



WEB COPY

SA No. 656 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 656 of 2018

Ramesh Krishnan
Rep by his Power Agent Mr.Surya Narayanan,
No.40/51, Beach Road, Kalakshetra Colony,
Besant Nagar , Chennai - 90

..Appellant(s)

Vs

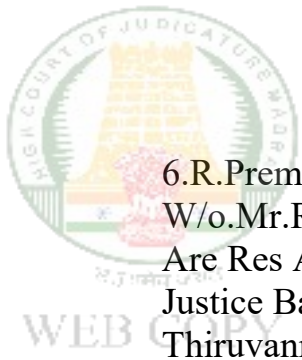
1.Nirmala Victor,
W/o.Mr.Victor Wilson, Res At Flat No.G1,All Are
Res At Their Respective Flats At No.27, Justice
Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41Chennai

2.Thomas Wilson,
S/o.Mr.M.Victor Wilson, Res At Flat No.G1, All
Are Res At Their Respective Flats At No.27,
Justice Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

3.Sandra Wilson,
W/o.Mr.Thomas Wilson, Res At Flat No.G1, All
Are Res At Their Respective Flats At No.27,
Justice Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

4.M/s.Value Logics Private Ltd.,
Having Office At , Flat No.1, And Rep By
Mr.Subramaiyam Sharma , Regional Manager
(operation)

5.S.Jayaraman
Owner Of Flat No.2, All Are Res At Their
Respective Flats At No.27, Justice Balakrishnan
Road, Valmiki Nagar, Thiruvanmiyur, Chennai -
41



6.R.Prema

W/o.Mr.Ramachandran , Owner Of Flat No.3, All
Are Res At Their Respective Flats At No.27,
Justice Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

7.S.Kumaran

S/o.Mr.K.Subramaniam, Owner Of Flat No.4, All
Are Res At Their Respective Flats At No.27,
Justice Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

8.S.Maheshwaran

S/o.Mr.G.Sridharan, Owner Of Flat No.5, All Are
Res At Their Respective Flats At No.27, Justice
Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

9.Shyamala Sridharan,

W/o.Mr.Sridharan , Owner Of Flat No.5, All Are
Res At Their Respective Flats At No.27, Justice
Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

10.Srikant Srinivasan,

S/o.Mr.V.Srivasan, Owner Of Flat No.6, All Are
Res At Their Respective Flats At No.27, Justice
Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

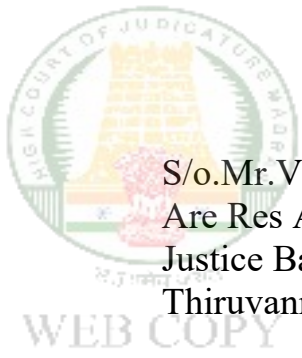
11.Ravikaran

S/o.Mr.Narasimhanan , Owner Of Flat No.7, All
Are Res At Their Respective Flats At No.27,
Justice Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

12.Latha Ganapathy

D/o.Mr.Ganapathy, Owner Of Flat No.7, All Are
Res At Their Respective Flats At No.27, Justice
Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

13.N.Subramanyan



S/o.Mr.V.Natarajan, Owner Of Flat No.7a, All
Are Res At Their Respective Flats At No.27,
Justice Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

14.Manu Natarajan

S/o.Mr.K.Natarajan, Owner Of Flat No.9, All Are
Res At Their Respective Flats At No.27, Justice
Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

15.Sujatha Manu

W/o.Mr.Manu Natarajan, Owner Of Flat No.9,
All Are Res At Their Respective Flats At No.27,
Justice Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

16.P.Prem

S/o.Mr.P.S.Nair, Owner Of Flat No.10, All Are
Res At Their Respective Flats At No.27, Justice
Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

17.Beena Prem,

W/o.Mr.P.Prem, Owner Of Flat No.10, All Are
Res At Their Respective Flats At No.27, Justice
Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

18.Vivek Prem

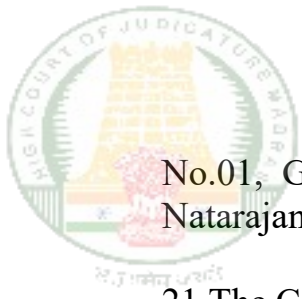
S/o.Mr.P.Prem, Owner Of Flat No.10, All Are
Res At Their Respective Flats At No.27, Justice
Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

19.Lakshmi Rama Krishnan

D/o.Mr.N.Ramakrishnan , Owner Of Flat No.11,
All Are Res At Their Respective Flats At No.27,
Justice Balakrishnan Road, Valmiki Nagar,
Thiruvanmiyur, Chennai - 41

20.The Principal Secretary,

Chennai Metropolitan Development Authority ,



No.01, Gandhi Irwin Road, Thalamuthu
Natarajan House, Egmore , Chennai - 600008

21.The Commissioner,
Greater Chennai Corporation, Rippon Buildings,
Sydenhams Road, Kannappar Thidal , Periyamet,
Chennai - 600003

..Respondent(s)

PRAYER: This second appeal has been filed to set aside the Judgment and decree dated 30.01.2018 passed in AS.No.336 of 2011, on the file of VI Additional Judge, City Civil Court at Chennai, confirming the Judgment and Decree dated 10.12.2010 passed in OS.NO.1775 of 2007 on the file of the XV Judge, Assistant City Civil Court at Chennai.

For Appellant(s): Mr.S.Sivaraman

For Respondent(s): Mr.K.V.Anantha Krushnan for
RR3, 5 to 8, 10 to 12, 19 & 21
Mr.M.Rajendiran, AGP for R20

JUDGMENT

This second appeal has been preferred as against the decree and judgment passed by the VI Additional City Civil Court, Chennai in AS No.336 of 2011 dated 30.01.2018.

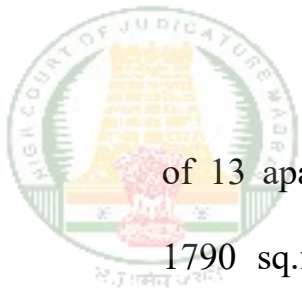
2.The appellant is the 4th defendant, who is the legal heir of the first defendant. In fact, the respondents 1 to 19 in this Second Appeal have filed the main suit in O.S.No.1775 of 2007 on the file of XVI City Civil Court, Chennai



for the reliefs of declaration and permanent injunction and the said suit was decreed. Aggrieved by the said decree and judgement, the defendants have preferred an appeal before the VI Judge, Additional City Civil Court, Chennai and the first appellate Court dismissed the appeal. Aggrieved by the decree and judgement of the first appellate Court, the present second appeal has been preferred by the appellant /4th respondent, who is one of the legal heirs of the first defendant.

3. The brief averments of the plaint are as follows:

The second and third defendants, who are the owners of Plot no.5/2A, 5/2B, 2nd Seaward Road/Justice Balakrishnan Road are the owners of the suit property. The first defendant is the daughter of the second defendant and sister of the third defendant and she is the Proprietress of Sri Devi Constructions. The second and third defendants entered into a Joint Venture Agreement dated 06.09.1995 with the first defendant for construction and development of apartments and the 4th defendant had granted permission and the 5th defendant also issued planning permission through proceedings dated 08.01.1996 for construction of 13 apartments. The first defendant also constructed 13 apartments and sold to the plaintiffs. Thus, the plaintiffs became the owners of the apartments, called Avatar apartments. The first defendant entered into separate construction agreement with the plaintiffs for the construction of the flats. The first defendant in the year 2001, after the completion of construction



of 13 apartments, had put up an unauthorized construction of approximately 1790 sq.ft., in open terrace which is common area earmarked for all the apartment owners. The first defendant have no right or authority to put up any unauthorized construction in the common open terrace. While so, the 4th and 5th defendants regularized the unauthorised construction without following the Rules. The first defendant received the entire sale consideration from all the flat owners for the entire suit property but failed to convey to some of the flat owners the undivided share of the land in proportion to the plinth area of the apartments. Now the plaintiffs understand that the first defendant is attempting to sell away the unauthorised construction put up in the terrace portion with the un-conveyed, undivided share illegally retained by her. When the Flat Owners' Association through letters dated 26.12.2006 and 02.01.2007 questioned the first defendant's *locus-standi* and called upon to furnish all the documents relating to the property, the first defendant sent a letter dated 08.02.2007 by enclosing some documents along with her explanation, claiming right to the open terrace. The first defendant claims right to unauthorised construction in the terrace portion on the basis of the Clause included in the promoters agreement entered with each of the flat owners. According to her, the alleged Clause gives right to the promoter/first defendant to reserve and claim the exclusive right to the common open terrace portion and right to put up additional construction. But the said Clause is contradictory to the other Clauses and the same are against the provisions of the Tamilnadu Apartment Ownerships Act, 2022 and



opposed to Section 23 of the Contract Act. The first defendant unauthorisedly encroached 1/4th portion in the open terrace. The second defendant is the mother of the defendants 1 and 3. The first defendant had obtained Power of Attorney from the second and third defendants for the sale of undivided share. Therefore, the plaintiffs have filed the suit.

4. The brief averments of the written statement filed by the defendants 1 to 3 are as follows:

The suit is not maintainable either in law or on facts. This Court has no territorial jurisdiction to try the suit. Originally the larger extent of lands were owned and possessed by the second and third defendants. The first defendant was the Proprietrix of Sri. Devi Constructions. Accordingly, the first defendant had entered into the Joint Development Agreement with the second and third defendants for construction and development of the property on 06.09.1995. The CMDA and the Corporation of Chennai have also granted permission and issued construction permit. Accordingly, the apartments were constructed. Consequently, building Agreement was entered into with the flat owners and the undivided share of the land was also registered separately in favour of each of the plaintiffs. Subsequent to the construction, there was some additional construction in the property and the same was rightly regularized by the 4th and 5th defendants. The suit is questioning the action of the 4th and 5th defendants and this Court has no jurisdiction to entertain the suit. The first defendant had



already entered into a separate construction agreement with each of the plaintiffs for construction of their flats and in the said agreement, the terrace of the building to be constructed except the areas specifically allotted and who had private terrace shall always be under the control and ownership of the builder or promoter. After signing the agreement, the plaintiffs are estopped from denying the right of the defendants. The suit is barred by limitation since the transactions were taken place as early as in the year 2001 while the present suit is filed in the year 2009. Therefore, the suit is liable to be dismissed.

5. Based on the above said pleadings and after perusing the records, the trial Court has framed the following issues for trial:

- (i) Whether the plaintiffs are entitled for permanent injunction as prayed for?
- (ii) Whether the plaintiffs are entitled for other reliefs?

6. On the side of the plaintiffs, PW1 was examined and marked Ex.A1 to A16 and on the side of the defendants, DW1 was examined and no documents were marked. The trial Court decreed the suit through its judgement and decree dated 10.12.2010. Aggrieved by the said decree and judgement of the trial Court, the defendants have preferred appeal in A.S.No.336 of 2011 on various grounds. During the pendency of the appeal, the first appellant died and all the legal heirs of the first appellant have been brought on record.



7. The first appellate Court was framed the following point for determination:

(i) Whether the appellate Court is warranting to interfere the judgement and decree dated 10.12.2010 passed in O.S.No.1775 of 2007 by the learned 5th Assistant Judge, City Civil Court, Chennai to set aside the same or not?.

8. After evaluating the oral and documentary evidences adduced on both sides and the judgments of trial court, the first appellate Court dismissed the appeal by confirming the decree and judgement passed by the trial Court in O.S.No.1775 of 2007 dated 10.12.2010. Aggrieved by the said decree and judgement, the present second appeal has been preferred by the 4th appellant in the first appeal, who is one of the legal heirs of the first appellant.

9. This Court at the time of admitting this Second Appeal, framed the following substantial questions of law:

(i) whether the suit is maintainable, when the jurisdiction of the Civil Court is barred in matters relating to the regularization of the buildings granted by the CMDA under the Tamil Nadu Town and Country Planning Act?

(ii) Whether the Courts below are correct in law in ignoring the



issue of limitation which has been raised by the defendants in paragraph Nos.9 & 10 of the written statement and not framing the issue with reference to the same?

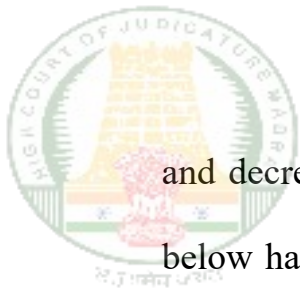
(iii) Whether the common area in the terrace portion can be interfered by the promoter under the pretext, they are entitled to construct, based on the remaining available un-utilized un-divided share of 982 sq. feet.?

10. Parties are hereinafter referred to as per their litigative status and ranking before the Trial Court

11. The learned counsel for the appellant would submit that the appellant is the legal heir of the deceased first defendant. Originally, the properties belonged to second and third defendants and they entered into construction agreement with the mother of the appellant and they constructed flats and thereafter, sold the apartments to the plaintiffs. The plaintiffs purchased the property for a particular extent and as per the construction agreement, the terrace portion of the building to be constructed except the areas specifically allotted to whom has exclusive private terrace shall always be under the control and ownership of the builder or promoter. Therefore, after signing the said agreement, the plaintiffs are estopped from raising the right of the builder who constructed the apartments. The said construction was constructed in the year



2001. At the time of construction, the plaintiffs were well aware of the construction and the concerned authorities, who are the defendants 4 & 5 have also regularised the said construction and after 6 years, the plaintiffs have filed the suit for declaration and permanent injunction. The Courts below failed to consider that the disputed flat was constructed well prior to the enactment of the amendment of the Tamilnadu Town and Country Planning Act i.e. 28.02.1999 and the application for regularisation was made in the first instance itself that is before extended date on 30.06.2000 and thereby, it does not come under Section 113 A of the Tamilnadu Town and Country Planning Act. The plan for the schedule of property was sanctioned in the year 1994-1995 and the regularization application for the construction to be made in the terrace was granted in the year 2002 itself, whereas the original suit was filed in the year 2007, i.e. after 5 years thereafter. The construction portion was completed in the year 1998. The application for regularization was submitted prior to 30.06.2000. The plaintiffs' Association was an unregistered one. The plaintiffs challenged the regularization order given by the statutory authorities through this suit and the same is not maintainable. Therefore, the Court below has failed to consider the same and erroneously decreed the suit. Moreover, the trial Court has not framed proper issues in respect of limitation, maintainability of the suit and no issue has been framed in respect of the declaration of the title and only framed an issue in respect of permanent injunction. The appellate Court also not framed proper issues and only framed a point for determination whether the judgement



and decree passed by the trial Court are correct or not?. Therefore, the Courts below have not framed proper issues and appreciated the facts and evidence in the proper prospective and therefore, the decree and judgement passed by the Courts below are liable to be set aside and the second appeal is liable to be allowed.

12. The learned counsel appearing for the respondent would submit that the second appeal itself is not maintainable and the appellant has no any right over the subject property and the second and third defendants are the owners of the property and the appellant has stepped into the shoes of the first defendant, who is the builder and she has no locus standi to file the appeal and to conduct the proceedings. The plaintiffs are the purchasers of the flats and at the time of executing sale deeds, the builder conveniently executed the sale deeds for the lesser extent of the undivided share and once the entire property was sold to the flat owners, the builder has no right over the property to retain any property in his favour and the entire terrace portion is common to all the flat owners but contrary to the provisions of law, the first defendant put up an unauthorised construction in the terrace and the defendants 4 & 5 viz., CMDA and the Corporation of Chennai erroneously regularized the unauthorized construction contrary to the provisions of law and therefore, the plaintiffs have filed the suit for declaration to declare the title of the plaintiffs to enjoy the open terrace portion in the building and for permanent injunction restraining the defendants



from interfering with the exclusive possession of the plaintiffs and from alienating the property. The trial Court, after careful consideration of the evidence adduced on both sides and after referring to the legal provisions, correctly decreed the suit and the first appellate Court also confirmed the judgment and decree of the trial Court after an elaborate discussion. Therefore, the Courts below have correctly appreciated the facts and there is no perversity or illegality in the judgement and decree passed by the Courts below and there are no substantial questions of law involved in this case and the second appeal is liable to be dismissed.

13.This Court heard both sides and perused the records.

14.In this case, the plaintiffs are the owners of the apartments and they purchased their respective flats with UDS through various sale deeds and the defendants also admitted the purchase of the properties by the plaintiffs. The main dispute is that the first defendant, who is the builder has not conveyed the entire property of UDS and he illegally retained some portion and also he unauthorizedly constructed the building in the open terrace, which is common to all the apartment owners. According to the defendants, based on the agreement entered between the first defendant and the apartment owners, they purchased the property and as per the agreement, a terrace of the building to be constructed except the areas specifically allotted which has exclusive private terrace shall



always be under the control or ownership of the builder. Therefore, the plaintiffs admitted the right of the builder and purchased the properties. Now they cannot question the same. Once the suit is filed for declaration and for permanent injunction, it is the duty of the plaintiffs to prove their case. The trial Court has not framed relevant issue in respect of the limitation and also for the declaration. The issue is only for permanent injunction and no specific issue has been framed in respect of the declaration when the prayer for declaration is the main relief sought for by the plaintiffs. Though the parties have adduced the evidence and marked the documents without framing the relevant issue in respect of the main relief, the suit cannot be disposed of. Further, the trial Court has failed to frame issue in respect of limitation. The trial Court has not appreciated the facts and the judgment is not in consonance with the Order 20 Rule 4(2) of CPC. As per Order 20 Rule 4(2) of CPC, the judgements of the Courts shall contain concise statement of the case, points for determination, the decision thereon and the reasons for such decision. But on perusal of the judgments and decrees passed by Courts below, it appears that no proper issues have been framed and not even considered crucial issue regarding the maintainability of the suit when on the date of filing of the suit, the construction was made and the prayer is only for the terrace portion of the building. On the date of filing of the suit, since the construction was made and that constructed portion cannot be considered as terrace portion. Therefore, the judgment of the trial Court is not in consonance with the Order 20 Rule 4(2) of CPC. Therefore,



the decree and judgment passed by the trial Court are liable to be set aside even without going into the merits of the case. As far as the first appellate Court is concerned, the first appellate Court has framed the point for determination as:

“Whether the appellate Court is warranting to interfere the judgment and decree dated 10.12.2010 passed in O.S.No.1775 of 2007 by the learned XV Assistant Judge, City Civil Court at Chennai to set aside the same or not?”

15. The appellate Court has not framed the proper points for determination and not appreciated the facts and the judgement of the first appellate Court is not in consonance with the Order 41 Rule 31 of the CPC. As per Order 41 Rule 31, the judgement of the appellate Court shall state the point for determination, the decision thereon and the reasons for the decision and the relief granted. Therefore, it is appears that the first appellate Court's judgment is not in consonance with Order the 41 Rule 31 CPC. Both the Courts have failed to frame proper issues and appreciated the facts and evidence and erroneously decreed the suit, which cannot be sustained.

16. Therefore, without going into the merits of the case, this Court is inclined to set aside the judgments and decrees passed by the Courts below and the matter is remanded back to the trial Court for framing proper issues and to dispose of the suit afresh. In such view of the matter, the substantial questions of law cannot be answered.



17. In the result, the Second Appeal is allowed and the judgment and decree dated 10.12.2010 passed in OS.NO.1775 of 2007 on the file of the XV Judge, Assistant City Civil Court at Chennai and Judgment and decree dated 30.01.2018 passed in AS.No.336 of 2011, on the file of VI Additional Judge, City Civil Court at Chennai are hereby set aside and the matter is remanded back to the trial Court for framing appropriate issues and to dispose of the suit afresh, after affording reasonable opportunity to both parties to adduce evidence in respect of the issues to be framed. Since the suit is of the year 2007, the trial Court is directed to complete the evidence and dispose of the same within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs.

20-02-2026

Neutral Citation: Yes/No

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To

1. The VI Additional Judge, City Civil Court at Chennai
2. The XV Judge, Assistant City Civil Court at Chennai



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P.DHANABAL J.

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