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O.A.Nos.709 and 710 of 2024
in
C.S.No.228 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.12.2024

Pronounced on : 07.01.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

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C.S.No.228 of 2024

1.Nandini Srinivasan
Wife of Late Srinivasan Seshadri

2.Daya Srinivasan
Wife of Govindarajan Veeraraghavan

Both permanently residing at:
Flat No.E2, P.A. Apartments,
Old No.81, New No.193/1, Luz Church Road,
Mylapore, Chennai 600 004.

Both 1st and 2nd plaintiffs are presently residing at:
No.5543, Malibu Drive,
Edina, MN 55436.

Both 1st and 2nd plaintiffs are represented by their Power Agent
Govindarjan Veeraraghavan,
No.5543, Malibu Drive, Edine, 55436.

.. Applicants in both
applications

/versus/



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1.Nirmala Krishnaswamy
Wife of N.C. Krishnaswamy,
Plot No.1243, 13th Main Road,
Anna Nagar, Chennai 600 040.

2.Kala Doraisamy
Wife of S.Doraisamy,
Tower 47, Mt.208, Ashiana Subham Senior Living,
Melrosapuram Road, Govindapuram,
Maraimalainagar, Chennai 603 209.

3.M/s P.A. Construction,
represented by K.Ponnusamy,
Raja Annamalaipuram, Chennai 600 028.

4.Palanisamy Apartment Owner's Association
Represented by its Secretary,
Old Door Nos.81,82,83/New Door No.181 to 189,
Luz Church Road,
Chennai 600 004.

.. Respondents in both
applications

Prayer in O.A.No.709 of 2024: Original Applications has been
filed under Order XIV Rule 8 of the O.S. Rules r/w Order XXXIX Rule 1
and 2 and Section 151 of C.P.C., to grant an ad-interim injunction
restraining the 3rd and 4th respondents, their men, servants, agents,
assigns, subsidiaries or any anyone claiming through or under them or
acting under their directions, from in any manner redeveloping any
portion of Schedule D or F property.



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Prayer in O.A.No.710 of 2024: Original Applications has been filed under Order XIV Rule 8 of the O.S. Rules r/w Order XXXIX Rule 1 and 2 and Section 151 of C.P.C., to grant an ad-interim injunction restraining the 3rd and 4th defendants or any person claiming through or under them from in any manner disturbing or interfering with the peaceful possession and enjoyment of the schedule F property by the applicants in any manner whatsoever.

Both Applications:

For Applicants :Mr.R.Parthasarathy,
Senior Counsel for
M/s Rekha.S.

For R1, R2 & R4 :Mr.P.R.Raman, Senior Counsel for
M/s Anupam Raghuraman

COMMON ORDER

The civil suit is filed for declaration of 1/3rd share in the 'D' schedule property for the first plaintiff, permanent injunction restraining the defendants 3 and 4 from redeveloping any portion of 'D' and 'F' schedule property and permanent injunction restraining the 3rd and 4th defendant from interfering with the peaceful possession and enjoyment of 'F' schedule property.



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2. The plaintiffs 1 and 2 are mother and daughter respectively.

They are represented by their Power Agent, who is the husband of the second plaintiff. Pending suit, the first plaintiff died leaving her daughter/ the second plaintiff as her sole legal heir.

3. According to the plaint, the 'A' schedule property measuring about 17 grounds and 181 sq.ft. was originally owned by K.Champakammal - the grandmother of the first plaintiff. The said Champakammal entered into an agreement on 18.01.1979 with M/s Ponnam Traders, a registered Partnership Firm. Under the said agreement M/s Ponnam Traders was empowered to negotiate and take steps for sale of the said property. In turn, M/s Ponnam Traders entered into a sale agreement with one K.Ponnuswamy on 11/03/1979. At the request of K.Ponnusamy representing M/s P.A. Construction, K.Champakammal executed an irrevocable General Power of Attorney deed dated 22.08.1979 appointing K.Ponnusamy as her Agent to develop and sell 12 grounds of land, from out of 17 grounds 181 sq.ft of land which is described as 'B' schedule property. Pursuant to the power of attorney



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deed, K.Ponnuswamy representing M/s P.A.Construction developed 'B' schedule property by constructing 7 blocks of apartments (Block A to G) consisting of 96 flats and marketed the same between August 1979 to January 1982 in a phase by phase manner. The said Champakammal got one flat in Block 'B' for herself under a construction agreement dated 28.01.1980. Under this construction agreement, Champakammal got a ground floor flat measuring 2000 sq.ft along with 2/8th share in UDS, besides 800 sq.ft of land on the southern boundary of the flat was earmarked for Champakammal. The 2000 sq.ft flat with 2/8th UDS and 800 sq.ft land are described as 'E' schedule property.

4. In respect of remaining 5 grounds and 181 sq.ft, (12,181 sq.ft) Champakammal executed another irrevocable Power of Attorney Deed in favour of K.Ponnuswamy on 29.11.1980. The said portion is 'C' schedule property. Based on the said power of attorney deed, Ponnuswamy has executed 7 sale deeds and conveyed totally 1,296.75 sq.ft.



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5. Meanwhile, the said Champakammal executed a Will on 24.09.1979 and died on 25.01.1982. In O.P.No.354 of 1982, the Hon'ble High Court of Madras granted Letters of Administration in favour of N.E.Kousalya, the adopted daughter of Champakammal. On the death of Champakammal, both the power of attorney deeds in favour of K.Ponnuswamy came to an end. However, the Encumbrance Certificate obtained by the plaintiffs reveals that K.Ponnuswamy, as power agent of Champakammal executed 6 sale deeds on 27.01.1982 and one sale deed on 28.01.1982 after the death of his principle Champakammal.

6. Till the death of Champakammal, no portion of the 'C' schedule property was developed by the 3rd defendant. After the death of Champakammal, the 3rd defendant has no right to use the power of Attorney to develop the 'C' schedule property or convey any portion of the land therein to any prospective buyers. The 3rd defendant through his power agent, the 4th defendant had conveyed 1,296.75 sq.ft through 7 sale deeds. Hence, the remaining land left from 'C' schedule property i.e



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10,884.25 sq.ft morefully described as 'D' schedule property devolves upon her only daughter N.E.Kousalya.

7. During her life time, N.E.Kousalya decided to give the plot in the 'E' schedule to her two daughters viz. the first plaintiff (died) and the 2nd defendant and so divided it into two parts as E-1 and E-2. Settled the Flat No:E-2 along with the vacant land (schedule 'F') in favour of the first plaintiff on 06.04.2018 absolutely, cancelling the earlier settlement deed through a rectification deed and the Flat No:E-1 was settled in favour of the 2nd defendant. Later, the first plaintiff had settled the 'F' schedule property in favour of the her daughter the 2nd plaintiff vide, deed dated 30.08.2023.

8. The plaintiffs' contention is that after the death of Champakammal, the power of attorney deeds dated 22.08.1979 and 29.11.1980 executed in favour of K.Ponnusamy representative of M/s P.A Construction got extinguished, so the entire 'D' schedule property reverts



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to her legal heir N.E.Kousalya. On 19.06.2019 Kousalya died, leaving behind the first plaintiff and the defendants 1 and 2 as her legal heirs.

Thus, the first plaintiff and the defendants 1 and 2 are entitled to 1/3rd share each in the 'D' schedule property. Having come to know about the steps taken by some of the flat owners to redevelop the entire 'A' schedule property and the adjacent properties, without compensating the first plaintiff for her 1/3rd share in the 'D' schedule property and the 2nd plaintiff for her 'F' schedule property, the plaintiffs issued notice to the 4th defendant as well as the proposed developer on 19.12.2023.

9. Alleging that, the fourth defendant is trying to redevelop the entire 'A' schedule property along with the third defendant without compensating the first applicant for her 1/3rd share in the plaint schedule 'D' property and the second applicant for the plaint schedule 'F' property, by taking advantage of their absence in India. Thus, the applicants have filed these applications O.A.Nos.709 and 710 of 2024 for the following reliefs.



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O.A.No.709 of 2024 is filed to grant an ad-interim injunction restraining the 3rd and 4th respondents, their men, servants, agents, assigns, subsidiaries or any anyone claiming through or under them or acting under their directions, from in any manner redeveloping any portion of Schedule D or F property.

O.A.No.710 of 2024 is filed to grant an ad-interim injunction restraining the 3rd and 4th defendants or any person claiming through or under them from in any manner disturbing or interfering with the peaceful possession and enjoyment of the schedule F property by the applicants in any manner whatsoever. On 04.10.2024, this Court passed an exparte interim injunction for a period of four weeks in O.A.No.710 of 2024 and also appointed an Advocate Commissioner suomoto to inspect the property, take photograph and file report in O.A.No.709 of 2024.

10. The respondents 1, 2 and 4 has filed a common counter with the following averments:

The plaintiffs lacks *bonafide*. The first plaintiff died on



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04.10.2024 suppressing the fact on 10.09.2024 and an order of exparte ad-interim injunction obtained against these respondents. The relief claimed in the suit is barred by limitation and therefore, along with the main suit, these applications ought to be dismissed in limine.

11. According to the respondents 1,2 & 4/defendants, Champakammal, the original owner of 17 grounds and 181 sq.ft., had executed the Power of Attorney Deed in favour of K.Ponnuswamy and in terms of the sale agreement. During her lifetime, she had been duly compensated for the entire extent of land including the portion mentioned under schedule 'D'. The possession of the schedule 'D' lands are jointly enjoyed by the multitude of home buyers residing in that land. Assuming a right to sue for a declaration of ownership over the schedule 'D' lands commenced on the date of death of the said N.E.Kousalya i.e. 19.06.2019, the suit is hopelessly barred by limitation.

12. Out of 12,181 sq.ft., of lands described in the 'C' schedule were sold and developed into two blocks 'B' and 'C' having 16 units in



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each block, (totally 32 units). For the land the owner of the land Champakammal was duly compensated for the land. Hence, the plaintiffs, who claimed right through the adopted daughter of Champakammal, have no right over the said property, which was already sold and being in continuous possession and enjoyment of multiple flat owners. Since the plaintiffs never had right over the property, which has been alienated 40 years ago, the applications seeking ad-interim injunction are liable to be dismissed.

13. Having been put in possession of the entire Schedule 'A' property by virtue of the assignment Agreement 11.03.1979, the said Mr. K.Ponnuswamy representing M/s. PA. Constructions (3rd defendant herein) proceeded with developing the entire Schedule 'A' property under the authority of K.Champakammal. Further, the said K Champakammal also executed another General Power of Attorney dated 29.11.1980 in favour of the said K.Ponnuswamy for the remainder of the land ad-measuring 5 grounds and 181 sq.ft. (total 12,181 sq.ft.). In all K.Champakammal had executed two Powers of Attorney in favour of



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K.Ponnuswamy in respect of the entire 17 grounds and 181 sq.ft. being the Schedule 'A' Property in the Plaint. This 5 Grounds and 181 sq.ft. of land do not have direct access from any road and it has to be accessed only through the 12 Grounds covered under the first Power of Attorney mentioned in Para 15.

14. The said M/s. P.A. Construction had developed the entire portion of the Schedule 'A' property ad-measuring 17 grounds 181 sq.ft. into 7 blocks of apartments (Block Nos. A to G) consisting of 92 flats and 4 Shops in the Ground Floor of 'G' Block and marketed the same, until January 1982 in a phased manner. The Plaintiffs have falsely stated that the said development of 7 Blocks was carried out only in plaint Schedule 'B' property i.e., 12 Grounds alone. The truth will come out once the Advocate Commissioner appointed by this Hon'ble Court inspects and submits the report on the status of the property, with regards to the construction of number of blocks and its location. The 32 flat-buyers are inhabitants of Block 'B' and Block 'C' apartments marketed and developed during the lifetime of K.Champakammal and the same is duly



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reflected in the encumbrance certificate of the same period. The total number of apartments in Schedule 'A' property is 96, out of which the Plaintiffs own a half share each in an apartment ad-measuring 2000 sq. ft. built up area. These apartments are spread across 7 blocks over the entire Schedule 'A' property. The 5 blocks situated in Schedule 'B' lands property contains only 64 apartments. Hence, the balance 32 flats are situated in the portion described as Schedule 'C' in the Complaint. In the Construction Agreement dated 28.01.1980 between K.Champakammal and the 3rd Defendant, it is clearly stated that the said K.Champakammal had agreed and paid the necessary sale consideration of Rs.2,40,000/- (Rupees Two Lakhs and Forty Thousand only) in tranches in exchange for a single apartment in the ground floor of Block 'E'. It is blatantly false and misleading to state that 'no portion of Schedule 'C' property was developed by the 3rd respondent prior to the death of K.Champakammal on 25.01.1982. Having been put in possession of the entire Schedule 'A' property, after the execution and payment of sale consideration, in accordance with the terms of the Sale Agreements dated 18.01.1979 and 11.03.1979, the 3rd defendant had engaged in development of the entire



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Schedule 'A' Property into flats. It is stated that 30 flats were sold in these two blocks in Schedule 'C' before the death of K.Champakammal and only two Sale Deeds were executed within a day or two, after her death.

15. The 3rd Defendant had developed the entire Schedule 'A' Property during the lifetime of K.Champakammal and the said KChampakammal was duly aware of the same, when she had facilitated obtaining of planning permits for the proposed development by the 3rd Defendant and had also entered into a Construction Agreement with the 3rd Defendant for an apartment for her own enjoyment in 'E' Block. The entire development endeavour over the Schedule 'A' Property of 17 Grounds 181 sq. ft. was carried out by the 3rd defendant as one project, by building 7 blocks over the said lands and not only in 12 Grounds as falsely stated by the Plaintiffs. The 3rd Defendant using the rights vested with them under the Powers of Attorney and corresponding Sale Agreements dated 18.01.1979 and 11.03.1979 had applied and obtained a sanctioned plan from the Corporation of Madras on 30.08.1979 showing



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the entire Schedule 'A' Property of 17 Grounds and 181 sq. ft, as one single parcel of land. In the said sanctioned plan, buildings were proposed to be constructed in the Schedule 'C' lands under contention in the instant case and the buildings were constructed on the Schedule 'C' lands as planned during the lifetime of K.Champakammal. It is brazenly false to state that merely 7 sale deeds tantamount to a total of 1296.75 sq.ft. were alone executed by the 3rd Defendant with regard to Schedule 'C' property and that the remainder of 10,885 sq.ft. out of total of 12,181 sq.ft. devolves upon N.E. Kousalya, who happens to be the mother of the 1st Plaintiff and the 1st and the 2nd Defendants.

16. The Encumbrance Certificate furnished by the Plaintiffs would reveal that a total of 30 sale deeds have been executed by the 3rd Defendant with regard to the Schedule 'C' lands alone during the lifetime of K.Champakammal as opposed to the 7 sale deeds falsely claimed by the plaintiffs. Assuming without admitting that in any eventuality, the said legal heirs of the deceased Champakammal may at best be entitled to those unsold portions of the UDS lands situated in the Schedule 'C'



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premises amounting to 5056.04 square feet, which are in continuous possession and enjoyment of the members of the 4th Defendant association, but however, as per Section 8 of the Act 44 of 2022, this is a deemed transfer of the proportionate UDS in favour of the members of the 4th Defendant. Pleadings, limitation, acquiescence and protection under Section 8 r/w 13 of Act 44 of 2022, the applications for injunction is strongly opposed by the respondents.

17. In the additional counter affidavits, the 4th respondent, who is the Secretary of Palanisamy Apartment Owners' Association had stated that the first plaintiff (since deceased) was infact actively participating in the meeting held by the respondents for taking decision on redevelopment. Through e-mail dated 15.06.2023 she informed the Association that she be represented by her proxy in the meeting schedule on 17.06.2023 to discuss the drawing of lots in connection to the redevelopment. On 17.06.2023 the said proxy Ms.Preethi did attend the meeting and also signed in the minutes book, after having drawn lots for the new apartment allotment on behalf of the plaintiffs. The first plaintiff



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been represented by her proxy in the series of meeting. As per Section 13 of the Tamil Nadu Apartment Ownership Act, 2022, if 2/3rd of the apartment owners agree for the redevelopment, they can proceed with the project. Further, Section 13 also enables redevelopment of an apartment in case the buildings is in ruinous condition or in a such a state that it may endanger the lives of the occupants or any other person so satisfied by the appropriate authority.

18. The oral submissions of the learned counsel and the documents relied by the respective parties reveals that in the annual general body meeting held on 25.08.2024 the members of the Association had expressed their concern about the precarious condition of the buildings and almost half the occupants have already vacated and others likely to vacate soon. The Greater Chennai Corporation which is the appropriate authority had given a certificate that structure is not fit for occupation. Thus, the building requires redevelopment on being satisfied the conditions, under Section 13(a) as per resolution passed by more than 2/3rd of the Apartment Owners and also under Section 13(b) in view



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of certificate given by the appropriate authority that the building is
ruinous condition.

19. This Court is conscious of the fact that the Court can grant
ad-interim injunction, if the applicants satisfied the balance of
convenience in their favour and if the injunction is not granted, it will
cause irreparable loss to the applicants.

20. Admittedly, 'A' Schedule property, which includes the 'D'
and 'F' schedule property originally owned by Champakammal. After
executing two power of attorney deeds and entering into the construction
agreement with the third defendant, she had not claimed any right over
the property till her lifetime. Except the flats which she got under the
construction agreement and 800 sq.ft of land over which she had
exclusive right of enjoyment, nothing more conveyed to them.

21. The first and second plaintiffs are not the direct
descendants of Champakammal. They trace their right and title through



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Kousalya, who is the adopted daughter of Champakammal. Champakammal died on 25.01.1982. Her adopted daughter Kousalya the beneficiary under the Will of Champakammal died on 12.07.2019. Neither Champakammal nor Kousalya during their life time had claimed any right over the property or questioned the transaction held 40 years ago. Even after the death of Kousalya, the first plaintiff and the second defendant who got flats in the said apartment through the Will of Kousalya had not claimed anything more than the flats given to them under the settlement. It is to be noted that till 19.12.2023, the date on which the first plaintiff issued a legal notice to the fourth defendant. (The receipt of which even denied and disputed the first plaintiff), they have not claimed any exclusive right over the 'D' schedule property. Apparently, the entire 'A' schedule property measuring 17 grounds and 181 sq.ft., been developed into apartments and sold to several persons long back. The building and land abutted to the building is enjoyed by the flat owners till date and more than 2/3rd of the flat owners have decided to redevelop the property. The proposal for the redevelopment had commenced, when repealed Tamil Nadu Apartment Ownership Act



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1994 was in force. Meanwhile, the New Tamil Nadu Apartment Ownership Act, 2022, (Tamil Nadu Act 44 of 2022) has come into force repealing the earlier act with saving clause.

22. Expression “common area and facilities” is defined under Section 2(i) of the New Act and Section 8 expressly confers, right to each apartment owner, an undivided interest in the common areas and facilities in proportion to the carpet area of his apartment to that of the total carpet area of the project. Under the old Act, the expression “common areas and facilities” defined under Section 2(h) and restricting the interest in the common areas and facilities as per the percentage satisfied in the deed of apartment and such percentage shall be computed based on the plinth area available in the apartment in relation to the total extent of plinth area available in the building.

23. Section 8 of the Tamil Nadu Apartment Ownership Act, 2022, restrains the apartment owners from dividing or causing partition undivided interest in the common area and facility de-linking the



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apartment to which it appertains. In the instant case, out of 96 flat owners, in the Extraordinary General Body Meeting held on 23.06.2024, 72 flat owners have agreed for the redevelopment. The plaintiffs to sustain the suit for declaration and injunction rely on the records like, title deed of Champakammal and the subsequent devolution of the property to Kousalya and her family. The plaintiffs question the transfer of the property, based on the power of attorney executed by Champakammal. Though they claimed that some of the sales were executed after the death of Champakammal by the power agent, the said allegation has been disputed by the defendants.

24. The original title holder Champakammal had been a party to the sale proceedings, which were effected between 1979 to 1982. The recitals of the document relied by the plaintiffs *prima facie* make out the case that consciously, Champakammal has sold her property and got a flat measuring 2000 sq.ft., with 800 sq.ft. of land exclusive right of enjoyment. The exclusive right of enjoyment will not get enlarged into



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exclusive right of title, from out of the common area meant for the enjoyment and use of the flat owners.

25. Considering the balance of convenience, the interest and the right of majority of the flat owners to redevelop the property, they cannot be restrained by one single flat owner, in the light of Section 13(a) of the Act. Looking from the another angle that if at all the plaintiffs have any right in the 'D' schedule property, which has already been developed and sold to third parties and that right never been ascertained for nearly 40 years till filing of the present suit. The balance of convenience is in favour of the flat owners Association. After lapse of several years of putting up the construction the attempt to redevelop the property, cannot cause any irreparable loss to the plaintiffs, who are the minority in miniscule. Even if there is any loss that loss can be compensated, if they succeed in the suit. Contrarily, if there is any restrain order for redevelopment, it will affect the majority of the flat owners, who have desired to rebuild after demolish the apartment, which has been certified as unfit for occupation by the competent authority.



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26. Hence, the balance of convenience as well as test of irreparable loss is not in favour of the plaintiffs/applicants, contrarily, it is in favour of the respondents/defendants.

27. As a result, on cumulative assessment of the facts and documents, this Court holds that the applicants/plaintiffs had not made out *prima facie* case for injunction. Contrarily, the balance of convenience is in favour of the respondents. Also, if any restrain order continues, it will cause irreparable loss to the respondents.

28. Hence, **Application Nos. 709 and 710 of 2024 are dismissed.** The report of the Advocate Commissioner shall be taken into consideration while deciding the suit. Any observations made by this Court in these applications is confined only for the purpose of disposing the two applications and it shall not be any way prejudice either of the parties while deciding the suit. No costs.

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Index:yes
Internet:yes/no
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