

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2019

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD)No.664 OF 2017
&
C.M.P.Nos.3365&3366 of 2017 and 3540 of 2018

George David

... Petitioner

Vs.

1. Zubair

2. Nazeer

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order made in E.P.No.1670 of 2015 in O.S.No.7757 of 2011 on the file of X Assistant Judge City Civil Court, Chennai dated 21.11.2016.

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For Petitioner : Mr.L.P.Maurya

For Respondents : Mr.C.P.Sivamohan

ORDER

The Revision petitioner obtained a decree of permanent injunction restraining the respondents and their men servants, agents or anyone claiming through them from in any manner encroaching upon using the premises of 200 Sq.ft of office space meant for the Apartment owners' association in the ground floor of Sapphire square flats at 44-45 Perambur Barracks Road, Purasaiwalkam, Chennai on 31.07.2014.

2. Violation of the decree, he filed an execution petition under Or.21 Rule 32 of C.P.C for arrest and detention of the respondent for disobeying the decree. The Trial Court after hearing both the sides dismissed the execution petition as one not maintainable. Aggrieved over the same, the petitioner is before this Court.

3. From the perusal of the materials, it is seen that the petitioner is one of the co-owner in the commercial apartment. He had a grievance that the respondents were attempting to encroach the office of the association. However, in the reply filed by the respondents it is stated that on 31.03.2015 itself they have handed over the keys to the president of the association. Thereby nothing survives for consideration. The grievance of the petitioner is that the keys should have been handed over to him, as there is no registered association.

(i) On the one hand petitioner seeks prohibitory order preventing the respondents from encroaching upon the office premises of the association and

(ii) On the other hand he claims that there is no such flat owners welfare association formed in accordance with Tamilnadu Appartment Ownership Act, 1994.

4. Both these issues, do not go together and contradictory between itself. Unless an association is formed there cannot be an office room for

that association. If the respondents attempt to encroach upon the office premises then it will amount to violation of the decree.

5. But in the instant case, it appears that the respondents were already in occupation and keys were handed over to the president of Sapphire square apartment owners' association.

6. In such circumstances, the maintainability of the execution petition itself is questionable. The Execution Court has rightly considered all these issues and dismissed the execution petition. At the outset, the petitioner being an co-owner, not being an office bearer of any association, or not having obtained any authorisation from the other flat owners, has no locus to file a suit and get it executed inspite of there being violation of the orders. Hence, I do not find any discrepancy in the order passed by the Execution Court.

Accordingly, the Civil Revision petition is dismissed. No costs. In fine, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

07.08.2019.

Index : Yes/No
Internet : Yes
Speaking Order/Non-Speaking Order

To
The X Assistant Judge
City Civil Court, Chennai

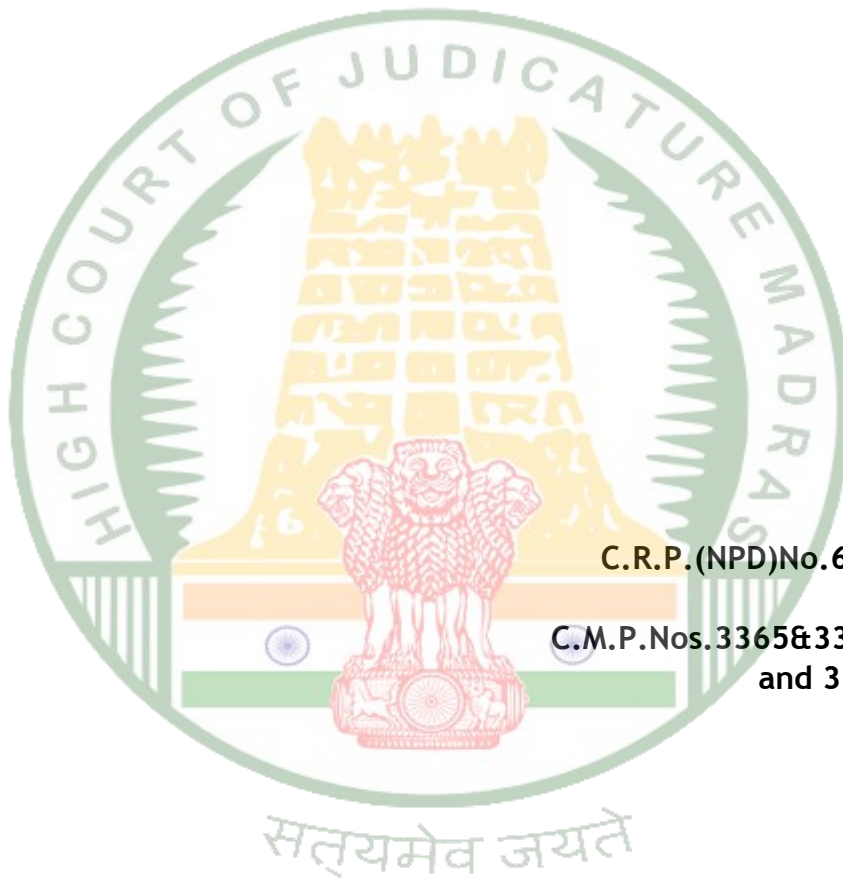


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M.GOVINDARAJ, J.

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