



S.A.No.1443 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.08.2022

Coram

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

S.A.No.1443 of 2007

&

CMP.No.11482 of 2022

K.Balasubramaniam

...

Appellant

Vs

1.G.Rani

2.G.Vasanthi

...

Respondents

Prayer: The Second Appeal is filed under Section 100 of CPC, against the judgment and decree dated 13.12.2006 passed in A.S.No.516 of 2006 on the file of the II Additional City Civil Court, Chennai, allowing the appeal against the judgment and decree dated 28.02.2006 passed in O.S.No.613 of 2005 on the file of the XIV Assistant City Civil Court, Chennai.

For Appellant : Mr.D.Nagesh Babu

For Respondent : Mr.C.Ramesh
Nos.1 & 2

JUDGMENT

The plaintiff in O.S.No.613 of 2005 on the file of the XIV Assistant City Civil Court at Chennai, is the appellant herein.



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2.The said suit had been filed by the plaintiff, K.Balasubramaniam against his co-owners, G.Rani and G.Vasanthi, seeking a declaration that he is entitled to use the car park area, either car park No.3 or 4 for parking his car/vehicle in the suit schedule property and for permanent injunction restraining the said defendants from interfering with his peaceful possession and enjoyment of parking the car/vehicle either in car park No.3 or 4 in the suit schedule property and also for costs.

3.The suit schedule property as described in the plaint is Flat No.B situated in the ground floor on the Eastern side of the building known as Nu-Tech Navaneetham having plinth area of 724 sq.ft (including common area) together with 479 sq.ft. of undivided share of the land out of a total extent 3080 sq.ft. situated in New door No.16/2 Old No.24/2, Block No.42, Ramakrishnapuram II Street, West Mambalam, Chennai – 600 033. It is stated that it also includes the exclusive right of the plaintiff's car park No.3 or 4.



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4.By judgment dated 28.02.2006 the suit was decreed. This necessitated the defendants to file A.S.No.516 of 2006. The said appeal suit came up for consideration on 13.12.2006 before the II Additional City Civil Court at Chennai. By judgment of even date, the appeal suit was allowed which meant that the original suit was dismissed.

5.Questioning such judgment, the plaintiff has filed the present second appeal.

6.The second appeal had been admitted on the two following substantial questions of law:

“1.Whether the car park earmarked for the plaintiff's vendor as per the builders allocation not deemed to be conveyed to the plaintiff. Notwithstanding a specific reference to the sale in the sale deed Ex.A.2?

2.Whether the Court below did not err in failing to see that as per Section 2(h) 6(1) & (2) of the Tamilnadu Apartments Ownership Act, 1994, the parking area is one of common



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amenities and hence the plaintiff is entitled to it without any objections from the defendants and more so by virtue of the specific reference to the builders agreement?”

7.It must be mentioned that pending the suit and the present appeal, the second defendant G.Vasanthi, had sold the flat, to which she was entitled to as owner, which was allotted to her, in the year 2013, to one Sudha and subsequently, the said Sudha had also sold that particular flat to one Revathy. The appellant herein had filed CMP.No.11482 of 2022 to implead the said Revathy as a further respondent in the second appeal.

8.I am informed by the learned counsel that the said Revathy had independently filed an application to implead herself as a respondent. It is clear that the purchasers were aware of the pending litigation and therefore, they cannot claim a larger right than what had been granted to the second defendant. It also transpires from the facts that they had only purchased the flat knowing fully well that there is a dispute with respect



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to the car parking area and they had still taken the risk of purchasing the flat. Since the said sale deed had been effected without obtaining leave of the Court as necessitated under Section 52 of the Transfer of Property Act, this Court can very well ignore such sale deed and can proceed further with examining the questions of law raised in the second appeal.

9.In the plaint, the plaintiff claimed that the property at Door No.24/2 New Door No.16/2, Ramakrishnapuram, II Street, West Mambalam, Chennai – 600033 had been inherited by one S.G.Kothandaraman and his two sisters who are the defendants G.Rani and G.Vasanthi. Having inherited the same, they thought they could develop the same by inviting developers to develop the property. Accordingly, the property was also developed and six flats had been constructed over the said land available and one flat each had been allotted to the three inheritors of the property namely S.G.Kothandaraman, G.Rani and G.Vasanthi. Three other flats had been allotted to the builder. The issue in the suit is not with respect to such allotment of flats. The builder for some reason had put up only four car parking space. He took up two for his exclusive usage. This meant that



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two car parking spaces were alone available for the three inheritors of the property. With respect to the allotment of car parking area, they had agreed as follows in the development agreement.

“(12) CAR PARKING:

Totally there are 4 car parking slots out of which car parking No.3 & 4 has been allotted to the party of First Part and among the party of First Part, they mutually agreed that owners should be given preference to park the car who occupy the flat and the balance two car parking slots bearing No.1 & 2 has been allotted to the Builder who is at liberty to allot the same to any third parties and receive the consideration for the same.”

10.Interpretation of aforementioned clause has given rise to this litigation, which has been pending now from the trial stage onwards for the past 22 years. Not satisfied with the land being inherited by them and such land being profitably developed into flats and also, having benefited by such development, the land owners are still involved in litigation with respect to car parking area.



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11.The appellant herein as plaintiff had filed O.S.No.613 of 2005, since he claimed that as a purchaser of the flat from S.G.Kothandaraman, he comes within the definition of an owner and therefore, has a right to claim one available car park space. The car parking area made available to the owners were Nos.3 and 4. It is stated that he was originally a tenant from the year 2000 under S.G.Kothandaraman, It is further stated that S.G.Kothandaraman was never residing in any one of the three flats or in the particular flat allotted to him. The only owners, who had been residing in the flat, were the defendants in the suit. Therefore, till the said appellant was a tenant, he had no right to claim usage of the particular car parking area. The two Car parking areas, namely, car parking Nos. 3 and 4 were utilized by the owners/the defendants, who had been residing. Thereafter, the appellant appears to have purchased the flat in which he was a tenant under S.G.Kothandaraman, by sale deed dated 24.05.2004. His character then changed from being a tenant in that particular flat to being a owner of that particular flat. It would now be fruitful to determining the area which was actually purchased as given in the sale deed.



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12.In the sale deed dated 24.05.2004, the schedule of the property which was conveyed to the present appellant, was as follows:

“SCHEDULE OF PROPERTY

Flat identified as No.24/2, Ramakrishnapuram II Street, West Mambalam, Chennai – 600 033 in the assessment records of Corporation of Chennai, i.e. Flat No.”B” situated in GROUND FLOOR on the Eastern side of the building known as “Nu-Tech Navaneetham” having a plinth area of 724 sq.ft.(including common areas) together with 479 sq.ft. of undivided share of land out of the total extent of 3080 sq.ft.(on which the building is constructed and of which building, the flat forms part) comprised in T.S.No.24, Block No.42, situate in KODAMBAKKAM VILLAGE, lying within the Registration Sub District of Ashok Nagar Registration District of Central Chennai, the land bounded on the -

*NORTH BY : T.S.Nos.12/2, 13 and 14/1,
SOUTH BY : Ramakrishnapuram II Street
EAST BY : T.S.No.23,
WEST BY : T.S.No.25.*

The market value of the property is Rs.10,25,000/-.



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13.Interpretation, as to the property he actually purchased, is the fulcrum of the decision to be taken in this particular appeal. It is the claim of the appellant that he had purchased not only the flat having plinth area of 724 sq.ft. but also the common area and 479 sq.ft of undivided share of land out of the total area of 3080 sq.ft.

14.In the said sale deed, S.G.Kothandaraman had described the property which he had conveyed as follows:

“the Vendor doth hereby grant, convey, transfer, assign and sell unto the Purchaser, by way of absolute sale, the property more fully described in the Schedule hereunder, together with all the easements, liberties, privileges, advantages and appurtenances and all the estate, right, title and interest, claim and demand whatsoever of the Vendor into or upon the said property or any part thereof, TO HAVE AND TO HOLD unto and to the use of the Purchaser, absolutely and forever, free from all



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encumbrances and claims.

THE VENDOR has this day placed the purchaser in vacant possession of the property hereby conveyed.”

15.It had been stated by the vendor S.G.Kothandaraman that he conveyed, transferred, assigned by way of absolute sale with all easements, liberties, privileges, advantages and appurtenances to the appellant herein for his use absolutely and forever free from all encumbrances and claims. It was further stated that the appellant herein had been put in possession of the property conveyed.

16.In the written statement filed by the defendants, they had contested the claim of the plaintiff for exclusive use of any one of the two car parking slots, either Nos.3 or 4 and they asserted that since S.G.Kothandaraman, did not reside in the said flat as owner and had leased out the flat allotted to him to the appellant herein, who had been inducted only as a tenant and as owners were residing in the respective flats allotted to them, at the time of institution of the suit and at the time



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of filing of written statement, their right should be protected to use the two car parking area by them alone and they therefore disputed the claim that the appellant can claim exclusive use of car parking spaces.

17.The parties went to trial and the following issues were framed for consideration:

- 1.Whether the plaintiff was entitled for declaration as sought*
- 2.Whether he was entitled for permanent injunction and*
- 3.Whether he can be categorized as the owner of flat.*

18.During trial, the plaintiff examined himself as PW1 and the husband of the second defendant Kirubakaran was examined as DW1.

19.The plaintiff marked Exs.A1 to A5. Ex.A1 was the copy of the development agreement. Ex.A2 was the copy of the sale deed in favour of the appellant/plaintiff. Exs.A4 & A5 were the copies of the advocate notice issued by the plaintiff. The defendants marked Ex.B1 which was



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the authorization given to DW1 to depose evidence before the Court.

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20. On the basis of the available evidence, the learned trial Judge first examined the documents filed. He observed that the plaintiff had come into possession as a tenant and had later purchased the flat. He also wondered how two car parking spaces can be allotted to three separate owners. Thereafter, the learned trial judge examined whether the plaintiff therein could be termed as a owner and came to the conclusion that he could be termed as the owner owing to his purchase of the flat. He also relied on the admission of DW1/Kirubakaran/husband of the 2nd defendant herein, who stated that the vendor of the plaintiff S.G.Kothandaraman had conveyed all his rights which had enured to him to the plaintiff. This statement was taken as an implicit admission that the plaintiff had been conveyed the right to occupy one car parking space and on that basis, the learned trial Judge decreed the suit and gave the option to the plaintiff to occupy either car parking space No.3 or space No.4.



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21. Aggrieved by that judgment, the defendants filed A.S.No.516 of 2006. This appeal suit came up for consideration before the II Additional City Civil Court, Chennai.

22. The learned II Additional Judge framed the following points for consideration under Order 41 Rule 31 C.P.C.

“ 1. Whether the plaintiff/respondent is entitled to park the vehicle in the car parking slot?

2. Whether the plaintiff /respondent is entitled to declaration and permanent injunction as prayed for?

3. Whether the appeal is allowable or not?”

23. The first appellate Judge then re-appreciated the evidence available on record and examined the clause relating to car parking and also the admission of DW1 which had been relied by the learned trial Judge. It was observed that the 1st and 2nd defendants were in occupation



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of the flats till 2005 and had thereafter leased out the flats to various third parties. It was also stated that the plaintiff had admitted that as long as he was a tenant, he did not utilize the car parking area. It was also found that in the schedule to the sale deed, there was no specific mention about transfer of rights of the car parking area to the plaintiff in the suit. It was also found on examination of Annexure 1-A which was attached to the sale deed with respect to the availability of garage, it had been remarked as Nill. It was stated that therefore the plaintiff cannot adduce evidence contrary to such written admission and it was therefore concluded that the plaintiff was never given any right to use the car parking area and on that reasoning, the learned first appellate judge declined to grant the relief of declaration and allowed the appeal suit and dismissed the original suit.

24.Questioning that particular finding, the plaintiff had filed the present second appeal. The second appeal had been admitted on the following two substantial questions of law:

“1.Whether the car park earmarked for the plaintiff's vendor as per the builders allocation not deemed to be conveyed to the plaintiff.



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Notwithstanding a specific reference to the sale in the sale deed Ex.A.2?

2.Whether the Court below did not erred in failing to see that as per Section 2(h) 6(1) & (2) of the Tamilnadu Apartments Ownership Act, 1994, the parking area is one of common amenities and hence the plaintiff is entitled to it without any objections from the defendants and more so by virtue of the specific reference to the builders agreement?”

25.I must once again reiterate the subsequent development which had happened. The second defendant in the suit G.Vasanthi, whose husband had given evidence as DW1/Kirubakaran, had sold the flat allotted to her in the year 2013 to one Sudha. From the year 2013 onwards, the said Sudha had not taken any necessary steps to implead herself as a party to the present second appeal. She had then sold the flat in the year 2022 to one Revathy.

26.The appellant herein had filed CMP No.11482 of 2022 to



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implead the said Revathy as a party /respondent to the second appeal. It is evident that the said purchaser had purchased not only the flat but also the litigation rights of G.Vasanthi and therefore cannot seek any larger right than what had been granted to Sudha who herself was a purchaser of the property. It must also be mentioned that the purchaser Revathy had independently filed C.M.P.S.R.No.74638 of 2022 on 15.07.2022 but the petition was not yet numbered. Steps have not been taken to number the said CMP and bring it up for consideration before this Court. It must also be mentioned that the present second appeal had been earlier listed on 11.07.2022 and on 21.07.2022 but still the application had not been brought before this Court for consideration.

27.As stated, the said purchaser had purchased the property pending the second appeal. Section 52 of the Transfer of Property Act is very clear that leave of the Court should be obtained. The claim of the appellant to implead the said Revathy as a party respondent has to be discussed on the ground that the said purchaser is not a bonafide purchaser. I would not give any credence to such purchase and therefore, the said application in CMP.No.11482 of 2022 is dismissed.



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28.Heard arguments advanced by Mr.D.Nagesh Babu, the learned counsel on behalf of the appellant and Mr.C.Ramesh, the learned counsel on behalf of the respondents effectively only for the first respondent.

29.The first substantial question of law is, whether any car park has been conveyed to the plaintiff. The second substantial question of law surrounds the provisions of the Tamil Nadu Apartment Ownership Act, 1994.

30.Let me examine the second substantial question of law first.

31.The Tamil Nadu Apartment Ownership Act, 1994 (Tamil Nadu Act 7 of 1995), had been legislated to overcome the difficulties which individual buyers face in multi-storeyed buildings and more particularly, in ownership of an individual Apartment together with the undivided interest in the common areas and facilities.

32.Section 3 (h) defines common areas and facilities as follows:

“3.Definitions.-In this Act, unless the



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context otherwise requires.-

a.. . .

h. "common areas and facilities" unless otherwise provided in the Deed of Apartment, means-

1. . . .

2.. . .

3.the basements, cellars, yards, gardens, parking areas and storage spaces;

33.The second substantial question of law revolves around interpretation of Section 6 (1) (2)

“6.Common areas and facilities.- (1)Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage specified in the Deed of Apartment and the limited common areas and facilities. Such percentage shall be computed by taking as the basis the extent of the plinth area available in the apartment in relation to the total extent of the plinth area available in the building.

(2) The parentage of the undivided



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interest of each apartment owner in the common areas and facilities and in the limited common areas and facilities, if any, as expressed in the Deed of Apartment shall have a permanent character and shall not be altered without the consent of all apartment owners. The percentage of the undivided interest in such common areas and facilities and the limited common areas and facilities shall not be separated from the apartment to which it appertains, and shall be deemed to be conveyed or encumbered with the apartment whether or not such interest is expressly mentioned in the conveyance or other instrument.”

34.The definition of common area and facility implies that it includes parking area.

35.Section 6 further explains common areas and facilities and states that every apartment owner shall be entitled to an undivided interest in common areas and facilities in the percentage specified in the deed of conveyance.



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36.Moreover, if any facility is expressed as being permanent in character, they should not be altered. It had been further provided that such common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment whether or not such interest is expressly mentioned in the conveyance or other instrument.

37.A reading of the above provision would indicate that a common area or facility also includes the parking area and would vest on an apartment owner when there is conveyance or encumbrance of a particular apartment even if it is not specifically mentioned in the conveyance instrument. The common area and facility shall not be separated from the apartment to which it appertains and shall be deemed to have been conveyed or encumbered with the apartment.

38.The common area includes the car parking space. Even if the deed by which such apartment is conveyed does not specifically include, the common area, the purchaser can claim interest, right and title over



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such common area. That is provided specifically under Section 6 (2) of the Act.

39. There is no information provided that this particular provision of the Tamil Nadu Apartment Ownership Act, 1994 had been declared to be ultra-vires. It still is in the statute. It is the law which has to be followed. The provision is very simple. If a common area includes car parking space and if the owner had a right to use the car parking space and if the owner conveys the apartment then his right over the car parking space automatically stands transferred to the purchaser. A car parking space, in other words, a common area in the apartment, should not be separated from the flat.

40. In the instant case, in the sale deed, the manner in which consideration had been paid had been mentioned and it had been covenanted that *“the receipt of which total sum of Rs.10,25,000/0 (Rupees Ten lakhs twenty five thousand only) the Vendor doth hereby admit and acknowledge in the manner detailed above and release the*



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purchaser from further payment thereof”

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41.Thus for the consideration received, S.G.Kothandaraman had conveyed, the schedule mentioned property together with all easements, liberty, privileges, advantages and appurtenances attached to the flat.

42.The reliance of the learned first appellate Court to Annexure 1-A, has got to be interfered with, since it is not part of the sale deed. Annexure 1 – A is a document kept along with the sale deed for the sole purpose of evaluating the structure available or the constructed area and to give a valuation thereon. It is the sale deed which conveys the right which are transferred and the consideration received for such rights and title being transferred.

43.In the instant case, the covenant very specifically states that the owner had conveyed all rights and privileges which stood attached to the property given in the schedule. Therefore, the sale deed will have to be



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read as a whole document and should not be read in parts.

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44.Viewed from that particular angle and viewed in conjunction with the provisions of Tamil Nadu Apartment Ownership Act, 1994, it is clear that a owner will have every right to use the car parking space if he/she resides in that particular flat.

45.The further aspect to be addressed is, whether the appellant who is the purchaser from the original owner can be termed to be an owner of the flat which he had purchased.

46.In this connection, the development agreement has to be examined. In the development agreement, the term '*owner*' had been stated as follows:

“OWNER:

*One Flat to each Vendor as indicated
below*

*(A).Mrs.G.RANI: Flat “F” in the First
Floor on the Southern side measuring 992 sq.ft.,*



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*and Mrs.G.RANI agreed to pay Rs.2,17,000/-
(Rupees Two Lakhs Seventeen Thousand Only) to
the builder.*

*(B).Mrs.S.G.KOTHANDARAMAN : Flat "B"
in the Ground Floor on the Eastern side
measuring 724 Sq.ft. and the builder agree to pay
Rs.51,000/- to Mr.S.G.KOTHANDARAMAN*

*(C).Mrs.G.VASANTHI : Flat "E" in the
First Floor on Eastern side measuring 806 Sq.ft.,
and Mrs.G.VASANTHI agreed to pay Rs.31,000/-
to the Builder."*

47.This would indicate that the three owners as on the date of the development agreement were Mrs.G.Rani, Mr.S.G.Kothandaraman and Mrs.G.Vasanthi. A reading of the development agreement shows that there is no embargo or restriction placed on those three named individuals to further convey the property. The right of the owner to convey a property for a valuable consideration vest with title. It would defy logic to state that a subsequent purchaser cannot be termed as 'owner'. Having purchased the property by a sale deed which had been duly registered



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and by which document title had been transferred in manner known to law, the purchaser becomes the *owner* of the property.

48. Section 54 of the Transfer of Property Act defines:

“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the



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property.

Contract for sale.—A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

49.A sale is a transfer of ownership in exchange for consideration. In the instant case, the consideration was Rs.10,25,000/-. The existing owner conveyed the property which was described in the schedule and also all his rights over that existing apartment flat. Possession had also been given. The sale deed had been registered. There was transfer of title and transfer of ownership and recognition of such transfer of title and ownership. Law recognizes the subsequent purchaser as the *owner* of the flat. The appellant herein had purchased the flat in the year 2004. From the date of purchase, he becomes the *owner* of the flat. As the *owner* of the flat, if he resides in that flat, he is entitled to one car parking space.



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50.As a matter of fact, the second defendant G.Vasanthi had sold her flat in the year 2013 to one Sudha, who had then sold it in the year 2022 to one Revathy. Therefore G.Vasanthi can no longer termed as owner. The first defendant G.Rani is yet another owner of the flat. The first defendant G.Rani according to the learned counsel for the first respondent is residing in the flat. She is therefore entitled to one car parking space. The appellant having purchased in the year 2004 and as the owner of the flats purchased by him is entitled to the other car parking space. The subsequent purchaser having purchased the litigation cannot claim any right since the said purchase had been done with the knowledge of the existing litigation.

51.The second substantial question of law is therefore answered that in view of the provision of the Tamil Nadu Apartment Ownership Act, 1994, the appellant herein had purchased not only the flat conveyed to him but also the common area and that common area as defined under Section 3(h) includes a car parking space and under Section 6(2) of the Act every common area and facility is included and attached to the flat



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which is sold. Therefore, the appellant herein is entitled for one car parking area. The judgment of the first appellate Court is contrary to the principles of law and has to be interfered with and is therefore set aside.

52.The first substantial question of law is whether the car parking area earmarked for the plaintiff's vendor can be conveyed to the plaintiff. The answer is only an extension of the discussion to the answer to the second substantial question of law. The sale deed states that the vendor of the appellant had conveyed the facilities available under the development agreement.

53.When the appellant purchased the flat then his ownership rights have to be recognized. The appellant herein has the right to use one of the car parking spaces and the first respondent G.Rani has the right to use other car parking area. It is for them to workout which car parking space they would use. If the appellant uses car parking No.3, then the first respondent will have to use car parking No.4. If the appellant uses car parking No.4, then the first respondent can use car parking No.3.



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aside.

54.Consequently, the judgment of the first appellate Court is set

55.The second appeal is allowed, however without costs.

Consequently, connected miscellaneous petition is closed, if any.

56.The judgment and decree of the first appellate Court in A.S.No.516 of 2006 dated 13.12.2006 on the file of the II Additional City Civil Court, Chennai, is set aside. The judgment and decree of the trial Court in O.S.No.613 of 2005 dated 28.02.2006 on the file of the XIV Assistant City Civil Court, Chennai, is restored and confirmed.

Index:Yes/No
Internet:Yes/No
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To

1.The II Additional City Civil Court, Chennai.



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- 2.The XIV Assistant City Civil Court, Chennai.
3.The Section Officer, V.R.Section, High Court of Madras.

C.V.KARTHIKEYAN,J.,

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