

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3469 of 2013
and M.P.No.1 of 2013

1.M/s.Rohini Flat Owners Association
Represented by its President
Mr.P.N.Nagarajan
No.241/5
Rohini Flats, Anna nagar
Chennai-101.

2.Parthasarathy
Members of Rohini Flat Owners Association
Anna nagar, Chennai-101. .. Petitioners/Plaintiffs

Vs.

1.Lee Matriculation Higher
Secondary School
Represented by its Principal
Hari Babu

2.Mr.Jayaseelan
Manager, Lee Matriculation
Higher Secondary School.

3.Mrs.Chandra Jayaraman
Secretary
Lee Matriculation Higher
Secondary School

4.Mr.Jayaraman
Retired Deputy Superintendent of Police

5.Mr.Velmurugan
Joint Secretary
No.37/1, 1st main road
Ashok Nagar, Chennai-83.

6.Mr.Chittibabu, Chairman
Lee Matriculation Higher
Secondary School

7.The Chairman-cum-Managing Director
Tamil Nadu Housing Board, Nandanam
Chennai-600 035.

8.The Executive Engineer and
Administrative Officer, Tamil Nadu
Housing Board, Anna nagar, Chennai-101.

9.The Commissioner
Ambattur Municipality
Ambattur, Chennai-53.

10.Mrs.M.Usha .. Respondents/Defendants

Prayer: Civil Revision Petition filed under Section 115 of Civil
Procedure Code, against the fair and decretal order dated 07.07.2010

made in I.A.No.3125 of 2009 in O.S.No.1760 of 2005 on the file of the learned VI Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.V.Kannan

For R1 to R6 : Mr.T.Saravanan

For R7 and R8 : Mr.M.R.Sivakumar (TNHB)

For R9 and R10 : No appearance

ORDER

The matter is heard through “Video-Conferencing”.

The Civil Revision Petition is filed against the fair and decretal order dated 07.07.2010 made in I.A.No.3125 of 2009 in O.S.No.1760 of 2005 on the file of the learned VI Assistant Judge, City Civil Court, Chennai.

2.The petitioners are the plaintiffs and respondents are the defendants in O.S.No.1760 of 2005 on the file of the learned VI Assistant Judge, City Civil Court, Chennai. The petitioners filed the said suit for

declaration and injunction. Pending suit, the petitioners filed I.A.No.3125 of 2009 for impleading the 10th respondent as defendant in the suit on the ground that the 10th respondent purchased the property pending suit. The 10th respondent / proposed party filed counter and opposed the said petition. The learned Judge dismissed the said petition.

3. Against the said order of dismissal dated 07.07.2010 made in I.A.No.3125 of 2009 in O.S.No.1760 of 2005, the petitioners have come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioners submitted that the learned Judge having ordered notice to the proposed party in I.A.No.5003 of 2010 filed for injunction against her, ought to have allowed the impleading petition. The proposed party has nexus to the subject matter and hence, it is necessary to implead her. The learned Judge failed to consider the judgments of this Court as well as the Honourable Apex Court while deciding the petition for impleading. The

petitioners are entitled to decide the parties to be sued who adversely affect the interest of the petitioners. The 8th respondent sold the 'E' schedule property while the suit is pending, without permission as required under Section 52 of the Transfer of the Property Act and prayed for setting aside the order of the learned Judge and for allowing the Civil Revision Petition.

5.Both the learned counsel appearing for the respondents 1 to 6 and learned counsel appearing for the respondents 7 and 8 separately contended that the property sold to the 10th respondent is not the subject matter of the suit and hence, 10th respondent is not necessary or proper party. Any purchase pending suit will be subject to the result of the suit. The learned Judge has given valid reason for dismissing the petition and prayed for dismissal of the Civil Revision Petition.

6.Though notice has been served on the 9th respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

7.Though the 10th respondent has entered appearance through the counsel, there is no representation on behalf of her, when the matter is taken up for hearing.

8.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents 1 to 6 and respondents 7 and 8 and perused the entire materials available on record.

9.It is seen from the materials on record that the petitioners filed I.A.No.3125 of 2009 for impleading the 10th respondent as defendant alleging 8th respondent sold 'E' schedule property to the 10th respondent. The 10th respondent filed counter stating that 8th respondent has allotted the property to the 10th respondent as per the lease-cum-sale agreement and subsequently sold to 10th respondent. It is the specific case of the 10th respondent that the property sold to her by 8th respondent is not the subject matter of the suit and it is entirely different property. When such a stand is taken by the 10th respondent, it is for the petitioners to prove by

letting in oral and documentary evidence during trial that the subject matter of the suit was sold to the 10th respondent and it is bound by the decision in the suit. The learned Judge has properly appreciated all the averments made in the affidavit, counter affidavit and judgments and dismissed the petition. There is no reason to interfere with the order of the learned Judge.

10.In the result, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

24.09.2020

Index : Yes/No
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To
VI Assistant Judge
City Civil Court, Chennai.

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V.M.VELUMANI, J.

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