

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 8.04.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.1135 of 2015

and

M.P.Nos.1 and 2 of 2015

Young Men's Indian Association (YMIA)
A Society regd under Societies Registration Act, 1960
rep by its Secretary,
No.49, Moore Street,
Chennai-1, TN

Petitioner/First defendant

1. T.S. Sridhar

... 1st respondent/1st plaintiff

2. S. Ragu

... 2nd respondent/2nd plaintiff

3. Natraj, R.

4. G. Subramanian

5. S.S. Rajkumar

6. R. Rajmohan

7. R. Ramachandran

8. P.G. Sadgurudas

9. G. Porselvam

10.G. Narayanaswamy

11.V.R.S. Sampath

12.B.S. Ragavan

13.S. Rajarathinam

14.V. Murali

15.Muralikrishnan

16.Muthuvelu

17.L. Palamalai

18.V. Anburaj
 19.V. Sundarajulu
 20.V.M. Sivasubramanian
 21.P. Varadarajan
 22.M.R. Venkatesh
 23.P.M. Soundararajan
 24.R. Anand
 25.Henry Thiagaraj

Respondents 3 to 25/defendants 2 to 25

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 9.1.2015 in I.A.No.14567 of 2014 in O.S.No.3516 of 2014 on the file of the learned XVI Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.V. Raghavachari for
 Mr.Nithyaesh Natraj

For 2nd Respondent : Mr.A. Sirajudeen
 For RR 3 to 25 : Given up

ORDER

Aggrieved over the fair and final order passed in I.A.No.14567 of 2014 in O.S.No.3516 of 2014 on the file of the learned XVI Assistant Judge, City Civil Court, Chennai, the first defendant has filed the above civil revision petition.

2. The plaintiffs filed a suit in O.S.No.3516 of 2014 on representative capacity, seeking for the reliefs of declaration, injunction and other reliefs. However, the learned counsel appearing for the respondents 1 and 2/plaintiffs submitted that the plaintiffs have restricted their prayer only in respect of the prayer mentioned in paragraph No.36(a) of the plaint and have given up the reliefs sought for in paragraph Nos.36(b)(c) and (d) of the plaint.

3. The case of the plaintiffs was that the revision petitioner/first defendant, which is administered by the Governing body, consisting of 24 members, had decided to demolish the lands, available in the suit property, and put up a new building with malafide intention and without any authority on their part. According to the respondents 1 and 2/ plaintiffs, the buildings, sought to be demolished are in good condition and therefore, the same should not be demolished.

4. The first respondent is a member of the governing body, who was also present in the governing body meeting, held on 26.4.2014. In the said Meeting, a decision was taken with regard to demolition and re-construction of the building, however, the first respondent/1st plaintiff objected to the said proposal and the same was also mentioned in the

Agenda dated 26.4.2014.

5. The second respondent/second plaintiff is a life time member of the Association. The main grievance of the respondents 1 and 2/plaintiffs is that the building should not be demolished, when they are in good condition.

6. The learned counsel for the petitioner/first defendant submitted that since the first respondent/1st plaintiff was a member of the governing body, who was also present in the meeting held on 26.4.2014, he cannot now oppose the Resolution passed on that day for demolition and reconstruction of the building. However, the learned counsel for the revision petitioner submitted that since the revision petitioner, being an Association, the decision taken by the Association cannot be questioned by the members of the Association before a Civil Court.

7. The suit was filed on 24.6.2014 and the defendants 1 to 6 have filed their written statement on 22.9.2014. The revision petitioner/1st defendant has filed an application in I.A.No.14567 of 2014 under Order VII Rule 11 of Civil Procedure Code to reject the plaint. The said application was hardly contested by the respondents 1 and 2 and the plaintiffs. The trial court took into consideration of both the parties and

dismissed the application finding that the first defendant has not made out a case under Order VII Rule 11 of Civil Procedure Code to reject the plaint.

8. For rejecting the plaint under Order VII Rule 11 of Civil Procedure Code, the requirements of Order VII Rule 11 of Civil Procedure Code have to be strictly followed. In the affidavit, filed in support of the petition, though the revision petitioner/1st defendant had disputed the averments stated in the plaint and also contended that the case putforth by the plaintiffs is a false one, but has not made any ground to reject the plaint under Order VII Rule 11 of Civil Procedure Code. Whether the building requires demolition or reconstruction can be decided only after completion of the trial.

9. A suit can be rejected, if the plaint does not disclose a cause of action; if the relief claimed is under valued and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, failed to do so and the court is properly valued, but the plaint is written upon paper insufficiently stamped and the plaintiff, on being, requires by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so and if the suit is barred by any law. In these circumstances, the suit can be rejected under Order VII Rule 11 of

Civil Procedure Code.

10. When the plaint raises arguable points, which required deeper deliberation and scrutiny, the same cannot be rejected in the eye of law under Order VII Rule 11 of Civil Procedure Code.

11. The trial court, while dismissing the application, rightly held that the application is not attracted any of the ingredients under Order VII Rule 11 of Civil Procedure Code.

12. That apart, the application has been filed by the petitioner only after filing of the written statement. For filing an application under Order VII rule 11 of Civil Procedure Code, the averments stated in the plaint itself is sufficient. But, the case on hand, the first defendant has filed the present application only after filing of the written statement. In the absence of any ground made out by the revision petitioner/first defendant, the trial court has rightly dismissed the application.

13. In these circumstances, I do not find any error or irregularity in the order passed by the trial Court in I.A.No.14567 of 2014 in O.S.No.3516 of 2014 and hence the civil revision petition is liable to be dismissed as

devoid of merits. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected MPs are closed.

14. Learned counsel on either side submitted that the defendants have filed their written statement and the suit is posted for framing of issues. In these circumstances, the trial court is directed to dispose of the suit, on merits and in accordance with law, uninfluenced by any of the observations given by this court in the present civil revision petition as well as by the trial court in the application No.14567 of 2014 in O.S.No.3516 of 2014, within a period of three months from the date of receipt of copy of this order.

15. With the above observation, the civil revision petition is dismissed. No costs. Consequently, connected MPs are closed.

8-4-2015

sr

Index:no
website:yes

Note:Issue order copy on 13.4.2015
To

XVI Assistant Judge, City Civil Court, Chennai,

M. DURAISWAMY,J.,

sr

C.R.P.(PD)No.1135/2015

8-4-2015