



A.S.No.886 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

A.S.No.886 of 2024
and
C.M.P.No.23315 of 2024

1. A.Radha
W/o Ashok Mehthas
2. M.Vijayalakshmi,
W/o Munuswamy
3. R.Venkataraman,
S/o Raghava Reddy
4. S.Revathy,
w/o Late K.Shankar
5. S.Sathishkumar,
S/o Late K.Shankar
6. S.Rekha,
D/o Late K.Shankar
7. S.Dhanushkodi
8. S.Rajalakshmi
D/o Late K.shankar
9. K.S.Abu Becker,
S/o K.M.Shaick Dawood

..Appellants



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Vs.

WEB

1. Mani

2. Tamil Vanan

3. S.Abdul Haroon

4. Lily

5. Nesamani

6. Premabai Narayanan

7. E.Sivasankaran

8. Malathi sivasankaran

9. Gopalakrishnan Subbulakshmi

10. S.Padmini

11. Munuswamy

12. Shivaji Prasad

13. V.Rajendra Kumar

14. Umanath Prasad Guptha

15.V.Praveen Kumar

16. P.Girish

17. K.Ramesh

18. N.S.Subashree

19. M.S.Gopalakrishnan



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20. Shantha Gopalakrishnan

21. K.V.Vasantha

22. G.Uma Maheswari

23. S.Karunamoorthi

24. R.Mary clara

25. Bhavani

26. Prakash

27. Regina Mano Kumar

28. A.S.T.prakash

29. M.Dhanapal

30. L.Saraswathy

31. M/s. Sankar Infra Projects
rep. by its Director R.Ganesh
No.15, Railway station Road,
Alandur,
Chennai - 600 016.

32. M/s. Kasi Builders,
rep. by M.K.Mathivathanan,
Plot Nos.91 & 92,
Kasi Theatre Complex,
Jawaharlal Nehru Salai,
Ashok Nagar,
Chennai - 600 095.

(R32- impleaded as party respondent vide order dt.30.10.2024
made in CMP.No.24095/2024 in A.S.No.886/2024
by JNBJ & RKMJ)

..Respondents



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Prayer: The Appeal Suit is filed under Section 96 read with Order 41 Rule 1 of the Civil Procedure Code against the judgment and decree in O.S.No.2201 of 2023 on the file of VII Additional City Civil Court, Chennai dated 23.02.2024

For Appellant : Mr.Murali Kumaran, Senior Counsel
for M/s.McGan Law Firm

For Respondents : Mr.S.Subramaniya

J U D G M E N T

*(Judgment of the Court was delivered by **J.NISHA BANU, J**)*

This appeal has been filed as against the judgement and decree passed by the VII Additional City Civil Court, Chennai, dated 23.02.2024 in O.S.No.2201 of 2023, dismissing the suit filed by the appellants/plaintiffs.

2. The suit was filed by the plaintiffs under Order VII Rule 1 of CPC seeking declaration (a) to declare the first plaintiff is the absolute owner of an extent of 440.30 sq.ft. being the 1/20th UDS out of 8806 sq.ft. instead of 1/20th UDS out of 5103 sq.ft. as stated in the sale deed Doc.No.3064/2005 (b) to declare the 2nd plaintiff is the absolute owner of an extent of 440.30 sq.ft. being the 1/20th UDS out of 8806 sq.f.t instead of 1/20th UDS out of 5103



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sq.ft. as stated in the sale deed Doc.No.3391/2007 (c) to declare the 3rd plaintiff is the absolute owner of an extent of 673.14 sq.ft. being the 2/14th UDS out of 4712 sq.ft. instead of 1/14th UDS out 4712 sq.t. as stated in the sale deed Doc.No.6974/2004 (d) to declare the 4th, 5th, 6th, 7th & 8th plaintiffs are the absolute owner of an extent of 336.57 sq.ft. of UDS being the 1/14th UDS out of 4712 sq.ft. instead of 1/14th UDS out of 1999.5 sq.ft as stated in the sale deed Doc.No.5214/95 and (e) to declare the 9th plaintiff is the absolute owner of an extent of 336.57 sq.ft. of UDS being the 1/14th UDS out of 4712 sq.ft. instead of 1/14h UDS out of 1999.5 sq.ft. as stated in the sale deed Doc.No.3361/2008.

3. The case of the appellants/plaintiffs are as follows:

(i) The plaintiffs are in possession and enjoyment of their respective flats in the complex Sagar Apartments as absolute owners as on date and paying taxes and other statutory levies in their names. There are 34 apartments in the complex, Sagar Apartments with 33 owners being the plaintiffs and the defendants together. The 3rd plaintiff is the owner of two flats being Flat Nos.I & J in the ground floor. The said Apartment has been constructed by M/s. Kasi Builders rep. by its Prop. Mr.M.K.Mathivathanan. The owners have formed an association by name Sagar Apartments (Phase-II) Flat Owners Welfare



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Association and the office bearers of the Association are maintaining the apartments by collecting monthly maintenance. The age of the apartments is more than 30 years and the building has become dilapidated and level of the building is low and there is rain water menace during rainy season. Therefore, the owners of the apartments unanimously decided to demolish and redevelop the property. After various rounds of discussion and meetings they have finally opted to develop the property through M/s. Sankar Infra Projects Pvt.Ltd. rep. by its Director Mr.S.Rajendran. The owners entered into a joint development agreement with the 31st defendant M/s. Sankar Infra Projects on 11.12.2022. The issue had been discussed amongst all the owners in the association and noted discrepancy in the documents of the plaintiffs wherein the UDS have been wrongly mentioned and it has to be corrected so that there is no shortfall in the land extent. Further as per site, the actual extent is available. The names of the owners, their undivided shares of land and their corresponding flat numbers and extent are enclosed in the plaint and there shall not be any discrepancy in conveying the land share to the prospective purchasers.

(ii) After summons, the defendants, 6,9,15,19,26, & 28 did not appear before the court and they were called absent and set exparte. The 29th defendant reported, died. The defendants, 1 to 5, 7, 8, 10 to 12, 14, 16 to 18, 20 to 25, 27, 30 and 31 entered appearance through advocate but have not



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chosen to file written statement and they were set exparte. On the side of the plaintiffs, documents Exs.A1 to A7 were marked.

(iii) The point for consideration is, Whether the plaintiffs have proved their case and whether the plaintiffs are entitled to get declaration as prayed in the plaint.

(iv) The trial Court found that the plaintiffs have claimed that the actual extent of land is 8806 sq.ft. in Survey No.208/1B2 and 208/1B2A1 but none of the plaintiffs had filed any single piece of document to show that the actual extent of land is 8806 sq.ft. in the said survey numbers. Though the plaintiffs had pleaded that the said flats had been constructed by M/s. Kasi builders through his Proprietor, M.K.Madhivadhanan, they have not examined the said Madhivadhanan to prove their claim and not added the Builder as a party to the proceedings. The trial Court came to the conclusion that the plaintiffs failed to prove their case with necessary documents and by examining the necessary parties by producing necessary and relevant revenue documents to show that the actual extent of land in existence is more than that of the extent of land mentioned in their documents. Hence, the trial Court dismissed the suit.

4. Aggrieved over the judgment and decree passed by the trial Court, the present appeal has been filed by the appellants/plaintiffs. Since the trial Court



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has observed that the Builder has not been added as a party to the proceedings and has not been examined, now, the appellants have filed an implead petition in C.M.P.No.24095 of 2024 to implead the proposed respondent viz., M/s. Kasi Builders, rep. by M.K.Mathivathanan, as the respondent in the appeal and the said petition is ordered today. To effectually and completely adjudicate upon and settle all the questions involved in the appeal, the proposed respondent, who is the builder/ promoter of the Apartments belong to the appellants and respondents, is the necessary party to be impleaded in the appeal. Hence, the builder/promoter is impleaded.

5. Since the builder/promoter of the Apartments has been impleaded, the Proprietor of M/s. Kasi Builders, Mr.M.K.Madhivadhanan has to be examined to prove the claim of the appellants/plaintiffs and therefore, We are of the opinion that it is just and proper to remand the matter back to the trial Court.

6. Therefore, the judgement and decree passed by the VII Additional City Civil Court, Chennai, dated 23.02.2024 in O.S.No.2201 of 2023, is hereby set aside. The learned VII Additional City Civil Judge, Chennai, is directed to conduct the trial afresh by giving opportunity to all the parties and dispose of



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the suit within a period of six months from the date of receipt of a copy of this judgment. Accordingly, the Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B., J.) (R.K.M., J.)
30.10.2024

vsi

To

VII Additional City Civil Court,
Chennai



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and
R.KALAIMATHI, J.

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