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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1199 of 2009

and

M.P.No.1 of 2009

Bala Sarassa

...Appellant/Appellant/Plaintiff

Vs.

1.Venkattamma

2.A.K.Jain

3. M.Saleem

4.The Member Secretary,
M.M.D.A.,
Thalamuthu Natarajan Maligai,
Egmore,
Chennai - 600 008.

5.The Executive Engineer,
T.N.E.B., No.60,
Gowdia Mutt Road,
Mylapore,
Chennai - 600 004.

6.The APCO Apartments Owner's Association,
rep.by its secretary
No.3 and 4, III Street,
APCO Apartments,
Balaji Nagar,
Chennai - 600 014.

... Respondents 1 to 6/Respondents 1 to 6
Defendants 1,3 to 7

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 18.09.2007 in A.S.No.64 of 2006 on the file of the learned IV additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 20.07.2005 in O.S.N.5105 of 2006 on the file of the learned VII Assistant Judge, City Civil Court, Chennai.



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For Appellant : Mr.D. Shivakumaran

For Respondents: Mr.Kanagasundaram
for Mr.T.N.Rajagopalan for R2

Ms.Veena Suresh for R4

R5 - Served - No Appearance

Not ready in notice
regarding R1, R3 and R6

JUDGMENT

The unsuccessful plaintiff before the Courts below is the appellant before this Court. The parties are referred to in the same array as in the suit.

2.The plaintiff had filed a suit O.S.N.5105 of 2006 on the file of the learned VII Assistant Judge, City Civil Court, Chennai for the following reliefs:

"(i)for permanent injunction restraining the defendants 2 to 4 and 7 or their men or people and anybody not interfere with the plaintiff peaceful possession and allowed the plaintiff to put up construction in the sit out area i.e., in the front portion of her Flat in the ground floor of APCO Apartments Door No.3 and 4, III Street, Royapettah, Madras - 14,

(ii)Mandatory injunction directing the 5th defendant to remove the unauthorised construction in the property bearing Door No.3 and 4, III Street, APCO Apartments, Royapettah, Madras - 14,

(iii)To direct the 6th defendant to remove the entire meter boxes in a common safer places not accessible to other tenements from the car parking i.e., from the outer wall of the plaintiff's kitchen wall."

3.It was the case of the plaintiff that the 1st defendant is a Partner of APCO Apartments and the builder of the plaintiff. The defendants 2 to 4 are the co-occupiers along with the plaintiff of the suit A schedule properties. It is her case that on 11.04.1990, she has entered into an Agreement with the 1st defendant in respect of the construction of a residential apartment in the ground floor of the building which is



proposed to be named as APCO Flats, measuring an extent of 870 sq.ft of built up area including a proportionate share in the common area. The 1st defendant has undertaken to complete the construction within a period of 12 months from the date of Agreement. In the month of June 1991, the plaintiff was allowed to occupy her flat. When she entered possession the construction of the flat had not been completed. The 1st defendant was claiming escalation charges @ 10% and out of balance of Rs.11,484/- that fell due on 14.04.1991, Rs.5,000/- was paid on 29.03.1993 and further, a sum of Rs.5,000/- was paid on 19.11.1993 through the 2nd defendant who was the President of the Association of the Apartment. This amount was not paid by the 2nd defendant by the 1st defendant. The plaintiff requested the 2nd respondent to return the same, however, he refused to pay the money to the plaintiff. Thereafter, he along with the defendants 3 and 4 who were residing in the same apartment started giving troubles to the plaintiff. The Apartments Owner's Association was formed but not registered. The defendants 2 to 4 are the occupiers of the unapproved layout and therefore, not entitled to hold a post in the APCO Apartments Owner's Association.

4.The plaintiff would contend that she had sit out area in front of her flat. Due to the 1st defendant's negligence, the said area was closed with the grill and wall work. The 2nd defendant claimed this sit out area as a common place and directed the plaintiff to remove the obstructions thereon. Further, as per the Approved Plan, there are two entrances provided adjoining the lift area, however, one of the entrance was closed. The plaintiff would submit that once the lift is erected there is a likelihood of the third party disturbances and concerns about the safety of the Apartments. The defendants 1 to 4 were putting up the unauthorised construction and therefore, the plaintiff had made a complaint to the 5th defendant. Further, the plaintiff would submit that the hazardous electric main switch board of all the flats owners including the unapproved flats is fixed in the outer wall of the plaintiff's kitchen wall. This poses a great risk of an electric shock and electric fire. The original Plan sanctioned by the MMDA does not show where exactly the switch board should be located. The plaintiff had objected to the fixing of the main switch board during the construction but in vain. The plaintiff in the above circumstances had come forward with the suit for the reliefs stated thereon.

5.The 1st defendant had filed a Written Statement denying the contentions raised by the plaintiff. They had categorically stated that the sit out area in front of the plaintiff's apartment did not belong to her and was a part of the common area. A lift was proposed to be installed only by the



defendants 2 to 4 and the 1st defendant is unaware of such a proposal. The 1st defendant would further submit that since the allottee had refused to contribute money the erection of the lift had stalled.

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6.As regards the fixing of the electric main switch board in the kitchen, the 1st defendant would submit that there is no danger of electric shock or fire since the place is specifically earmarked to fix the electric switches and necessary safeguards have been taken. The defendants had raised the plea of limitation.

7.The 7th defendant who is the Association filed a Written Statement in which they had stated that the plaintiff did not have good relations with any of the flat owners and further, she was in huge arrears of maintenance charges payable to the Association. The 7th defendant would also contend that the suit is barred by limitation and therefore sought for dismissal of the suit.

8.The trial Court after considering the elaborate arguments dismissed the suit. Challenging the same, the plaintiff has filed A.S.No.64 of 2006 on the file of the learned IV Additional Judge, City Civil Court, Chennai. The learned Judge has also confirmed the Judgment and Decree of the trial Court. Challenging the Judgment and Decree of the Appellate Court, the present suit has been filed.

9.The Second Appeal has not been admitted and notice has been issued for the admission. The parties were referred to Mediation which has not yielded the desired result. Hence, the Appeal is taken up for hearing.

10.Heard the learned counsels appearing on either side and perused the papers.

11.The plaintiff who has entered possession of the Apartments in the year 1991 has instituted the instant proceedings nearly five years thereafter, viz., in the year 1996, for a mandatory injunction to remove the unauthorised construction and to remove the entire meter box in the common area apart from seeking injunction against the defendants in respect of the sit out area. The Courts below on a perusal of records come to the conclusion that the plaintiff has not proved her right to the sit out area and that the same is not part of 870 sq.ft apartment purchased by her. In the absence of any convincing evidence, the claim of the plaintiff was baseless. From the reading of the Sale Agreement itself, it is clear that the sit out area is only in the common area. The plaintiff has failed to prove that the sit out is part of the property which



was purchased by her.

12.The case of the plaintiff that the defendants 1 to 4 put up unauthorised construction and that the 5th defendant should be directed to remove the unauthorised construction is absolutely baseless and clearly barred by limitation. The plaintiff has not made out a case that the construction is unauthorised. That apart, it is for the 4th defendant/MMDA to consider the same. If they find that the construction is unauthorised it is well open to take necessary action and the plaintiff is not entitled to the relief of Mandatory injunction.

13.As regards the removal of the meter box, the suit is clearly barred by limitation. The plaintiff has occupied the property in the year 1991 and the meter box has been in existence in the outer of wall prior to that. No steps have been taken for its removal and the suit filed in the year 1994 is clearly barred by limitation.

The Courts below have passed a well considered the Judgment and no exception can be taken to the same. The Second Appeal is therefore dismissed, however, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Deputy Registrar(P & A)

//True Copy//

Sub Assistant Registrar

mps

To

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

2.The VII Assistant Judge,
City Civil Court,
Chennai.

3.The Member Secretary,
M.M.D.A., Thalamuthu Natarajan Maligai,
Egmore,
Chennai - 600 008.

4.The Executive Engineer,
T.N.E.B., No.60, Gowdia Mutt Road,
Mylapore, Chennai - 600 004.



+1cc to Mr.D.Shivakumaran, Advocate, S.R.No.32844
+1cc to M/s.P.Veena Suresh, Advocate, S.R.No.33015
+1cc to Mr.T.N.Raja Gopalan, Advocate, S.R.No.33195

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GPL (CO)
CB (17/11/2021)