



OSA.Nos.10 and 11 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM :

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

**OSA.Nos.10 and 11 of 2022
and
CMP.Nos.6277 and 6280 of 2022**

Regal Palm Garden Apartment
Owners Association (RPGAOA),
Represented by its Secretary,
No.383, Velachery, Tambaram Road,
Velachery, Chennai - 600 042.

.. Appellant in both OSAs

Versus

1. M/s. CeeDeeYesHousing and
Infrastructure Private Limited,
(Formerly Cee Dee Yes Housing and Finance Ltd.,)
Rep.by its Managing Director,
No.42, 2nd Main Road, Gandhi Nagar,
Adayar, Chennai 600 020.
2. M/s. CeeDeeYesHealthCare Services Private Limited,
(Formerly Cee Dee Yes Standard Towers Pvt Ltd.,
Rep. by its Managing Director,
No.383, Velachery, Tambaram Road,
Velachery, Chennai - 600 042.
3. C.Devadasasundaram



4. M/ standard Fire Works Private Limited,
Represented by its Managing Director,
No.1/3, Thirthangal Road,
Sivakasai 626 123.

5. The Special Tahsildar (Land Acquisition - Highways),
Mambalam - Guindy Taluk,
Singaravelar Maaligai, Chennai 600 001.

6. The Tahsildar,
Velachery Taluk,
Velachery, Chennai 600 042.

7. The Chennai Metropolitan Development Authority,
Rep by its member Secretary,
Thala Muthu Natarajan House,
Gandhi Irwin Road, Egmore, Chennai - 8.

8. M/s. CeeDeeYes Property Services Private Limited
represented by its Director Brunth Sundar,
No.42 II Main Road Gandhi Nagar,
Adyar Chennai 20.
(Eighth respondent impleaded as per order
dated 16.12.2019 in Appln.Nos.8572 & 8573 of 2019
in C.S.No.535 of 2019.

.. Respondent in both OSAs

Common Prayer: Original Side Appeals filed under Order 36, Rule 9 of Original Side Rules read with clause 15 of the Letters Patent, to set aside the common interim order and decree dated 06.09.2021 made in O.A.Nos.847 and 848 of 2019 in CS.No.535 of 2019 passed by this Court and allow the Original Side Appeals.

For Appellant	:	M/s. Chitra Sampath, Senior Advocate for Mr.S.Namasivayam in both OSAs
For R1 to R3	:	Mr.Kabir, Senior Advocate for Mr.T.Jayaraman in both OSAs
For R4	:	Mr.A.Sivaji in both OSAs
For R5 & R6	:	Mr.R.Sidharth, Government Advocate in both OSAs
For R7 & R8	:	No appearance



COMMON JUDGMENT

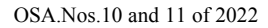
(Judgment of the Court was delivered by R. MAHADEVAN, J.)

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The present Original Side Appeals have been preferred by the appellant/plaintiff against the common order dated 06.09.2021 passed by the learned Judge in O.A.Nos.847 and 848 of 2019 in CS.No.535 of 2019.

2.The necessary facts leading to the filing of these appeals would run thus:

2.1. On 28.03.2001, an MOU was entered into among the first respondent represented by the third respondent and the fourth respondent, for development of 6.86 acres of land owned by the fourth respondent in Velachery in three different parcels. Subsequently, on 29.05.2001, a deed of reconstitution was executed by the fourth respondent and the 3 parcels were clubbed into one composite land parcel. *Vide* letter No.C3/21795/2001 dated 02.05.2002, the seventh respondent / CMDA granted planning permission in favour of the fourth respondent for construction of building with two entries / gates situated on Velachery-Tambaram Main Road to the composite complex. Out of the primary residential zone of the composite land parcel, a gift deed to an extent of 29916 sq.ft was executed by the fourth respondent in favour of the Corporation of Chennai. On 16.05.2002, building permission was granted by



2.2. From December 2002 and thereafter, the members of the appellant Association / their predecessors-in-interest, entered into sale-cum-construction agreements, wherein the extent conveyed to the individual buyers is mentioned as undivided share of the entire extent of 6.86 acres comprised in S.Nos.329, 328/2, 327/1, 256/2, 325/1, 325/2 and 325/2 with Velachery-Tambaram Road as the Western boundary. However, in the sale deeds, the third respondent replaced the Velachery-Tambaram Road with S.No.329 as the western boundary and the larger extent as 5.50 acres, in violation of the planning permission. In 2003, the fourth respondent had conveyed an extent of 48,000 sq.ft. in 24 sale deeds of 2400 sq.ft. each in S.No.329 to the second respondent with Velachery-Tambaram Road as western boundary. On 06.06.2005, the balance extent of 10156 sq.ft which forms the pathway to the residential complex, in S.No.329, was purchased from the fourth respondent by the eighth respondent viz., M/s.Cee Dee Yes Property Services Private



Limited. The respondents 1 to 4 also built an illegal wall blocking part of ingress and egress to the residential complex.

2.3. In 2014, the appellant Association was formed after duly electing its office bearers. As the members of the appellant questioned the violation of the planning permission, a MOU was entered into, among the eighth respondent, third respondent and appellant on 16.05.2015 and as per the same, the third respondent agreed to transfer the undivided share of land in S.No.329 measuring an extent of 10156 sq.ft. in favour of the appellant, but there was no mention about time limit or consideration. Subsequently, after exchange of some communications, the third respondent unilaterally cancelled the said MOU on 11.01.2017. Aggrieved by the same, the appellant preferred CS.No.535 of 2019, for mandatory injunction and permanent injunction.

2.4. Since the respondents have attempted to subdivide and alienate the suit schedule property to the third party, the appellant filed OA Nos.847 and 848 of 2019 in CS.No.535 of 2019 seeking interim injunctions restraining the respondents from alienating or encumbering the suit schedule property; and from subdividing the suit schedule property by metes and bounds and maintain the same as per the composite plan granted by the seventh respondent on 02.05.2002 as ordered in A.No.2810 of 2020 in CS No.535 of 2019.



However, by order dated 06.09.2021, the learned Judge dismissed both the applications. Therefore, the present appeals by the appellant / plaintiff.

3.The learned counsel for the appellant submitted that as per the CMDA approved plan, the extent of 10156 sq.ft of land in S.No.329 is the only pathway leading to the residential complex of 412 families consisting of more than 2000 residents, including children and senior citizens; and if the suit schedule property is allowed to be dealt with as a private property, the residents of the entire apartment complex will be deprived of ingress and egress to the road. Without considering the same, the learned Judge erred in dismissing the applications, by the order impugned in these appeals. It is also submitted by the learned counsel that the learned Judge erroneously raised the issue of maintainability of the suit, when the application seeking rejection of plaint was already dismissed. Further, ignoring the fact that the appellant Association came into existence only in 2014, the learned Judge erred in observing that the reconstitution deed dated 29.05.2001 is fabricated by the appellant. With these submissions, the learned counsel prayed to set aside the order of the learned Judge and allow these appeals.



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4. On the above submissions, we have heard the learned counsel appearing for the respective respondents and also perused the documents enclosed in the typed set of papers.

5. It could be seen that with respect to the suit schedule property, there were various agreements and undertakings among the parties, the violation of which, has raised the present dispute. This court is of the opinion that such disputed questions of fact cannot be adjudicated in these appeals. Hence, considering the facts and circumstances of the case and as agreed to by the learned counsel appearing for both sides, we direct the Court concerned, where the civil suit is pending, to dispose of the case in CS.No.535 of 2019, as expeditiously as possible, in any event, preferably within a period of six months from the date of receipt of a copy of this order. Till such time, *status quo* as obtaining today, shall be maintained by both sides.

6. Both the original side appeals stand disposed of, in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
05.04.2023

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Index : Yes / No
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