



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

REGULAR FIRST APPEAL NO.1826 OF 2021 (INJ-)

BETWEEN:

1. MRS. SANGEETHA AGRAWAL
AGED ABOUT 46 YEARS,
W/O MR.HEMANT AGRAWAL
RESIDING AT FLAT NO.101
PRIMROSE BLOCK
ESTEEM GARDENIA
SAHAKARNAGAR
BENGALURU-560 092
2. MR HEMANT AGRAWAL
AGED ABOUT 49 YEARS,
S/O SHRI HARISH CHANDRA AGRAWAL
RESIDING AT FLAT NO.101
PRIMROSE BLOCK
ESTEEM GARDENIA
SAHAKARNAGAR
BENGALURU-560 092

...APPELLANTS

(BY SRI. B S JEEVAN KUMAR., ADVOCATE)

AND:

1. M/S ESTEEM GARDENIA APARTMENT OWNERS
ASSOCIATION
ESTEEM GARDENIA SAHAKARANAGAR
'E' BLOCK, BENGALURU-560 092





REPRESENTED BY IS SECRETARY

...RESPONDENT

(RESPONDENT IS SERVED AND UNREPRESENTED)

THIS RFA IS FILED UNDER SECTION 96 OF THE CPC, AGAINST THE JUDGMENT AND DECREE DATED 27.09.2021 PASSED IN O.S.NO.9969/2015 ON THE FILE OF THE X ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE, DISMISSING THE SUIT FOR INJUNCTION.

THIS APPEAL IS COMING ON FOR DICTATING JUDGMENT, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

ORAL JUDGMENT

The Regular First Appeal is filed by the appellants/plaintiffs calling in question the judgment and decree dated 27.09.2021, passed by the X Additional City Civil & Sessions Judge, Bengaluru, (hereinafter for brevity referred to as 'the Trial Court'), in O.S.No.9969/2015, wherein the suit filed by the plaintiffs against the defendant/association for the relief of mandatory injunction and for damages came to be dismissed.



2. For the sake of convenience and easy reference, the parties are referred to as per their rankings before the Trial Court.

3. The defendant/association is said to have been formed by the owners of the apartments in various blocks in Esteem Gardenia Apartment situated at Sahakara Nagar, 'E' Block, Bengaluru, which is formed with a consideration of defining process of community living within the said layout and all the members are said to be required to conduct themselves in accordance with the bye-laws and in the way of being socially acceptable and considerate to fellow residence. The plaintiffs have further stated that they were residing on the 2nd floor in Primrose block, Esteem Gardenia as tenants from September 2008 till May 2010 and on 31.05.2010, the plaintiff No.2 purchased the flat No.101 on the 1st floor of the said block under a registered sale deed dated 31.05.2010.

4. It is stated that they were regularly paying the maintenance amount and other charges and also following



the code of conduct which provides aspects like the owners/residents are not permitted to place any furnitures, packages, vehicles etc., in the common lobbies, vestibules, stairways, elevators both common and limited except while in normal transit through them and there should be no obstruction that prevent the free flow of traffic in the corridors and they are required to place closed shoe-racks outside the doors without causing obstruction to other residents and in case of any objection by any residents of the same floor the issue will be decided by the members of the Board and will be binding on all. It is further provided in the bye-laws that the residents may place any objects for improvement of aesthetics of the lobby and in case of any dispute in this regard the members of Board have right to decide the same for removal of such objects. It is stated that inspite of clear prohibition in the bye-laws there are pots being placed in the stairways of Primose block, which make the stairways narrow and difficult for free walk and when the



pots are watered the stairways become slippery causing risk for the users. The plaintiffs have further stated that on 29.08.2012, when the plaintiff No.1 was using the stairways coming from terrace to 3rd floor had fallen, due to which she suffered serious fracture injury and underwent surgery on 30.08.2012 and 13.10.2012 and further surgeries are required for removal of implants. It is stated that they have spent huge amount for the treatment.

5. It is further submitted that after this incident the pots were removed for few months but thereafter once again they were kept on stairways and though the plaintiffs had informed the defendant about the unfortunate incident and injuries suffered by plaintiff No.1 the defendant failed to remove the pots which block the easy usage of stairways thereby demonstrating the negligence of the defendant. In spite of their repeated complaints about this issue, the defendant/association is not able to redress and remove the obstruction. In spite of



issuance of notice the defendant has not removed the pots and the defendant is alleged to be trying to force the plaintiffs to withdraw the notice by discussing it in the Association General Body meeting.

6. The defendant has filed written statement and contended that the pots were not placed on stairways by any individual apartment owner, but based on the majority decision of the association pots were kept. However, the pots were removed by the defendant after filing of the suit. Therefore, prays to dismiss the suit.

7. Based on the pleadings of the parties, the Trial Court has framed the following issues:

ISSUES

- 1) Do plaintiffs prove that the suit area is a common area meant for use and occupation of the suit apartment residents?*
- 2) Do plaintiffs further prove that the defendants have illegally placed pots at stairways of suit apartment and it causing inconvenience to them?*
- 3) Do plaintiffs further prove that it can seek mandatory injunction against the defendant not to*



allow others to put any obstruction on the stairways of suit premises?

4) Do plaintiffs further prove that the circular notice resolution of defendant issued by playing of football in suit apartment playground is null and void and not binding upon the plaintiffs?

5) Do plaintiffs are entitled for damages of Rs.1,00,000/-?

6) Do plaintiffs are entitled for the reliefs sought for?

7) What order or decree?

8. In order to prove the case, plaintiff No.2 is examined as PW-1 and plaintiff No.1 is examined as PW-2 and got marked documentary evidence as Exs.P-1 to P-52. The defendant has not adduced any oral or documentary evidence in support of its defence except one documentary evidence marked as Ex.D-1.

9. The Trial Court, after appreciating both oral and documentary evidence on record dismissed the suit. Being aggrieved by the same, the appellants/plaintiffs have filed this present appeal.



10. Heard the arguments of the learned counsel appearing on behalf of both the parties and perused the materials placed before this Court.

11. Though trial Court answered issue No.(1) in the affirmative that the plaintiffs have proved that suit area is common area meant for use and occupation of the suit apartment residents but failed to prove that defendant has illegally kept pots at stairways of suit apartment and causing inconvenience to them. Hence, dismissed the suit.

12. Being aggrieved by the judgment and decree passed by the Trial Court, the appellants/plaintiffs have preferred this appeal by raising various grounds and argued in consonance with the grounds raised in the appeal memorandum that the stairway is a common area for all the users and owners of the flats in the apartment. If pots are kept and watered making the floor wet and slippery, there would not be any free movement. It is also submitted that plaintiff No.1 slipped on the said stairway while going to third floor sustained fractured injuries and



spent a huge amount for medical treatment. This occurred only because of keeping the pots on the stairway and watering them caused the stairway to become slippery. Hence, without considering this, the Trial Court has dismissed the suit.

13. Further, it is submitted that the defendant/association has prohibited children for playing football and other games in the playground situated in the apartment, which restricts the mental and physical development of children. Therefore, such a restriction imposed by the defendant/association is a violation of child rights. Hence, without any reasonable grounds, the defendant/association has imposed restrictions on the children from playing games in the playground. Thus, it is submitted that the action of the defendant/association in this regard is highly illegal and arbitrary, which has not properly considered by the Trial Court. Hence, prays to interfere with the judgment and decree passed by the Trial Court by allowing the appeal.



14. The respondent/defendant remained absent despite service of notice upon them.

15. After hearing arguments of the learned counsel appearing on behalf of the parties and perusal of the materials available on record, the following points arise for my consideration:

- i. Whether, under the facts and circumstances involved in the case, the stairways/disputed area are common areas made for the use and occupation of the owners of the flats in the apartment?*
- ii. Whether, under the facts and circumstances involved in the case, the defendant proves that keeping the pots on the stairways and corridors is as per the bye-laws of the defendant/association?*
- iii. Whether, under the facts and circumstances involved in the case, the action of the defendant/association in prohibiting the children from playing physical games in the playground area, which is meant for the common use of all the children residing in the flats in the apartment, is legal?*
- iv. What order or decree?*



16. It is undisputed that the plaintiffs are owners of the flats in the Esteem Gardenia Apartment. The defendant is an association of the owners of the flats who are residing in the Esteem Gardenia Apartment. The plaintiffs have led evidence that the stairways are common places meant for the use of all the owners of the flats in the apartment. The defendant has not disputed that the stairways and the corridors are common areas meant for the use of the owners of the flats in the apartment. Therefore, the Trial Court is correct in answering issue No.(1) holding that the plaintiffs proved the fact that the suit area is a common area meant for the use and occupation of the owners of the flats in the apartment.

17. The defendant has filed a written statement and has taken contention in Paragraph No.6 that pots are not placed on the stairways by any individual apartment owners, but are placed based on the majority decision of the association. However, the said pots were removed by the defendant after filing of the suit by the plaintiffs. This



averment in the written statement proves the fact that the pots were kept on the stairways and the defendant has also not disputed that the stairway is a common area meant for the use and occupation of the owners of the flats in the apartment. Further, the defendant has admitted in the written statement that the said pots were removed from the stairways.

18. When this being the written statement filed by the defendant, keeping the pots causes obstruction to the free movement of any of the owners of the flats, which infringes the civil rights of the plaintiffs. The plaintiffs have shown good reason why pots should not be kept, for the reason that plaintiff No.1 fell on the stairway due to slippery floor caused by keeping pots and watering the pots and produced medical documents to show that she has undergone surgery for the fatal injuries. The plaintiffs have produced Exs.P-27, P-28, P-29, P-30, P-31, P-34 to P-38, all of which show that plaintiff No.1 suffered fracture injuries due to falling on the stairways. If the pots are kept



on the stairways, inevitably they have to be watered and the water would percolate and flow onto the stairway floor to become wet and slippery. The plaintiffs have proved the fact that due to such slipperiness on the floor caused by watering the pots, she fell and suffered injuries.

19. When this being the fact is proved and the stairways are the common area and if this act of the defendant causes obstruction and causing infringes the right of free movement of the plaintiffs, then certainly the pots are to be removed. Hence, the Trial Court has not considered this aspect in a practical way. Therefore, the plaintiffs have proved the fact that keeping the pots and watering them causes the floor to become wet and slippery, which obstructs free movement of the owners of the flats in the apartment. Hence, the suit in this regard filed by the plaintiffs is liable to be decreed.

20. Further, while answering issue No.(4), the Trial Court has upheld the prohibition put by the defendant, prohibiting the children from making use of the playground



for playing physical games. It is submitted that there is a playground in the apartment. It is contention taken by the defendant/association that the decision to stop playing football in the play area was taken by the defendant/association based on the complaints of the residents and that only some of the games that are suitable for the play area are allowed to be played. The averment in the written statement is not clear as to which games are allowed and which are not allowed in the play area.

21. There is no averment in the written statement of the defendant as to which games are allowed to be played by the children and which are not. Therefore, the averment made in the written statement is vague in nature and without giving any clarification. On the guise, the defendant is not supposed to prohibit the children from playing games in the play area. Playing games by children is a fundamental right of children and prohibiting the children from playing takes away their overall health.



Hence, it is hereby directed that the defendant/association reconsider its decision, which was taken earlier in this regard and with the consent of the majority of the residents of the apartment, shall take a decision as to which games are to be allowed and which are not allowed in the play area. However, by stopping one or two games, the children should not be deprived of playing games in the play area. The defendant shall specify the games to be played in the play area after taking confidence of the members of the association. The defendant/association is directed to take decision in this regard within a period of three months from today.

22. Therefore, I answer point Nos.(i) and (ii) in the ***Affirmative*** and point No.(iii) in the ***Partly Affirmative***. Thus, the appeal is liable to be allowed by decreeing the suit filed by the plaintiffs.

23. In the result, I proceed to pass the following:

ORDER

- i. The Regular First Appeal is ***allowed***.



- ii. The judgment and decree dated 27.09.2021 passed in O.S.No.9969/2015 by the X Additional City Civil and Sessions Judge, Bengaluru (CCH-26), is hereby set aside.
- iii. The suit of the plaintiffs is decreed by mandatory injunction to the effect that the defendant/association shall remove the pots placed in the stairways and other common areas which are meant for common use by residents of the flats in the apartment.
- iv. It is also hereby decreed by granting a perpetual injunction that the defendant/association shall not keep any pots or any materials on the stairways and corridors, which are common areas meant for use of the owners of all flats/members in the apartment.
- v. It is also hereby directed by mandatory injunction that the defendant/association



shall take a decision by majority as to which games are to be allowed and which are not allowed for children to play within a period of three months from today by convening general body meeting.

vi. Draw decree accordingly.

In view of disposal of the appeal, pending IAs',, if any, shall stand disposed of.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE

AG: Para 1 to 11
SRA: Para 12 to end
List No.: 1 SI No.: 36