



S.No.742 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	26.06.2025
<i>Pronounced on</i>	28.07.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.742 of 2019

1. Raja Mohamed
2. A.Syed Abuthakir
3. A.Abdul Kalam Azad
4. A.Mohamed Ismail

.. Appellants

versus

H.Bawa Nainar

.. Respondent

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgment and decree dated 31.01.2019 made in A.S.No.252 of 2018 on the file of XV Additional City Civil Judge, Madras, confirming the judgment and decree dated 13.02.2017 in O.S.No.6436 of 2015 on the file of XIII Assistant Judge, City Civil Courts, Chennai.

For Appellants : Ms.V.Srimathi

For Respondent : Mr.M.Balasubramanian



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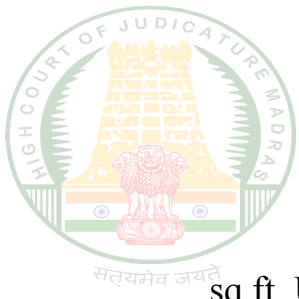
JUDGMENT

WEB COPY This Second Appeal arises out of the judgment and decree dated 31.01.2019 in A.S.No.252 of 2018 passed by the learned XV Additional City Civil Judge, Madras, confirming the judgment and decree dated 13.02.2017 in O.S.No.6436 of 2015 passed by the learned XIII Assistant Judge, City Civil Courts, Chennai.

2. The unsuccessful defendants before the Courts below, are the appellants herein and the respondent herein is the plaintiff.

3. For the sake of convenience, the parties herein after referred to as per their nomenclature before the trial Court.

4. The case of the plaintiffs is that one Thiru A.Shameem Ahamed owned land and building bearing D.No.20/47 (Old D.No.54), Anderson Street, George Town, Chennai-01, measuring total extent of 1452 sq.ft. together with ground plus two floors. The petitioner along with his wife, purchased a shop in the ground floor measuring 272 sq.ft. along with 91



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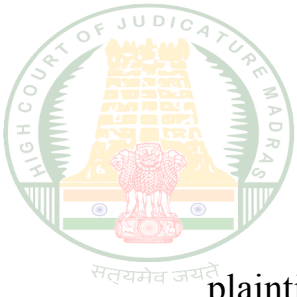
sq.ft. UDS under a registered sale deed, dated 27.10.2014. The defendants 1 and 2 herein also purchased 226 sq.ft. UDS together with first floor of the building to an extent of 652 sq.ft. by a registered sale deed dated 9.4.2015 and also the defendants 3 and 4 purchased 226 sq.ft. of UDS first floor building to an extent of 660 sq.ft. The defendants 1 to 4 have also taken the ground floor portion on lease and second floor and carrying on their business under the name and style “Sabina Stationeries”. While so, the defendants 1 to 4, without having any right or authority and without any planning permission, illegally put up third floor and partly constructed the fourth floor despite the protest made by the plaintiff. The said construction would diminish the value of the UDS held by the other co-owners. Further, in a commercial complex, well, staircase and open terrace should be used in common by all the co-owners, but the defendants reduced the space of the staircase and prevented the plaintiff to visit the terrace without recognizing him as a co-owner. Therefore, the plaintiff lodged a complaint with the local police, who, in turn, suggested the plaintiff to approach the Civil Court. Hence the suit.



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5. Resisting the suit, the defendants 1 to 4 filed a written statement, *inter alia*, stating that they are the owners of the property only in respect of the first floor of the building and the plaintiff's right is limited over the shop on the ground floor along with UDS of 91 sq.ft. only and there is no common area to be enjoyed by the co-owners of the property and no right has been given to him over any common area in the premises and to use the staircase. The defendants have taken the premises situated on the ground floor, second floor and third floor for rent and they did not put any construction, in the third floor and fourth floor and it had been constructed only by the original owner of the property. The property is not a commercial complex and therefore, the staircase and open terrace are not common to use. The defendants carried out alteration of the existing staircase which has been used to go from ground floor to the first floor with the permission of the original owner and the plaintiff has no right to use the staircase as the same exclusively belongs to the defendants. No flats are there and it is not a multi-storied building to be used and enjoyed by the co-owners. The



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plaintiff has no right to raise objection for carrying out alteration of the staircase. The plaintiff was not willing to come for amicable settlement and therefore, the defendants sent a legal notice on 27.10.2015 to the petitioner and his wife, but there was no reply from the plaintiff. Hence, no cause of action arose to file the suit. With these averments, the defendants sought for dismissal of the suit.

6. Based on the respective pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is entitled to get the relief of declaration?
2. Whether the plaintiff is in possession and enjoyment of the suit property?
3. Whether the plaintiff is entitled to get the relief of permanent injunction as prayed for?

7. To prove their respective case, the plaintiff was examined as PW.1 and got marked Exs.A1 to A9 and the 1st defendant was examined as DW.1 and no documents were marked.



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8. The trial Court, on consideration of both oral and documentary evidence, has held that the plaintiff proved his title over the shop portion as the owner and that the defendants have no absolute right over the staircase and terrace and that he is entitled to use common area without interference as a co-owner and accordingly, decreed the suit.

9. Aggrieved over the judgment and decree of the trial Court, the defendants preferred an appeal before the lower appellate Court, which, on analyzing of the findings of the trial Court, by its judgment, confirmed the same and consequently, dismissed the appeal. Hence, the regular second appeal is preferred by the defendants.

10. This Second Appeal is admitted on the following substantial questions of law, viz.,

- i) Whether the findings of the courts below are not perverse when it had failed to understand the meaning of UDS qua the built up area purchased by the respondent?



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ii) When the plaintiff had not established his right over the property that belong to the appellants and admittedly purchased under Exs.A3 and A4, are the courts below justified in granting a decree for injunction?

iii) When the plaintiff had purchased only the shop portion together with the UDS restricted to the built up area, is he entitled to claim the remaining lands as common area demanding a status of co-sharer with the appellants?

iv) Whether the courts below are right in granting a decree in favour of the plaintiff, when the schedule of property shown in the suit has no relevance to Exs.A1 and A2?

v) Can the courts grant or create a right to the plaintiff in the absence of legal entitlement based on title deeds?

vi) Whether the courts below are right in decreeing the suit without even appreciating the suit which is not



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properly valued and appropriate court fee had not been paid?

11. Challenging the concurrent findings of the Courts below, Ms.V.Srimathi, learned counsel appearing for the appellants would contend that the original owner, Thiru Shameem Ahamed had sold away a specific portion, i.e. a shop to an extent of 272 sq.ft. on the ground floor to the vendors of the plaintiff along with undivided share of 91 sq.ft. and nothing beyond it and therefore, the plaintiff's right is restricted only in respect of his shop and UDS allotted to him and he cannot claim that he is a co-owner of the entire property. She would also contend that the property being a commercial one, there is no common area to be enjoyed by co-owners of the property and that there is no right regarding enjoyment of common area in the premises for the use of staircase, which has been given by the vendor of the plaintiff; that, the defendants purchased the entire first floor portion under two sale deeds measuring total extent of 1312 sq.ft. together with undivided share of land measuring 552 sq.ft. out of total 1452 sq.ft. and they never put up any illegal constructions on 3rd and 4th floors, but they carried



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on alteration of existing staircase which is exclusively used by the defendants to go to the first floor from the ground floor, over which, the plaintiff has no right to use the same; that, as a matter of fact the UDS allotted to the plaintiff is within his individual built up area which was sold to him and it remains intact and at no point of time, the value of the UDS would get diminished as alleged by the plaintiff.

12. The learned counsel would further contend that the Courts below have not dealt with the issues in proper perspective manner. The Courts have erroneously held that the plaintiff is entitled to the relief of declaration and consequential permanent injunction when there are no common areas to be enjoyed by the plaintiff. Further, the plaintiff cannot question the alteration of staircase done by the appellants as they had right to do so as per Clause 8 specified in the rental agreement entered between the appellants and the original owner in respect of the ground floor portion which was taken by the appellants on rental basis. If at all the defendants made constructions if any, the original owner, Shameem Ahamed alone can

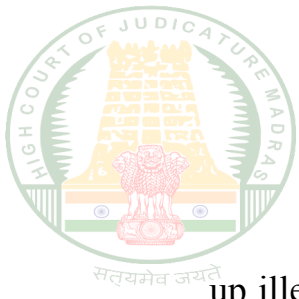


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question the same, but not the plaintiff as he has no right to question the same and if any obstruction is caused in respect of his property, only then, the plaintiff can question. With these contentions, the learned counsel for the appellants would urge this Court to set aside the concurrent findings of the Courts below and to allow the appeal.

13. On the other hand, Mr.M.Balasubramanian, learned counsel for the respondent/plaintiff would contend that on appreciation of both oral and documentary evidence adduced by both parties, both the Courts below have concurrently held that the plaintiff is entitled to the declaration and consequential injunction as sought for, which requires no interference. He would contend that the defendants are also one of the co-owners like that of the plaintiff having purchased the entire first floor measuring 1312 sq.ft. together with UDS of 552 sq.ft. and being co-owners, they do not have any right to alter the staircase or put up any constructions over the joint property that too any illegal construction and prevent the other co-owner to use the common area and facilities. He would contend that the defendants have put



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up illegal construction on the 3rd and 4th floors without getting any approval or planning permission from the concerned authority or by earmarking UDS towards the so called construction and also altered the staircase, which would certainly diminish the value of the UDS of all the co-owners of the property and the Courts below have rightly held that the acts of the defendants cannot be sustained. He pointed out that it is settled law that a co-owner cannot construct illegally on joint property and infringe upon the rights of other co-owners. He would also contend that the defendants reduced the space of the stair case and prevented the plaintiff who is a co-owner, to visit the terrace and being co-owners, the defendants ought to have recognized the right of the other co-owner, i.e. the plaintiff. The Courts below have categorically held that the defendants have common right over the staircase and terrace and their sale deeds did not convey any exclusive right to the defendants to enable them to make alteration of the staircase or to put up illegal construction on the 3rd and 4th floors, which requires no interference. With these contentions, the learned counsel sought for dismissal of the appeal.



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14. Heard the learned counsel for the appellants and the learned counsel for the respondents and perused the entire materials on record.

15. The undisputed facts are as follows:

(i) One Shameem Ahmed owned land and building bearing door No.20/47 (old door No.54), Anderson street, George Town, Chennai -600001 comprised in old survey No.3410-Tondiarpet Taluk, admeasuring 1452 sq.ft. Land together with ground plus two floors under a registered sale deed dated 23.06.1989.

(ii) the plaintiff and his wife purchased 272 sq. ft., ground floor shop and 91 sq.ft., of undivided share in the land on 27.10.2014.

(iii) the defendants 1 and 2 purchased 1st floor of the building measuring 652 sq. ft., together with 226 sq. ft., of undivided share in the land on 09.04.2015.

(iv) the defendants 3 and 4 purchased 660 sq.ft., first floor building with 226 sq.ft., of undivided share on 08.04.2015.



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(v) the defendants 1 to 4 have taken on lease, the remaining portion in the ground floor and second floor, carrying on business under the name and style "Sabina Stationeries".

16.The contention of the plaintiff is that, the defendants 1 to 4 without any planning permission constructed the 3rd floor, and the 4th floor partly inspite of protest made by the plaintiff as a co-owner of the suit property. The act of the defendants would diminish the value of the undivided share of the land held by the other co-owners. Further, in a commercial Complex, well, Staircase and Open Terrace should be used in common. The defendants 1 to 4 reduced the space of the staircase and refused permission to the plaintiffs to visit the terrace. It is submitted that, it is settled law, the undivided share land in a flat or multi storied building cannot be divided or partitioned and the co-owner should recognize the right of the other co-owner in the common area. The defendants have no right to alter the staircase by reducing the space of the staircase and prevent the plaintiff to reach the open terrace of the building in any manner.



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17.The learned counsel for the appellant/plaintiff would submit that a co-owner cannot be allowed to cause prejudice to the other co-sharers. To support his contention he has relied upon the following judgment reported in ***AIR 1985 Madras 283*** in which it is held that,

"A co-sharer cannot be allowed to cause prejudice to the other co-sharers by putting up a substantial construction during the pendency of a suit for partition filed by the co-sharers."

18. On the other hand, the defendants would submit that there is no common area to be enjoyed by co-owners of the property. No right has been given to the plaintiffs to enjoy the common area. Mr.A.Shameem Ahmed is in absolute possession and enjoyment of the remaining property as absolute owner. The plaintiff has purchased only 272 sq. ft., in the ground floor with undivided share of land measuring 91 sq.ft., and therefore, the plaintiff is not entitled to use the staircase as it exclusively belongs to the defendants. It is further submitted that the defendants have not put up any illegal construction in the 3rd and 4th floor and only alterations in the stair case were



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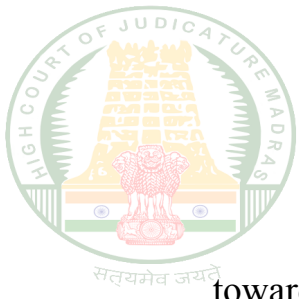
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done by the defendants. The plaintiff has no right to raise any objection in this regard.

19.The learned counsel for the appellant would further contend that as per Clause 8 specified in the rental agreement entered between the appellants and the original owner in respect of ground floor portion which was taken by the appellants on rental basis, the plaintiff cannot question the alteration of staircase by the appellants. The relevant portion of the said rental agreement is extracted as hereunder:

"The purchasers shall not hinder in any manner or way or have any right to hinder the construction to be put up any time in the future by the Vendor or his nominee over and above his shop or over any part of the existing building described in schedule 'B' property."

20.Here, neither the vendor nor his nominee are trying to put up any constructions in the said property. Moreover, as rightly pointed out by the learned counsel for the plaintiff/respondent, without getting any approval or planning permission from the concerned authority or by earmarking UDS

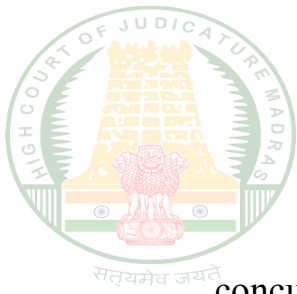


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towards the so called construction and altering the staircase, would certainly diminish the value of the UDS of other co-owners. Furthermore, even the owner of the building is not entitled to carry out any work, which would jeopardise the soundness and safety of the property or reduce the value thereof or impair any easement or hereditament. The plaintiff who is a co-owner has a right to visit the terrace and the defendants ought to have recognized the right of the plaintiff. The Courts below have rightly held that the defendants have common right over the staircase and terrace and their sale deeds did not convey any exclusive rights to the defendants to enable them to make alteration of the staircase or to put up illegal construction on the 3rd and 4th floors which requires no interference. Moreover, each owner of the building may use the common areas and facilities in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other co-owners.

21.I do not find any perversity, irregularity or material error in the



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concurrent findings rendered by the Courts below, warranting interference under Section 100 of the Civil Procedure Code.

22.For the above reasons, all the substantial questions of law are answered against the appellant and the second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition closed.

28.07.2025

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Index: Yes/No

Speaking order / Non-speaking order

To

1. The XV Additional City Civil Judge,
Madras,
2. The XIII Assistant Judge, City Civil Courts, Chennai
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.

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