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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2021

CORAM

THE HON'BLE MR.JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

O.S.A.NO.112 OF 2021

1. S.Sridhar

2. S.Ganthimathi Sridhar

... Appellants/Plaintiffs

.Vs.

1. S.Sivashanmugam

2. S.Kondappan

3. S.Ramakrishnan

4. R.Uma Devi

... Respondents/Defendants

PRAYER:-

Appeal preferred under Clause 15 of Letters Patent and Order XXXVI Rule 11 of O.S. Rules against the order dated 16.10.2020 made in O.A.No.238 of 2020 in C.S.No.156 of 2020.

PRAYER IN C.S.NO.156 OF 2020:-

(a) Directing the defendants 1 to 3 by way of specific performance of clause 6 in the Sale Deed dated 04/04/2005, registered as Doc.No.1010/2005 in S.R.O. Mylapore (the Subject Sale Deed), to execute a sale deed conveying 1174.52 square feet of undivided share in the land described fully in the Schedule-A given hereunder together with all rights incidental and appurtenant thereto for a total consideration of Rs.25,00,000/- to and in favour of the Plaintiffs.

b) That the sale deed dated 11/05/2005, executed by the 1st and 2nd defendants through the 3rd defendant as this Power of Attorney to and in favour of the 4th defendant herein in so far as it relates to 900.41 sq.ft undivided share of land in the



Schedule A Property, registered as Document No.1601/2005 in the office of the Sub-Registrar, Mylapore as null and void; and the sale deed dated 11.05.2005, executed by the 1st and 2nd defendants through the 3rd defendant as this Power of Attorney to and in favour of the 4th Defendant herein in so far as it relates to 274.11 sq.ft undivided share of land in the Schedule A property, registered as Document No.2304/2005 in the office of the Sub-Registrar, Mylapore as null and void; or in alternative

c) Directing the defendants 1 to 3 to pay to the Plaintiffs damages/compensation to the tune of Rs.150 crores, in lieu of the lost opportunity of the Plaintiffs to have earned such sum in view of the appreciation in the price of the said land, from 2005 till date, had the Plaintiffs been given the option to purchase the 1174.52 of UDS in the Schedule A Property;

d) Granting a permanent injunction restraining the defendants and their men, agents, assigns and representatives from interfering with the Plaintiff's peaceful possession and enjoyment of the common areas of the said land in Plot.No.207, Old No.22, New No.12, 7th Main Road, Raja Annamalaipuram, Chennai - 600 028, totally measuring 4463 sq.ft., i.e., the Schedule A Property.

e) Directing the defendants to pay to the plaintiffs the cost of this suit; and

f) Granting such further or other reliefs as this Honourable Court may deem fit and proper under the circumstances of the case and thus render justice.

PRAYER IN O.A.NO.238 OF 2020:-

Application filed under Order XIV Rule of O.S. Rules read with Order 39 Rule 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 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.



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

For Respondents : Mr.V.Anand
For R3 and R4

JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

This appeal arises from the order passed by learned Single Judge dated 16.10.2020 in O.A.No.238 of 2020 in C.S.No.156 of 2020.

2. This appeal is by the plaintiffs. They are aggrieved by the dismissal of injunction application, pending suit.

3. Heard learned advocates. Both the learned advocates have addressed the Court at length.

4. The submission of the learned advocate for the appellants, in substance is to the effect that refusal to grant injunction by learned Single Judge is erroneous, since according to him the plaintiffs have strong prima facie case, balance of convenience is in their favour, coupled with the fact that according to him, irreparable loss would be caused to them if the injunction as prayed for is not granted. In support of his submissions, learned advocate for the appellants has taken this Court through the sanctioned plan, the terms of agreement between the contesting parties etc., The grievance in substance pertains to car parking, usage of common area, with whom the keys of the common toilet should be etc.,. It is submitted that injunction as prayed for be granted.

5. On the other hand, learned advocate for the contesting respondents has submitted that, the arrangements, which are complained are in place since years, and only because of certain other issues, the suit is filed in the year 2020. It is submitted that the contesting respondents are staying on the ground floor. It is submitted that no interference be made by this Court in the order passed by learned Single Judge.

6. Having heard learned advocates for the respective parties and having considered the material on record, it has transpired that the issues addressed before this Court pertain to, taking keys from the watchman at the time of usage of toilet by the driver of the plaintiffs, car parking etc. We find that, learned Single Judge, on the basis of the report of the Advocate



Commissioner has considered the rival contentions (in paragraphs 7 to 10 of the impugned order) and has found that even if the grievances of the plaintiffs are right, at this interim stage, no injunction would have served any purpose and in the facts of the case, no mandatory direction could have been given. We have considered the reasons recorded by learned Single Judge vis-a-vis the stakes of the matter, on the face of material on record. We do not find any reason to interfere with the impugned order. Additionally, what right the plaintiffs could assert as co-owners of the property, is also an aspect, which may further tilt balance against them.

7. For the above reasons, this Original Side Appeal is dismissed. No costs. Consequently, connected C.M.P.No.5320 of 2021 is closed. Needless to observe that the dismissal of this appeal is not to weigh against the appellants while deciding the suit.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssm/14

To

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

+2ccs to M/s.Rugan and Arya, Advocate, S.R.No.60622

O.S.A.NO.112 OF 2021

RGN(CO)
PBS/09/12/2021