of the order dated 06.06.2018 passed by this Court within the time frame to be fixed by this Court, failing which permit the applicants/plaintiffs herein to relay the common passage in between the 19 shops at our cost in the suit property morefully described in the schedule.

For Applicants : Mr.T.V.Ramanujun, Senior Counsel.

For R5 : Mr.S.R.Ragunathan.

ORDER

This application has been filed by the plaintiffs in the suit, seeking a direction against the 5th respondent / 5th defendant, to restore the common passage in between the 19 shops dug by him, in violation of the order dated 06.06.2018, within a time frame to be fixed by the Court, failing which to permit the applicants / plaintiffs herein to relay the common passage in between the 19 shops at their own cost.

2.In the affidavit filed in support of the said application, it had been stated that the suit had been filed by the President of the Chinthadripet Fish and Perishable Products Traders Society and its members, seeking enforcement of Clause 16 of an agreement dated 06.05.1990, to direct the defendants to execute a sale deed in respect of the schedule mentioned property in favour of the plaintiffs and for permanent injunction restraining the defendants from alienating the property or disturbing the peaceful possession and enjoyment by the plaintiffs and its members.

3.It had been stated that on 06.06.2018 in O.A.No.513 of 2017, this Court had passed an order restraining the 5th defendant from interfering with the possession of the members except with due process of law and granted him right to initiate legal proceedings for eviction, if rents are not paid for the portions in occupation of the tenants and that he should maintain the suit property and provide a clean environment in the suit property, not only for the traders but also for the general public and that if he initiates any legal proceedings, which comes under the category of “due process of law” he must bring them to the notice of this Court. An Appeal in O.S.A.No.197 of 2018 was filed and the Division Bench had confirmed the order of injunction and had also recorded the undertaking given by the 5th respondent, that he would not interfere with the possession and enjoyment.

4.It had been stated that due to COVID-19 pandemic situation, the Greater Corporation of Chennai, had ordered temporary closure of the fish market situated in the suit property and all the shops remained closed. Taking advantage of that situation, the 5th defendant had sent his men to the suit property on 17.05.2020, and had dug the common

pathway in between the 19 shops and had attempted to demolish the two feet of platform in front of all the 19 shops situated in the suit property.

5.The applicants filed O.A.No.223 of 2020 seeking an order of interim injunction restraining the 5th defendant from in any way altering the physical features of the suit property. After hearing both the sides, the Court had also granted an order of interim injunction on 17.06.2020. Thereafter, the Greater Corporation of Chennai, granted permission to reopen the market on 06.08.2020. It had been stated that the 5th defendant, after digging the common passage, did not taken any steps to relay the common passage and therefore, the applicants were not able to open the shops and it had been alleged that this was an interference with the possession and enjoyment of the suit property, in violation of the order dated 06.06.2018.

6.It was further stated that the 5th defendant was not permitting the applicants to enter into the market, thereby, again causing interference with possession and enjoyment. It was stated that the 5th defendant inducted third parties to the suit property and was running the fish market

contrary to the agreement dated 06.05.1990. The applicants issued a notice on 06.08.2020 and the 5th defendant had not replied to the said notice. It had been stated that in the order dated 17.06.2020 in O.A.No.223 of 2020, this Court had recorded the submission of the counsel for the 5th defendant that the platforms are not going to be demolished in their entirety and only two feet of the platforms are going to be demolished. The fact that there was going to be demolition of part of the platform was not disputed. It had been stated that when the order of injunction is in force, the 5th defendant had dug up the floor and had also attempted to demolish two feet of the platform in violation of the order dated 06.06.2018. It is under these circumstances, that the application has been filed seeking a direction to the 5th defendant to restore the common passage and failing which, permit the applicants to restore the same at their cost.

7.A counter affidavit had been filed by the 5th defendant, in which, it had been stated that he was entitled to maintain the suit property and common areas to provide a clean environment, not only for the traders but also for the common public and that the common pathway in between

the shops was laid three decades back and due to continued footfall and presence of strong saline water and acids, normal wear and tear had developed several pot holes, cracks to the surface, which resulted in stagnation of residuary fish waste, slush and formation of water pools and there was a risk of acquiring and increasing bacteria on the fish products, which would be hazardous to the general public.

8.It had been further stated that due to the COVID-19 pandemic, the market was compulsorily shut down due to the lockdown notification of the Government and therefore, he intended to carry work for the maintenance of the market and further stated that it was informed to all the occupants and stated that there was a raised platform in front of the shops measuring 16 x 11 Sq.ft., and that he intended to remove only two feet of the raised platform to provide easy access to the public and to comply with social distancing norms.

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9.It had been stated that after commencement of the work, the applicants had moved A.No.223 of 2020 during the lockdown period. It had been stated that an order was passed restraining him from altering the physical features of the suit property either by carrying out any

construction activity or by attempting to demolish any portion of the platforms. Consequently, he could not carry out the restoration work. It had been stated that he is willing to complete the work within a period of three weeks.

10.It had also been claimed that rents have not been paid by the applicants, since from March – 2020 for the 9 shops occupied by the applicants. He further stated that he want to remove only 2 feet of the 16 x 11 Sq.ft., raised platform in front of the shop. The photographs of the suit premises prior to the lockdown and recent photographs and also copy of the notification relating to the Standard Operating Procedures dated 30.08.2020 were also filed as documents by the 5th defendant.

11.Heard Mr.T.V.Ramanujun, learned Senior Counsel for the applicants / plaintiffs and Mr.S.R.Ragunathan, learned counsel for the 5th respondent / 5th defendant.

12.This is an application which had been brought about by the 5th defendant by his own actions. He admits that there has been a lockdown,

ordered by the Government owing to the COVID-19 pandemic and that all the shops were closed from March – 2020. He however complains that the rents have not been paid from March – 2020 onwards. In the order dated 06.06.2020, the 5th defendant was granted a right to initiate legal proceedings for eviction, if the rents are not paid. He has not informed the Court whether he has chosen that option. It was also directed that if he initiates any legal proceeding, he should bring them to the notice of the Court. On the other hand, taking advantage of the lockdown and the premises being naturally vacant, he appears to have dug up the flooring and has invited an order of this Court restraining from him removing any portion of the platform or from carrying out any physical alteration by order dated 17.06.2020.

13.A fervent plea had been made by Mr.S.R.Ragunathan learned counsel for the 5th defendant that the applicants cannot plead equity owing to the fact that they did not pay rent from March-2020. There have been various notifications regarding demand and collection of rents during the lockdown period. At any rate, the 5th defendant cannot take the law in his own hands and alter the physical features, particularly by digging up the floor.

14. Simultaneously, an attempt had been made to demolish two feet of the raised platform. This has been specifically injuncted by order dated 17.06.2020. The 5th defendant was injuncted from interfering with the peaceful possession by order dated 06.06.2018. The lockdown have been lifted. The applicants necessarily have to eke out their livelihood by selling and marketing their fish. It is stated that on oath and on affidavit that they have been prevented from entering into the fish market. Even if they enter, they would find that public cannot access their shops because, flooring had been removed and the photographs evidence that.

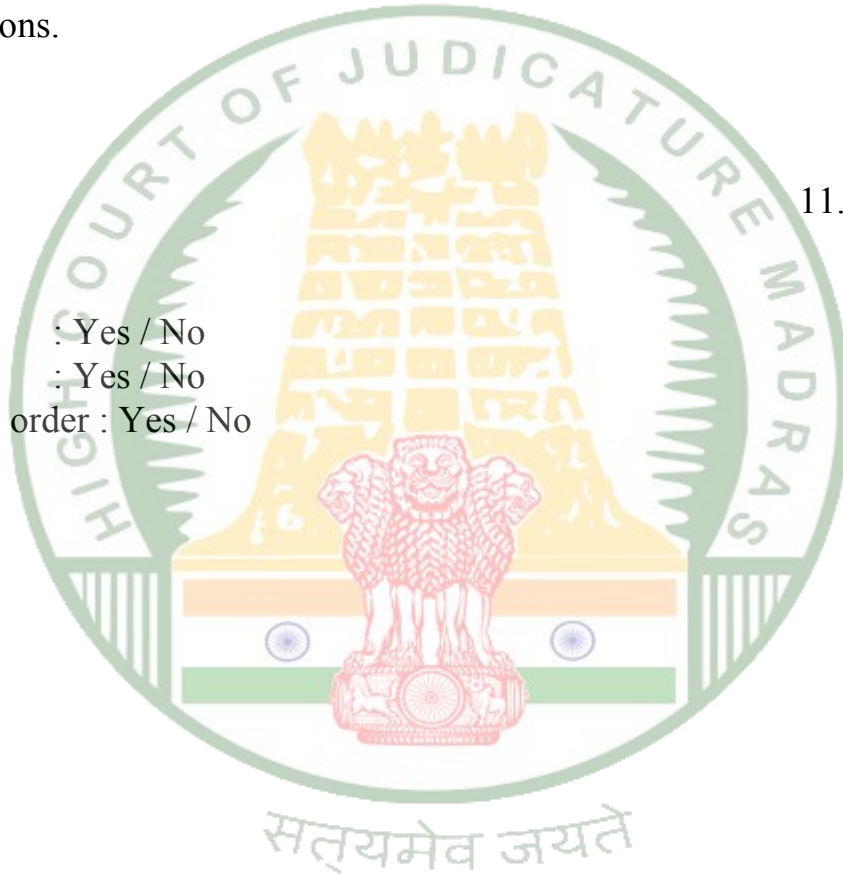
15. In view of these facts, a direction is issued to the 5th defendant to relay the flooring on or before 18.09.2020. The work is to be commenced on or before 14.09.2020. If the work is not commenced on or before 14.09.2020, on and from 15.09.2020, the applicants are permitted to relay the floor at their cost and seek adjustment of the cost in an appropriate manner. If the work had commenced on or before 14.09.2020, then it should be completed by the 5th defendant on or before 18.09.2020. If it is not completed on or before 18.09.2020, then

the applicants are permitted to complete the balance work on and from 19.09.2020 and again adjust the costs involved.

16.This application is accordingly allowed, with the above observations.

11.09.2020

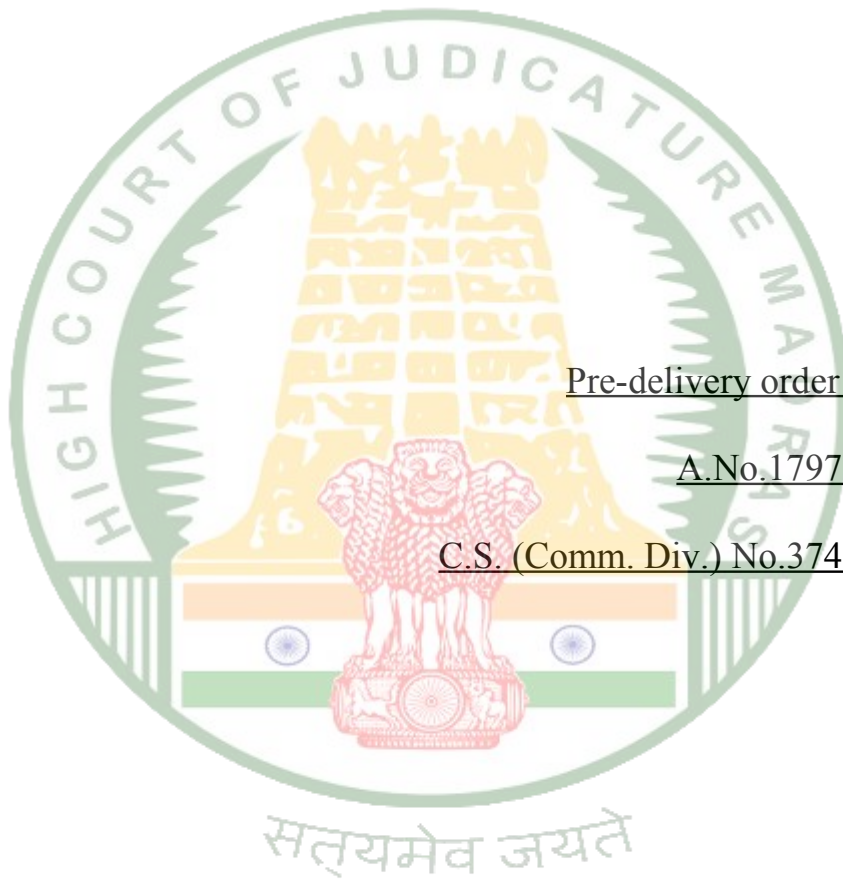
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Speaking order : Yes / No



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C.V.KARTHIKEYAN, J.,

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Pre-delivery order made in

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