

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY THE 21ST DAY OF JUNE 2021

THE HON'BLE MR. JUSTICE V.PARTHIBAN

O.A. No.358 of 2020

and

A.No.999 of 2021

in

C.S. No.200 of 2020

S.Sumathy,
W/o.Senthilkumar,
Proprietor, S & S Builders,
No.524/17, Rajiv Gandhi Street,
Poonamallee High Road,
Arumbakkam, Chennai-600 106.

... Applicant/Plaintiff

-Versus-

1. S.Annamalai,
2. Pushpa,
W/o.Annamalai,
1 & 2 are residing at No.21/A,
Throwpathiammankoil Street,
Velacherry, Chennai-600 042.
3. Daisy Rani,
W/o.late Rajendran,
4. Mrs.Deepika,
D/o.Late Rajendran,
5. Lokesh,
S/o.Late Rajendran,
3 to 5 are residing at 35/15B,
Throwpathiammakoil 1st Street,
Velacherry, Chennai-600 042.

... Respondents/Defendants

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the respondents 1 and 2/ Defendants 1 and 2, their men, agents, servants and every one claiming under them and any one acting on their behalf from in any way preventing the ingress and egress to the plaint schedule 'A' and schedule 'B' mentioned property, morefully described hereunder, by parking their vehicles or in any other manner whatsoever, pending disposal of the above suit.

A.No.999 of 2021:-

1. S.Annamalai,
S/o. Seeyalam
2. Pushpa, W/o.Annamalai,
1 & 2 are residing at No.21/A,
Throwpathiammankoil Street,
Velacherry, Chennai-600 042.

: Applicants/Respondents 1 and
2/ Defendants 1 and 2

-VS-

1. S.Sumathy,
W/o.Senthilkumar,
Proprietor, S & S Builders,
No.524/17, Rajiv Gandhi Street,
Poonamallee High Road,
Arumbakkam, Chennai-600 106.

...Respondent-1/
Applicant/Plaintiff

2. Daisy Rani,
W/o.late Rajendran,

3. Mrs.Deepika,
D/o.Late Rajendran,

4. Lokesh,
S/o.Late Rajendran,
2 to 4 are residing at 35/15B,

Throwpathiammakoil 1st Street,
Velacherry, Chennai-600 042. ... Respondents 2 to 4/Respondents 3 to
5/Defendants 3 to 5

Application praying that this Hon'ble Court be pleased to vacate the interim injunction order granted against the Applicants/defendants 1 and 2 in O.A.No. 358 of 2020 in C.S.No.200 of 2020 dated 03.09.2020.

These Applications coming on this day before this court for hearing in the presence of Mr.Subramani for Mr.R.Subramanian for M/s. C.Jagadish, advocates for the applicant in O.A.No. 358 of 2020 and for the 1st respondent in A.No. 999 of 2021 and Mr.M.Thangadurai, Advocates for the 1st and 2nd respondent in O.A.No. 358 of 2020 and for the Applicants in A.No. 999 of 2021, and upon reading the Judge's Summons and the affidavit of S.Annamalai filed in A.No. 999 of 2021, and the order dated 22.09.2020 made in O.A.No. 358 of 2020, and this court having observed that the fact of the matter is that for the occupants in Block B, an access needs to be provided for their occupation and usage. When the report of the Advocate Commissioner would conclude that if any one in Block A blocks the common passage with their vehicle, it would be difficult for the people in Block B to access the main road and even to park their vehicle, in such situation, this Court can safely come to the conclusion that the balance of convenience is entirely in favour of the plaintiff and there is no imminent

requirement for this Court to vary the order of injunction granted by this Court from the facts and circumstances of the case, further, this Court does not find any valid reasons for vacating the interim injunction, as the pleadings and arguments advanced on behalf of the applicants herein are devoid of substance, it is ordered as follows:-

That the order of interim injunction granted in pursuance of the order dated 03.09.2020 made in O.A.No. 358 of 2020 restraining the respondents 1 & 2 therein, their men, agents, servants and every one claiming under them and any one acting on their behalf, from in any way preventing the ingress and egress to the plaint properties morefully setout in the schedule A & B hereunder, by parking their vehicles or in any other manner whatsoever, be and is hereby made absolute.

2. That the A.No. 999 of 2021 be and is hereby dismissed.

3. That the C.S.No.200 of 2020 be posted on 28.07.2021 for framing issues.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
21st DAY OF JUNE 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

SK

19.07.2021

O.A. No.358 of 2020
and
A.No.999 of 2021
in
C.S. No.200 of 2020

ORDER :-
DATED : 21.06.2021

THE HON'BLE MR. JUSTICE
V.PARTHIBAN

FOR APPROVAL:19.07.2021

APPROVED ON:20.07.2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY THE 21ST DAY OF JUNE 2021

THE HON'BLE MR. JUSTICE V.PARTHIBAN

O.A. No.358 of 2020

and

A.No.999 of 2021

in

C.S. No.200 of 2020

S.Sumathy,
W/o.Senthilkumar,
Proprietor, S & S Builders,
No.524/17, Rajiv Gandhi Street,
Poonamallee High Road,
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... Applicant/Plaintiff

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5/Defendants 3 to 5

Application praying that this Hon'ble Court be pleased to vacate the interim injunction order granted against the Applicants/defendants 1 and 2 in O.A.No. 358 of 2020 in C.S.No.200 of 2020 dated 03.09.2020.

These Applications coming on this day before this court The court made the following order:-

This application has been filed to vacate the interim injunction granted against the applicants/defendants 1 and 2 herein in O.A.No.358 of 2020 in C.S.No.200 of 2020 dated 03.09.2020.

2. The first respondent herein is the plaintiff who has filed the suit for grant of permanent injunction restraining the defendants 1 and 2 and their men, agents, servants from in any way preventing the ingress and egress to the schedule mentioned property either by parking their vehicles or in any other manner whatsoever.

3. The case of the plaintiff was that the defendants 1 and 2 are the owners of the property at Plot No.65, New Door No.13, Old Door No.11, Throwpathi Amman Koil Street, Velachery, Chennai 600 042, described in the schedule 'A' appended to the plaint. The third defendant's husband

S.Rajendran, is the owner of the property at Plot No.67, New Door No.13, Old Door No.11, Throwpathi Amman Koil Street, Velachery, Chennai 600 042, described in Schedule 'B' appended to the plaint. The plaintiff being a Promoter/Builder, joined with the defendants to develop the properties described in Schedule 'A' and Schedule 'B' by entering into a joint venture agreement and the defendants offered Plot No.65 and 67 for joint development to construct 10 residential flats in two blocks namely Block A and Block B and access to the property is given through Throwpathi Amman Koil Street. Subsequently, some flats have been put up in Schedule A and Schedule B properties and were also sold to the third parties.

4. The entire ground floor portion in both blocks A and B are earmarked for covered car parking. According to the plaintiff, in the half way of the joint venture project, there were unjust demands from the defendants 1 and 2 and the defendants had been obstructing the smooth completion of the project. The plaintiff attempted to bring out of the settlement and negotiations were under way for some time. On the outbreak of Covid-19 in March 2020, the further construction work was stopped and after some time, again the construction work was resumed. When there is a resumption of work, in order to frustrate the plaintiff's efforts from completion of the entire work, attempts were made by the defendants to

prevent the construction work and take advantage of the delay in completion of the project for their own benefit.

5. According to the plaintiff, third parties who purchased the flats in Block B could not reach the respective portions because of the unreasonable and obstructive attitude of the defendants 1 and 2, preventing ingress and egress to the property located in Block B. In the said circumstances, a suit has been laid with the aforesaid prayer.

6. This Court, after adverting to the averments and the material, has granted an order of ad interim injunction vide its order dated 03.09.2020, as prayed for in O.A.No.358 of 2020 and A.No.1817 of 2020 in the above mentioned suit. The order of injunction has been continued from time to time.

7. While ordering an ad interim injunction, this Court has also appointed an Advocate Commissioner to visit the property and note down the physical features and also the existence and the availability of the covered car parking and also to identify and report the access from the street to the schedule mentioned properties. In pursuance of the same, the Advocate Commissioner appointed so, has inspected the property and she has also filed a report on 21.09.2020.

8. While so, being aggrieved by the injunction order granted by this Court, the respondents 1 and 2 viz., the defendants, have come forward

with this application in A.No.999 of 2021, seeking to vacate the interim injunction granted by this Court in O.A.No.358 of 2020.

9. According to the learned counsel appearing for the applicants in this application, the B schedule property is having access through the eastern side and the occupants in B Block have no right to use A schedule property as passage to reach the B schedule property. According to the learned counsel, the plaintiff has committed a grave fraud and constructed the building in violation of the plan. According to him, the Advocate Commissioner would clearly point out in his report that there are violations in the building in the construction put up by the plaintiff.

10. The affidavit filed in support of the vacate stay petition would contain multitude of facts as to the nature of the property, no. of flats constructed, the building plan and the conduct of the plaintiff etc. Therefore, the learned counsel would submit that the continuation of interim injunction would cause prejudice to the right of the applicants herein / the defendants 1 and 2 in the suit and therefore, he requested this Court to vacate the interim injunction granted by this Court.

11. On the other hand, Mr.R.Subramanian, the learned counsel for the plaintiff would submit that this Court while granting the ad interim injunction, was prima facie satisfied that unless access to the B schedule property is granted through the A schedule property, the property in

schedule B can never be put to use at all. The learned counsel would submit that infact, the Advocate Commissioner's report would clearly support the case of the plaintiff. He would draw the attention of this Court to Sub Paragraph 4 under the caption "Access from the street to the suit property", which reads as follows:

"A.The Block B ca be accessed from the street only through main gate fixed in Block A and people from the Block B can access the main road only through Block A and common passage in only 8 feet breadth, if anyone in Block A blocks the common passage with their vehicle, it would be difficult for people in Block B to access the main road and even to park their vehicle."

12. The report was also supported by the photograph as mentioned above. In view of the report of the Advocate Commissioner, the injunction is liable to be continued and the vacate stay petition is liable to be rejected.

13. This Court has considered the submissions of the learned counsel for the respective parties. Although a number of competing contentions made in the form of pleadings, nevertheless, a single fact for taking a decision in the application is whether there is any access is available to Block B (B Schedule Property) in order to appreciate the

contentions of the learned counsel for the applicants herein. However, as the facts would disclose that there appears to be practically no other access except the access through Block A to Block B and the Advocate Commissioner's report also points to that fact as extracted above.

14. Whatever be the nature of dispute as mentioned in the affidavit filed in support of the vacate stay petition, the fact of the matter is that for the occupants in Block B, an access needs to be provided for their occupation and usage. When the report of the Advocate Commissioner would conclude that if any one in Block A blocks the common passage with their vehicle, it would be difficult for the people in Block B to access the main road and even to park their vehicle, in such situation, this Court can safely come to the conclusion that the balance of convenience is entirely in favour of the plaintiff and there is no imminent requirement for this Court to vary the order of injunction granted by this Court from the facts and circumstances of the case. Further, this Court does not find any valid reasons for vacating the interim injunction, as the pleadings and arguments advanced on behalf of the applicants herein are devoid of substance.

15. For the above said reasons, the application is A.No.999 of 2021, stands dismissed and O.A.No.358 of 2020, is allowed and the order of ad interim injunction granted by this Court on 03.09.2020, is made absolute.

16. The written statement has been filed. Post the suit on 28.07.2021, for framing issues.

Sd./-(V.P.N.J.)

21.06.2021

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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