

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI  
AND  
THE HON'BLE MR.JUSTICE M.S.RAMESH

O.S.A.Nos.273 and 274 of 2020

M/s.Gatala Developers and Properties Pvt. Ltd.,  
Vaastu, No.18/37,  
Maharaja Surya Road,  
Alwarpet, Chennai 18

...Appellant in both OSAs./  
Ist Respondent in Appellant  
and Plaintiff in C.S.

vs.

1.S.M.M.Jawahar Hussain  
No.38, Maraicar Labbi Street,  
Chennai 600001

...Ist Respondent in both OSA's  
and suit and appellant in  
A.No.9344 of 2017

2.P.S.M.Pathur Jaman,  
No.3/35, Customs Road, Kilakarai  
Ramanad District

...2<sup>nd</sup> Respondent in both OSA's  
2<sup>nd</sup> Respondent in Appellant  
and 2<sup>nd</sup> defendant in suit.

Original Side Appeals filed against the order dated  
17.03.2020 in A.No.9344/2017 in C.S.No.698/2017, and order dated  
28.09.2020 in O.A.No.96 of 2020 in C.S.No.698 of 2017.

A.No.9344 of 2017: Application praying to setaside exparte  
order of attachment made in A.No.5401 of 2017 in CS.698 of 2017.

OA.No.96 of 2020: Oringinal Application praying to setaside the  
interim order dated 28.09.2020 in C.S.No.698 of 2017 and allow  
the present OSA.

For Appellant : Mr.V.K.Vijayaraghavan  
for M/s.Ojas Law Firm

For Respondents : Mr.B.Vijay,  
for 1st respondent  
Mr.A.V.Arun  
for 2nd respondent

## COMMON JUDGMENT

(made by DR.VINEET KOTHARI, J.)

These appeals are directed against the interim order dated 28 September 2020 in O.A.No.96 of 2020, and the interlocutory order dated 17 March 2020, whereby the learned Single Judge, while removing the attachment on the property of the Defendants at the request of the Plaintiff/builder - M/s.Gatala Developers and Properties Pvt. Ltd., while trying the suit in C.S.No.698/2017, and disposing of the applications in A.Nos.9344 of 2019 and 5401 of 2017, has directed that the Respondent / Defendant may furnish security to the extent of Rs.35 lakhs. The relevant portion of the order, viz., paragraphs 18 to 20, are quoted below for ready reference:-

18.The affidavit does not contain any of the above averment. Further, from the very arguments, it is clearly evident that despite Planning permission having not been obtained, the plaintiff has proceeded to complete the constructions and thereafter, the application has been moved to ratify the same. It is also seen that the agreed extent has also not been provided for the defendants and the agreed built up area is also not handed over to the applicants. The 1st defendant has also brought to the notice of this Court that the Member Secretary of the CMDA has himself initiated a complaint on the ground of forgery against the plaintiff and the same is pending which fact no doubt has been objected by the learned counsel for the defendants. However, the plaintiff has not produced any proof to show that the complaint has been closed. In these circumstances, this Court is not inclined to continue the attachment in respect of the property belonging to the 1st defendant. Therefore, the attachment in respect of this 1st defendant's property is raised. Considering the fact that the 1st defendant had filed his written statement within the time stipulated by this Court there is no attachment in respect of the 2nd defendant's property. Therefore, A.No.9344 of 2017 is allowed.

19.After the orders were dictated, the plaintiff would submit that the parties are ready to hand over the possession of the property. The plaintiff has come forward

with the suggestion that he is ready to hand over the possession of the properties of the four floors that are due to the respective defendants on some security being furnished.

20. The learned counsel for the respondents would submit that they have to get instructions from their client to provide security to the tune of Rs.35 lakhs.

2. The learned counsel for the Appellant/Plaintiff Mr.V.K.Vijayaraghavan submitted that the security furnished by the Defendant is not adequate and it pertains to a property which he has purchased in the court auction and therefore, another security of the same amount or in the form of flat, which is being transferred to the Defendant and possession is being offered to him, should be given.

3. On the other hand, Mr.B.Vijay and Mr.A.V.Arun, learned counsels appearing on behalf of the Respondents 1 and 2 submitted that it is at the request of the Plaintiff itself to handover the possession of the property on some security that the learned Single Judge has given security to the extent of Rs.35 lakhs. They submitted that the property in question, for which security has been furnished already, in terms of the said impugned order dated 17 March 2020, is worth more than Rs.90 lakhs and the same was purchased in court auction held by the Debts Recovery Tribunal and the Respondents are in possession, and hold the title of the said property for the last ten years.

4. Be that as it may, having heard the learned counsel for the parties, we are of the opinion that no interference is required to be made in the order impugned before us and the impugned orders appear to be perfectly within the parameters provided under Or.38 R.5 of the Code of Civil Procedure and it seems that at the request of the Plaintiff itself, to handover the possession of the flats in question to the Defendant, against some security, the learned Trial Judge has directed furnishing of the said security to the tune of Rs.35 lakhs. Thus, we are of the opinion that the interest of Plaintiff is adequately secured by the said order and therefore, no interference is required to be made. The learned Trial Judge may proceed with the trial in accordance with law.

5. If any modification of the said order is to be sought by the Plaintiff, the Plaintiff is at liberty to file another application before the learned Trial Judge herself.

6. With these observations, the appeals are dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions in C.M.P.Nos.13431 and 13433 of 2020 are also dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To  
The Sub Assistant Registrar,  
Original Side, High Court,  
Madras.

+2cc to M/s.A.V.Arun, Advocate, S.R.No.40270 & 40271

O.S.A.Nos.273 & 274/2020

sai(CO)  
rv(06/01/2021)



WEB COPY