

Petitioner Vs. Respondents

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Court : Chennai

Decided On : Nov-01-2016

Judge : M.M.Sundresh

Appeal No. : Original Application Nos.753 & 510 of 2016 in C.S.No.377 of 2016

Appellant : Petitioner

Respondent : Respondents

Judgement :

M.M. Sundresh, J.

1. Considering the common issues have arisen in these Applications, they have taken up together.

2. This is a third round of litigation inter-se parties. It is not in dispute that the applicants are the owners of floors 2 to 4 and common owners of first floor with a specific demarcation as ordered in the earlier round of litigation in C.S.No.270 of 2013, by way of compromise entered in the inter-se parties, this decree was passed on 28.04.2016.

3. Now, there are allegations and counter allegations. It is the case of the applicants that the pipelines with respect to drainage and water supply running through the portion owned by the respondents has been cut followed by an

encroachment in the common area. Thus, the applicants are unable to use their exclusive property with respect to floors 2 to 4. It is further case of the applicants that in the first floor, there is no toilet, but only the current meter is in existence. Therefore, there is an attempt to use the said portion as a toilet by the respondents.

4. The learned Senior Counsel appearing for the applicants submits that there is a threat to the possession and enjoyment of the property including the moveables kept inside the premises of the applicants. Some of the materials have been stolen and therefore, in order to protect the exclusive possession, the applicants will have to be permitted to close the floors 2 to 4, of course, subject to the right of the respondents to go to the fourth floor for the purpose of maintaining the overhead water tank, which is situated above it. Further submission is made that after two lifts, one of them is being used by the respondents, dumping its own materials. Thus, there is no objection to use the other floor, for the above said purpose of reaching the overhead water tank by the respondents.

5. The learned Senior Counsel appearing for the respondents denies the allegations made. On the contrary, it is submitted that the applicants, who handed over the records to the respondents. The respondents are entitled to use the staircase starting from the ground floor upto fourth floor. Therefore, while there is no objection for the applicants to put up the sheets to be used as doors, the same cannot be made to the extent of blocking the access to use the common staircase.

6. In so far as the portion which according to the applicants is being used on the Eastern side of the first floor, it is submitted by the learned Senior Counsel appearing for the respondents that the same is being used as a toilet.

7. As of now, it appears that the pipelines running through the portion of the respondents are being cut. However, in these Applications, they are not concerned with the said issue. Now, there are only two issues before us. One is with respect to the doors sought to be put up through iron sheets by the applicants and the other issue is with respect to usage of a small constructed portion in the Eastern side of the first floor, in which, admittedly, the electricity meter is available. Since the electricity meter is in existence in the first floor and its usage is either for the

aforesaid purpose or as a toilet is being disputed by the learned Senior Counsel appearing for the respondents, the second issue is not gone into by this Court, awaiting the further report from the learned Advocate Commissioner.

8. Thus, the learned Advocate Commissioner is directed to make a re-visit to the Eastern portion of the first floor, in which, the electricity meter is said to be kept by tomorrow itself (02.11.2016) and file an additional report. The additional report shall deal with the other issue of the usage of the said portion.

9. The one other issue with respect to the usage of floors 2 to 4 by the additional construction by putting up iron sheets as doors, this Court, at this juncture, does not want to go into as to whether the respondents are entitled to use the passage which they claim to be a common one, though prima facie it appears to be one belonging to the applicants. One thing is clear, at best, the respondents can use it for the purpose of maintaining the overhead tank, though, an averment has been made in the counter affidavit filed that there is a floor beyond that, it appears that there is no such floor. This can be seen from the fair submission made by the learned Senior Counsel appearing for the respondents as well as the statement made by the learned Advocate Commissioner before this Court. In other words, there is no floor beyond the fourth floor and what is available above fourth floor is a overhead tank. Therefore, at best, the respondents can claim their right to have access to the fourth floor for the purpose of maintaining the overhead tank.

10. The learned Senior Counsel for the applicants does not have any objections for the above said re-course. Thus, it is hereby ordered that the applicants can put up the door by way of iron sheet to protect the floors 2 to 4, subject to the right of the respondents to use the same to have access for the purpose of maintaining the overhead tank situated above the fourth floor. For the aforesaid purpose, the respondents shall give pre-intimation to the applicants and in pursuant to the same, the applicants shall allow the respondents to have access in the fourth floor.

11. Post the Applications for further hearing, awaiting the report of the learned Advocate Commissioner with respect to the Eastern portion of the first floor as indicated above for the purpose of passing appropriate orders with respect to deal with the small room, in which, the electricity meter is said to have been kept.

12. Since it is made clear that this only an interim arrangement, therefore, all other issues have left open, including the entitlement of the parties to use the common area, with respect to the staircase, as this is clarified with respect to rival contentions, inter-se parties. This contention is according to the applicants that they are entitled to use the common passage in the ground and first floor, whereas according to the respondents, they are entitled to use the common passage, floors 2 to 4. The learned Advocate Commissioner shall also file a report in this regard, which can be used at a later point of time. It is also made clear that this is only an interim arrangement and therefore, the permission given to the applicants would be subject to the further orders to be passed in the other Applications.

13. Post the matter for hearing on 08.11.2016.

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