

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (PD) No.301 of 2017

and

C.M.P.No.1398 of 2017

K.V.Radhakrishnan ... Petitioner /1st Defendant

Vs.

1.S.Senthil

2.S.Vasuki ... Respondents/ Plaintiffs

Prayer: Revision filed under Section 227 of the Constitution of India against the fair and decretal order dated 31.08.2016 passed by the 1st Assistant Judge, City Civil Court, Chennai dismissing I.A.No.5668 of 2015 in O.S.No.324 of 2014.

For Petitioner : Mr.V.Jayakumar
for Mr.R.Sundarrajan

For Respondents : Mr.Anand Venkatesh

ORDER

The Civil Revision Petition has been filed against the fair and decretal order dated 31.08.2016 passed by the 1st Assistant Judge, City Civil Court, Chennai dismissing I.A.No.5668 of 2015 in O.S.No.324 of 2014.

2.The petitioner is the first defendant and the respondents are the plaintiffs in the suit in O.S.No.324 of 2014 on the file of the learned I Assistant Judge, City Civil Court, Chennai for the following reliefs:

a) to grant permanent injunction restraining the defendants, their men, agents and their servants or any one acting on behalf of them from locking common grill gates as Schedule "B" in day time.

b) Mandatory injunction to direct the defendants to provide one set of keys of Schedule "B" grill gates for each 7 flats owners

c) Mandatory injunction to direct the defendants to collect the maintenance charges from all the 7 dwelling owners according to their square feet occupation.

d) Mandatory injunction to direct the defendants to demarcate the car parking and two wheelers limitation excluding the approved 3 plan of schedule mentioned property.

e) direct the defendants to pay a sum of Rs.1,00,000/- as compensation for the mental agony of the plaintiffs.

3. The respondents as the plaintiffs filed a suit for mandatory injunction and claiming a sum of Rs.1 lakh for compensation from the petitioner and other defendants, against which, the petitioner/1st defendant filed the written statement and is contesting the suit. The petitioner filed I.A.No.5668 of 2015 under Order VII Rule 11 of C.P.C. to reject the plaint.

4. According to the petitioner, no cause of action arose in the suit and the relief sought for by the respondents is not clear and the respondents had not added necessary parties to the suit. It is the respondents who are causing hardship to the other flat owners and they are only preventing the other co-owners from using the common area. The respondents alone were collecting maintenance charges earlier. Subsequently, they stopped collecting the maintenance charges and are having several thousands of rupees collected from other flat owners towards maintenance charges. They are not maintaining the apartments except paying electricity charges for the common area.

5.The respondents/plaintiffs filed their counter and opposed the averments made in the application.

6.Learned Judge, considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application holding that the averments in the plaint alone is crucial while considering the application to reject the plaint. Against the same, the present Civil Revision Petition is filed.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. From the perusal of the plaint copy, it is seen that various allegations are made against the petitioner and other

defendants and as to whether the statement made by the respondents is correct or not, whether the respondents are entitled to get the compensation of Rs.1 lakh for mental agony caused by the petitioner and other defendants, can be decided only after considering the oral and documentary evidence let in by both parties at the conclusion of the trial. The various allegations made by the petitioner against the respondents cannot be considered in the application filed by the petitioner for rejection of the plaint. The respondents have stated as to how the cause of action for the suit arose. Only the averments made in the plaint can be considered while deciding the application under Order VII Rule 11 C.P.C.

9. Learned Judge, considering the provisions of Order VII Rule 11 of C.P.C. properly and exercising his power conferred on him and dismissed the application by giving cogent and valid reasons. There is no illegality or irregularity in the order of the trial Court warranting interference by this Court.

10. In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Ist Assistant Judge,
City Civil Court, Chennai

+1cc to Mr.M.Jai kumar, Advocate, S.R.No.23363

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SV(CO)
RS(20/06/2017)