

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2017

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

**C.R.P.(PD)No.2102 of 2015**

**and M.P.No.1 of 2015**

The Elegant Flat Owners and  
Residents Association  
rep. By its President  
Old No.36, New No.61, Gandhi Road  
Velacherry, Chennai 42

... Petitioner

v.

1. R.Madhavi

2. S.Rajasekaran

(representing the 31 Flat  
Owners of the Elegant Flats Complex)

... Respondents

C.R.P filed under section 227 of C.P.C. against the fair and  
decreetal order dated 09.02.2015 in I.A.No.12982 of 2014 in  
O.S.No.1062 of 2014 on the file of the IV Assistant City Civil Court.

For Petitioner : Mr.N.Subramaniayan

For Respondents : Mr.J.Saravanel (R1)  
R2-NA

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the 1<sup>st</sup> respondent.

2. Challenging the fair and decreetal order dated 09.02.2015 passed in I.A.No.12982 of 2014 in O.S.No.1062 of 2014 on the file of the IV Assistant Judge, City Civil Court, Chennai, the 1<sup>st</sup> defendant has filed the above Civil Revision.

3. The plaintiff filed the suit in O.S.No.1062 of 2014 for mandatory injunction and permanent injunction. The 1<sup>st</sup> defendant filed an application under Order 7 Rule 11 of Code of Civil Procedure for rejection of plaint, stating that the plaintiff has not disclosed the enforceable right and that the provisions of Tamil Nadu Apartment Ownership Act, 1994, on the face of it stipulates that the same is applicable only after the Deed of Apartment is executed. Further, the 1<sup>st</sup> defendant contended that the Deed of Apartment has not been executed so far. Hence, the relief sought for by the plaintiff is liable to be rejected.

4. Similarly, for the 2<sup>nd</sup> prayer viz., for permanent injunction, the 1<sup>st</sup> defendant contended that the remedy is not before the Civil Court and therefore, the plaint has to be rejected.

5. The plaintiff filed his counter and opposed the petition.

6. The trial Court, taking into consideration the case of both parties, held that it cannot be said that there is no cause of action and plaintiff has right and also enforceable right as against the defendant. Further, the trial Court while dismissing the petition observed that the issues can be decided at the time of the trial of the suit. With regard to the relief of permanent injunction, the trial Court observed that the said issues framed can also be decided in the suit after trial.

7. I do not find any reason to interfere with the order passed by the trial Court, as rightly it has been observed by the trial Court that the issues involved in the application filed under Order 7 Rule 11 of the Code of Civil Procedure can be decided after the trial of the suit. The Civil Revision Petition is dismissed.

8. It is brought to the notice of this Court that the defendants have already filed their written statement and the suit is ripe for trial. In these circumstances, I direct the IV Assistant Judge, City Civil Court, Chennai to dispose of the suit on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order.

No costs. Connected miscellaneous petition is also dismissed.

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The IV Assistant City Civil Court, Chennai.

**M. DURAISWAMY,J.,**

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