
(2011) 02 MAD CK 0209

In the Madras High Court

Case No : O.S.A. No. 269 of 2010 and M.P. No. 1 of 2010

R. Krishnaveni

APPELLANT

Vs

Govindarajulu Naidu and Man and Doil Builders (P) Ltd.

RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0209

Hon'ble Judges : R. Banumathi, J;M. Duraiswamy, J

Bench : Division Bench

Advocate : D. Rajagopal, for the Appellant; J.R.K. Bhavanantham, for R-1, K. Sridhar and Sridhar Associates for R-2, for the Respondent

Final Decision : Dismissed

Judgement

M. Duraiswamy, J.—O.S.A. No. 269 of 2010 arises against the order passed by the learned single Judge made in O.A. No. 197 of 2010

in C.S. No. 185 of 2010. The Plaintiff, who was the applicant in the application, is the Appellant. The Respondents were the Defendants in the suit

and the Respondents in the application. The Appellant filed O.A. No. 197 of 2010 for interim injunction restraining the Respondents from dealing

with or by altering the suit property pending disposal of the suit.

2. O.S.A. No. 270 of 2010 arises against the order passed by the learned single Judge made in A. No. 1196 of 2010 in C.S. No. 185 of 2010.

The Appellant was the Plaintiff in the suit and the first Respondent in the application. The first Respondent was the first Defendant in the suit and

the applicant in the application. The second Respondent was the second Defendant in the suit and the second Respondent in the application The

first Respondent/applicant filed application in O.A. No. 1196 of 2010 to vacate

the order of ad-interim injunction dated 25.2.2010 granted in
O.A. No. 197 of 2010 in C.S. No. 185 of 2010.

3. According to the Appellant, the first Respondent is her brother and their father late N. Ramasamy Naidu purchased the suit property on

7.7.1958. The said Ramasamy Naidu put up construction of a house in a portion of the suit property and was residing there with his family. The

said Ramasamy Naidu died in the year 1964 leaving behind his wife, Dhanalakshmi Ammal, the Appellant and the first Respondent as his legal

heirs. The said Dhanalakshmi Ammal died in the year 1967 leaving behind the Appellant and the first Respondent as her legal heirs. Therefore, the

suit property devolved upon them equally. The first Respondent was residing in the suit property and the request of the Appellant for division of the

suit property into two equal shares and allot one such share to her was not considered by the first Respondent. In the third week of January 2010,

the first Respondent demolished the existing house and had entered into an agreement with the second Respondent for putting up construction of

the flats in the suit property. The first Respondent also tried to deal with the suit property. Thereafter, the Appellant filed the suit in C.S. No. 185

of 2010 for partition and separate possession of her half share in the suit property and also for permanent injunction. The Appellant also filed

application in O.A. No. 197 of 2010 for interim injunction restraining the Respondents from in any way dealing with the suit property pending

disposal of the suit. By order dated 25.2.2010, the learned single Judge granted interim injunction for a period of three weeks. Thereafter, the

second Respondent filed an application in A. No. 1196 of 2010 to vacate the interim injunction granted in O.A. No. 197 of 2010. The learned

single Judge after hearing both sides, by common order dated 23.4.2010, permitted the second Respondent to complete the construction of all the

flats in full and also permitted the second Respondent to sell to the third parties, so many flats, whose total constructed area would be 50% or less

than 50% of the total constructed area in the suit property in entirety. The learned single Judge also granted interim injunction restraining the second

Respondent from alienating or encumbering or dealing with more than 50% of the undivided share of land in the suit property. Aggrieved over the

order of the learned single Judge, the Appellant has filed the above two appeals.

4. Though the first Respondent did not file any counter in O.A. No. 197 of 2001, and A. No. 1196 of 2001, he filed his counter in M.P. No. 1 of

2010 in the above appeals. In the said counter, the first Respondent had stated that he entered into a Joint Venture Agreement on 6.3.2009 with

the second Respondent for construction of residential flats at the ratio of 50% in the undivided share. He gave power of attorney to the second

Respondent to sell 50% of the land and construct residential flats on the said site. In lieu of 50% interest in the land, the second Respondent had to

construct four numbers of 2 bed room flats and 2 numbers of 3 bedroom flats and the total area to be constructed was approximately 6700 sq. ft.

According to the first Respondent, the second Respondent demolished the old house on 22.4.2009 after obtaining permission for demolition of the

old house. The second Respondent started construction on 17.6.009.

5. According to the second Respondent, he is entitled to put up two flats in the first floor and two flats in the second floor for the total constructed

area of 3366 sq. ft. The flats in each floor are of the extent of 1316 sq. ft, 1070 sq. ft. And 980 sq. ft. According to the second Respondent, the

owner was allotted two flats, one in the first floor and another in the second floor each measuring 1316 sq. ft. and for the remaining share of the

constructed area, he had agreed to pay Rs. 3,000/- per sq.ft. Therefore, the second Respondent sought for permission to complete the

construction of the remaining portions with an undertaking to handover the share entitled for the owner and also to any one indicated by this Court.

6. The learned single judge, after taking into consideration the materials available on record and the submissions made by the respective learned

Counsels, disposed of both the applications with the following directions:

9. (i) The second Defendant shall complete the construction of all the flats in full, at his cost.

(ii) The second Defendant is also permitted to sell to third parties, so many flats, whose total constructed area (super built up area) would be 50%

or less than 50% of the total constructed area in the suit property in entirety.

(iii) The second Defendant shall not alienate, encumber or deal with more than 50% of undivided share of land in the suit property. The second

Defendant shall not also alienate, encumber, deal with or part with the possession of the remaining flats (other than those permitted by this order to

be sold), until further orders of this Court. But these remaining flats shall be kept under lock and key by the second Defendant, in trust for the

Plaintiff and the first Defendant.

(iv) The first Defendant shall not alienate, deal with, transfer, encumber or take possession or part with possession of any part of the undivided

share of land or any part of the constructed area.

(v) After the completion of construction of even the remaining flats, intended for allotment to the Plaintiff and the first Defendant, the second

Defendant shall file an account into court, of any amount payable to him under the Joint Development Agreement. Similarly, the Plaintiff and the

first Defendant are also at liberty to come up with any application for appropriate orders for putting the remaining flats to proper use, so that they

do not go to waste, but earn income during the pendency of the suit.

(vi) There will be no order as to costs.

7. Aggrieved over the order of the learned single Judge, the Appellant/Plaintiff has filed the above appeal.

8. Heard Mr. D. Rajagopal learned Counsel appearing for the Appellant, Mr. J.R.K. Bhavananthan, learned Counsel appearing for the first

Respondent and Mr. K. Sridhar, learned Counsel appearing for the second Respondent.

9. On a careful consideration of the materials available on record and on the submissions made by the respective counsels, it could be seen that

there is no dispute that the Appellant and the first Respondent are the daughter and son respectively of Ramasamy Naidu. The said Ramasamy

Naidu died in the year 1964 leaving behind his wife, Dhanalakshmi Ammal, the Appellant and the first Respondent as his legal heirs. The said

Dhanalakshmi Ammal died in the year 1967 leaving behind the Appellant and the first Respondent as her legal heirs.

10. According to the Appellant/Plaintiff, the suit property devolved upon herself and the first Respondent. Therefore, the Appellant/Plaintiff claimed

half share in the suit property. Even according to the Appellant/Plaintiff, she is entitled only to half share in the suit property.

11. It is pertinent to note that in the counter filed in M.P. No. 1 and 2 of 2010 in O.S.A. No. 269 of 2010, the second Respondent had stated that

the first Respondent produced a legal heir ship certificate of late N. Ramasamy

Naidu indicating that the first Respondent was the only legal heir.

Based on the said document and the revenue records standing in the name of the first Respondent, they entered into an agreement with the first

Respondent for development of the suit property into flats on 6.3.2009. As per the development agreement, it was agreed that the constructed

flats would be equally shared between the first and Respondents. The total constructed area was 6732 sq. ft. As per the agreement, the second

Respondent was entitled to 3366 sq. ft. of constructed area and the first Respondent is entitled to the remaining 3366 sq.ft. of constructed area.

However, the development agreement was entered into between the first and second Respondents, as if the first Respondent is the absolute owner

of the suit property. Now, in the present suit filed by the Appellant, she has claimed half share in the suit property, she being the daughter of late N.

Ramasamy Naidu.

12. According to the second Respondent, they obtained the demolition permission from the Corporation of Chennai on 22.4.2009 and the

demolition was completed in April 2009 itself. The planning permission for the construction of the flats was obtained on 17.6.2009. By February

2010, 70% of the construction was completed in respect of the flats. The suit was filed in February 2010. Therefore, it is clear that the

Appellant/Plaintiff did not take any steps to move this Court for any relief when the construction was commenced in the year 2009. The Appellant

had approached this Court only when 70% of the construction was completed. This Court while granting interim injunction on 7.4.2010, passed

the following order:

6. ... The second Defendant is directed to file an affidavit containing the following details:

(i)The number of flats authorized to be constructed as per the approved building plan;

(ii)The total built up area in respect of each of those flats;

(iii)The flats earmarked under the Joint Venture Agreement to be allotted to the first Defendant; and

(iv)The details of any obligations on the part of the first Defendant for the completion of construction of all the flats in all respects so as to make the

flats ready for occupation.

After passing of the order on 7.4.2010, the second Respondent completed the construction as stated supra. The Appellant herself filed the suit for partition claiming half share in the suit property. Therefore, if the half undivided share in the land and 50% of the constructed area are protected, the claim of the Appellant/Plaintiff for partition and separate possession will stand protected. Before the learned single Judge, the second Defendant also agreed to this suggestion. In the counter affidavit filed by the second Respondent, it is averred that in pursuant to the order of the learned single Judge dated 27.4.2010, second Respondent had completed the construction of all the flats and had also executed the sale deed in respect of two flats in favor of Prabhu Reaping and K. Susil by sale deeds dated 14.5.2010. even before the order, the second Respondent had already sold one flat. The purchasers of three flats are said to have been in possession of the said flats. In the counter affidavit, the second Respondent has averred that as per the order dated 27.4.2010, 50% of the constructed area and UDS has been kept unencumbered and that the second Respondent would abide by the further orders of the court in respect of the same.

13. Learned Counsel appearing for the Appellant relied upon the judgment reported in Dorab Cawasji Warden Vs. Coomi Sorab Warden and others, and I. Gouri and Others Vs. C.H. Ibrahim and Another, .

14. The facts and circumstances of the case reported in the above judgments differs from the case on hand. Therefore, the above judgments are not applicable to the facts and circumstances of the present case.

15. After taking into consideration the materials available on record and the submissions made by the respective counsels, the learned single judge rightly permitted the second Respondent to sell the flats, whose total constructed area (super built up area) would be 50% or less than 50% of the total constructed area in entirety. Further, the learned single Judge, directed the second Respondent not to alienate, encumber or deal with more than 50% of undivided share of land in the suit property. The learned single Judge also directed the second Respondent not to alienate, encumber, deal with or part with the possession of the remaining flats. The learned single Judge also directed the first Respondent not to alienate, deal with, transfer, encumber or take possession or part with possession of any part of the

undivided share of land or any part of the constructed area. By the orders passed in the applications in O.A. No. 197 of 2010 and A. No. 1196 of 2010, the interest of all the parties have been safeguarded till the disposal of the suit.

16. In these circumstances, we are of the considered view that the order of the learned single Judge does not warrant any interference. The appeals are liable to be dismissed. Accordingly, both the Original Side Appeals are dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.