



A.S.No.102 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2025

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

A.S.No.102 of 2022

1.J.Syed Maohammed
2.J.Shahul Hammam
3.Miakkan
4.J.Mohideen

.. Appellant/Defendants 3 to 6

Vs.

1.M/s.Crescent Housing (P) Ltd.,
Rep.by its Director K.Sivaraman,
89, Santhome High Road,
R.A.Puram, Chennai-28.

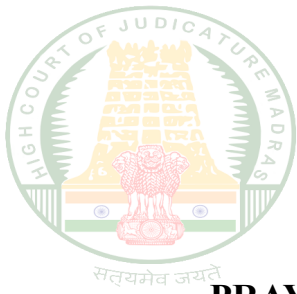
2.Sarath Kakumanu
S/o.Subbiah,
Rep.byhis Power Agent T.S.Shanthi
M.Jamaludeen (died)

3.Pakir Meeral
4.Pichammal Begam
5.Mohammed Begam
6.Jamaludeen
7.Alija
8.P.Ammenal Beevi
9.J.Mohammed Riyaz

.. Respondents/Defendants 7,9 to 13 & 22

[Cause title accepted vide Court order dated 14.02.2022 made
in C.M.P.No.521 of 2022 in A.S.SR.No.117612 of 2021 (CVKJ)]

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PRAYER: Appeal Suit is filed under Section 96 read with Order XLI of C.P.C, to set aside the judgment and decree dated 29.03s.2019 made in O.S.No.12594 of 2010 by the learned XVIII Additional City Civil Court, Chennai by allowing the first appeal.

For Appellants : Mr.E.Prabu

For R1 & R2 : Mr.P.R.Raman, Senior Counsel
for M/s.Abitha Banu

For R3 to R9 : Steps not taken

JUDGMENT

The suit for injunction was filed by the plaintiffs to perpetuate the agreement for development. The suit property with the defendants.

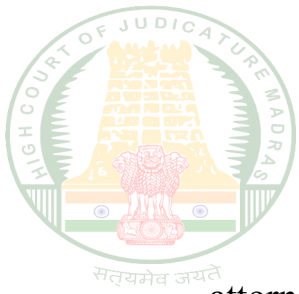
2. The specific apprehension expressed by the plaintiffs for seeking an injunction against the defendants is encapsulated in paragraph 13 of the plaint, which speaks about the cause of action. For the sake of clarity regarding privity, the relevant portion of the plaint is extracted below:-

“13.The cause of action for the suit arose with the jurisdiction of this Hon'ble Court where the property is situated and where



the transaction took place on 10.08.1987 when the Memorandum of Agreements entered into between 1st defendant and his family members and M/s.Pioneer Building Syndicate Pvt.Ltd., on 16.10.1987 when the General Power of Attorney deeds executed by 2nd defendant and Asia Meeral in favour of 1st defendant, on 27.04.1992 when the General Power of Attorney deeds executed by Syed Abbas, Shamsudeen, Doult Koyammal, Kaja Mohideen and Peer Mohamed in favour of the 2nd plaintiff and T.S.Shanthi, on 09.07.1992 when the General Power of Attorney executed by Sayem Anbu Bivi, Mumaj, Raja Peer Mohamed and Syed Abul Rahman in favour of the 2nd plaintiff and T.S.Shanthi, between 15.12.1994 and 10.05.1995 when the necessary sale deeds of undivided shares of land is executed in favour of the plaintiffs on when the defendants attempted to trespass into the suit property and subsequently.”

3. The suit was contested by the defendants through their written statement, contending that the plaintiffs are only the power of



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attorney holders of the defendants. As such they do not have any independent right to initiate proceedings against their principal. Moreover, not all the owners of the property have been arrayed as defendants and therefore, the suit suffers from non-joinder of necessary parties. The agreement entered into between the owners and the promoters has become otiose due to lapse of time and breach of its terms.

4. Admittedly, the plaintiffs and the defendants are co-owners of the suit property. Therefore, an injunction restraining the co-owners from exercising their rights over the property cannot be granted. Further, the defendants have made several allegations regarding the impropriety of the contract, breach in payment of sale consideration and the inherent difficulty in the agreement itself, particularly due to the non-involvement of all the sharers in the suit property. Hence, the suit has been contested.

5. Based on the pleadings, the trial Court has framed the issues 1 to 3, which are as below:-

“(i) Whether the plaintiffs are entitled to



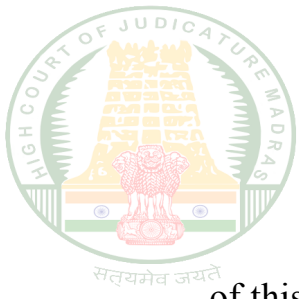
the relief of permanent injunction as prayed for?

(ii) Whether the plaintiffs are entitled to the relief of mandatory injunction as prayed for?

(iii) To what relief the parties are entitled to?”

6. To substantiate their claim, on the side of the plaintiffs, one Senthilnathan has mounted the witness box and 64 documents were marked as Ex.A1 to Ex.A64. On the side of the defendants, Jamaludeen was examined as DW.1 and no documents were marked as exhibits.

7. The trial Court, after considering the fact that the defendants had admittedly put the plaintiffs in possession of the property and permitted them to construct a building, observed that the construction was halfway through. While so, there cannot be any obstruction or interference with the peaceful continuation of the construction except through due process of law. More so, the Court tentatively held that possession of the entire property was with the plaintiffs and that the defendants had no intention of interfering with such possession. Relying



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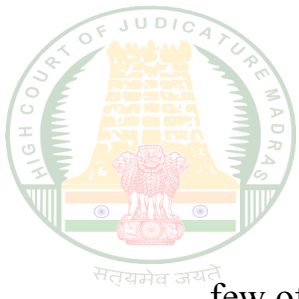
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of this implied admission, the suit was decreed and the obstruction put up by the defendants in front of the suit property was directed to be removed within a period of three months.

8. Being aggrieved, the present appeal suit has been filed by the defendants 3 to 6, who are wife and three sons of the Jamaludeen, the first defendant, who died during the pending of the suit.

9. The learned counsel appearing for the appellants forcibly argued that the entire records relied by the plaintiffs would show that they are not agreement holders for the entire suit property. At the most, they hold an agreement only in respect of 78.5% of undivided share (UDS) and the remaining 21.5% is that father, Jamaludeen (the deceased first defendant) and 11 other members of his family. While so, there cannot be an injunction restraining the remaining co-sharers, who are not party to the agreement with the plaintiffs.

10. Per contra, the learned Senior Counsel appearing for the defendants submitted that during the pendency of the suit and subsequent to its disposal, all 11 other members of Jamaludeen's family along with a



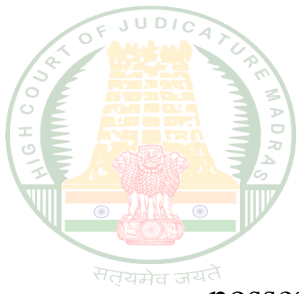
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few of the legal heirs of Jamaludeen (after his death) have conveyed their respective sharers in the property to the plaintiffs, except the 4th appellant who holds about 4000 Sq.ft/2,00,000 Sq.ft UDS in the suit property.

11. The claim is denied by the learned counsel for the appellants, who contends that the UDS held by the 4th appellant is not just 4,000 sq.ft, but much more and that the conveyance relied upon by the plaintiffs does not cover the full 21.5% UDS held by all the co-shares. He further submits that not all the co-sharers, except the 4th appellant have conveyed their rights in favour of the plaintiffs and thus, the plaintiffs cannot claim exclusive possession or seek injunction against the 4th appellant.

12. Be that as it may, the short point involved in this appeal for determination is whether the injunction granted in favour of the plaintiffs is contrary to equity and whether the plaintiffs have the right to remain in possession of the suit property without any disturbance. The entire dispute revolves around whether the plaintiffs, having been put in possession by the owners of the property, are entitled to continue in



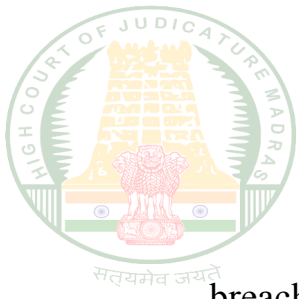
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possession of the property without complying the terms of agreement and whether the agreement relied by the plaintiffs covers the entire suit property.

13. On this issue, the trial Court, after perusing Ex.A24 to Ex.A58, which include sale deeds executed in favour of M/s.Crescent Housing private limited along with other connected documents such as the power of attorney and joint development agreement executed by the land owners in favour of the nominee of M/s.Pioneer Building Syndicate Private Limited on 10.08.1987, concluded that the land owners had consented to the development of their property and had agreed to receive their respective shares in a specified manner.

14. Pursuant to the agreement, the plaintiffs had taken possession of the property and proceeded to construct eight complex, out of which five complex have been completed and three are under construction. In such circumstances, there cannot be any interference with the plaintiffs peaceful possession and enjoyment of the property by the defendants under the guise of non-payment of consideration or



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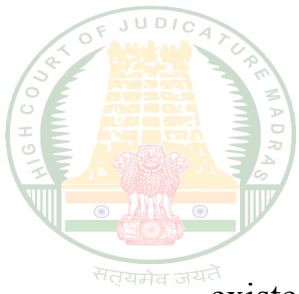
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breach of contract. Any such grievance would only give rise to a separate cause of action, for which the defendants must seek remedy in the manner known to law. Without following due process of law, possession of the property cannot be disturbed. The findings of the trial Court are in accordance with established legal principles and precedent. Hence, this Court is not inclined to interfere in the order passed by the trial Court.

15. The learned counsel appearing for the appellants submits that due to violations of the building permit, the entire structure on the suit premises is now subject to demolition proceedings and that the suit property currently stands vacant.

16. In response to the above submission, the learned counsel for the defendants contended that the removal of the superstructure, which occurred subsequent to filing of the suit, does not alter the status or rights of the plaintiffs. More so, when the plaintiffs have already initiated a suit for specific performance, which is presently pending before the High Court.

17. This Court is not inclined to venture beyond the facts as they



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existed on the date of the suit. If the defendants have any unsettled claims for amounts allegedly due to them, they are at liberty to work out such claims in the manner known to law. However, disturbing the peaceful possession of the plaintiffs, who have been lawfully put in possession without following due process of law, cannot be entertained.

18. Hence, this Appeal Suit stands dismissed. As a result, the judgment and decree passed by the trial Court are confirmed. There shall no order as to costs.

19.06.2025

Index: Yes/No
Speaking/Non Speaking order
Internet: Yes
Neutral Citation: Yes/No
rpl

To

- 1.The VII Additional City Civil Court, Chennai
- 2.The Section Officer, High Court of Madras, Chennai.

DR.G.JAYACHANDRAN,J.

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