



A.No.3075 of 2024 in CS.No.306 of 2013

A.No.3075 of 2024
in CS.No.306 of 2013

DATED : 21.11.2024

A.A.NAKKIRAN, J.

ORDER

This application has been filed by the applicant/defendant to direct the 1st respondent/1st plaintiff to restore the staircase that was demolished by the 1st respondent/1st plaintiff without following the due process of law.

2.The learned counsel for the Applicant/defendant submits that as per the said settlement deed executed by mother of the parties, the applicant was enjoying the first floor allotted to her and as per the extended construction jointly put up by the 1st plaintiff and the defendant. The 1st plaintiff and the defendant removed the existing stair case and constructed the new stair case on the northern side of the 1st plaintiff's and defendant's property with entry from western side. The stair case put up jointly by the 1st plaintiff and the defendant is the only access for the defendant for



A.No.3075 of 2024 in CS.No.306 of 2013

ingress and egress to her property.

WEB COPY

3.It has been further submitted by the learned counsel that there is a common area being enjoyed by the 1st plaintiff and defendant. However, the 1st plaintiff has removed the staircase steps. The defendant came to know that she was set exparte on 04.04.2017 in the main suit when she received notice in E.P No.2 of 2018 and E.P No.3 of 2018 allegedly filed by the plaintiffs on the basis of exparte decree dated 04.04.2017. The plaintiffs have obtained an order appointing advocate commissioner as per the orders in application No.1754 of 2020 in E.P No.2 of 2018 for removal of stair case on mislead claims that the said stair case is built up in schedule "B" property belong to the 1st plaintiff. The said application was dismissed for non prosecution on 09.03.2022. However, the 1st respondent with rowdies has demolished the stair case in the common area without following the due process of Law. Hence, the application has been filed to direct the 1st plaintiff to restore the stair case and the status quo ante present before the illegal removal of the stair case may be restored.

4.The learned counsel for the 1st Respondent/1st Plaintiff submits that in the execution petition, an advocate commissioner was appointed



A.No.3075 of 2024 in CS.No.306 of 2013

WEB COPY

and the unauthorised stairway constructed by the defendant was demolished under the aegis of this Court. The exparte decree was set aside primarily on the ground of a typographical error in the suit itself. Unfortunately, before the termination of the execution proceedings, the suit decree was set aside and E.P could not be prosecuted further. The claim that the stairway has been only partially demolished is a barefaced lie and the report of the advocate commissioner stands as proof to the contrary. The allegation of encroachment by the 1st plaintiff is baseless and undeserving of consideration, while the applicant's right to access her property is not denied. The accusations against the advocate commissioner are also baseless. The applicant has not made a case for restoration, and all the allegations made by her revolve around the merits of this case which can be dealt with by this Court only during the trial. Therefore, this application is liable to be dismissed.

5. Heard both sides and perused the materials available on record.

6. On perusal of the amended plaint copy, it is seen that "A"



A.No.3075 of 2024 in CS.No.306 of 2013

WEB COPY

Schedule property with extent of 1 Ground and 960 Sq.Ft together with superstructure thereon comprising of Ground, 1st and 2nd Floor. Having considered the Settlement Deeds vide Document Nos.560 of 2003 and 565 of 2003 and Ex.P12,-the Sketch attached with the documents, the applicant/defendant and the respondent/1st plaintiff are directed to jointly restore the Staircase as per the aforesaid documents within a period of four weeks and the cost of the restoration of staircase shall be born by both parties. With the aforesaid direction, this Court is inclined to allow the application.

7. In the result, the Application stands allowed. No costs.

21.11.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
uma/Lbm



WEB COPY



A.No.3075 of 2024 in CS.No.306 of 2013

A.A.NAKKIRAN, J.
uma/lbm

Pre-Delivery Order in
A.No.3075 of 2024
in CS.No.306 of 2013

21.11.2024