

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CRP.No.1112 of 2020 and
C.M.P.No.6041 of 2020

T.N.Padmanaban

...Petitioner

/Vs/

1.R.Satish Kumar
2.A.Rajendran
3.Jayaseeli
4.Shri Krishna Builders
represented by its Managing Partner
P.Nandakumar

.... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 17.12.2019 passed in I.A.No.15 of 2018 in O.S.No.163 of 2020 and reject the said suit on the file of the Principal District Munsif Court, Poonamallee.

For Petitioner : Mr.D.Murthy

O R D E R

This Civil Revision Petition has been filed by the petitioner/1st defendant seeking to set aside the order passed in I.A.No.15 of 2018 in O.S.No.163 of 2017, dated 17.12.2019 and reject the said suit on the file of the learned Principal District Munsif, Poonamallee.

2. The petitioner is the first defendant in the suit and the respondents 1 and 2 are the plaintiffs in the suit.

3. The respondents 1 and 2/plaintiffs have filed the said suit in O.S.No.163 of 2017 for permanent injunction restraining the defendants from disturbing the plaintiffs' peaceful possession and enjoyment of the suit property including the covered car parking. Subsequently, the plaintiffs have filed the interlocutory application in I.A.No.479 of 2017 under Order 39 Rules 1 and 2 of CPC, to grant interim injunction restraining

the defendants, their men, agents, servants, representatives, relatives, claiming through the defendants from disturbing the petitioners/plaintiffs' peaceful possession and enjoyment of the schedule property including covered car parking in any manner pending disposal of the suit and subsequently, the aforesaid application was allowed by the Court below on 05.12.2017. Thereafter, the petitioner/first defendant has filed an I.A.No.151 of 2018 in O.S.No.163 of 2017 under Order 7 Rule 11 (A) of CPC, praying for rejection of the plaint on the alleged ground that it does not disclose the cause of action and since the suit is filed under the Tamil Nadu Apartment Ownership Act, 1994, the interim protection cannot be granted. The learned counsel for the petitioner further submitted that the respondents are claiming the title over the property(ies) which includes common areas and the common terrace of the floor. The application for rejection of the plaint filed by the first defendant, was dismissed by the Court below. Challenging the same, the petitioner/first defendant has approached this Court by way of this Civil Revision Petition.

4. Heard the submission of the learned counsel for the petitioner as well as perused the materials available on record.

5. On a perusal of the order of the Court below, it is seen that the Trial Court after having heard the learned counsel for the petitioner in the application filed for rejection of the plaint on the alleged ground that it does not disclose the cause of action, had rightly rejected the same considering the nature of the suit and the relief claimed by the petitioner. The said suit has been filed by the respondents 1 and 2/plaintiffs claiming right over the suit property. The aforesaid disputes among the parties can be decided only under the Tamil Nadu Apartment Ownership Act, 1994 (7 of 1995), wherein there is no specific bar to decide the nature of the allotment of car parking shed under the approved plan.

6. The authorities under the Tamil Nadu Apartment Ownership Act, 1994 (7 of 1995) had not been made as a party-defendant in the suit proceedings. The case of the revision petitioner/first defendant is that the dispute between the parties relate to the common areas, purchase of undivided share and also the construction of the building, open space in and around the building and garden area situate in front of the building cannot be used for any other purpose other than the one for which they were earmarked and no particular owner can exclusively claim usage of such common areas. It is not in dispute that the petitioner and the respondents are claiming their right over the allotment of car parking. The above dispute between the parties had to be adjudicated only in the suit by adducing the oral and documentary evidence before the Court below. There is no

statutory bar to entertain in the suit. This Court cannot go into the order passed by the Court below, considering the nature of the suit and the claim sought for by the parties concerned. There is no error warranting interference in the impugned order passed by the Court below and therefore, the contentions of the revision petitioner are liable to be rejected.

7. At this stage, the learned counsel for the petitioner seeks to dispose of the said original suit at the earliest point of time so as to settle the dispute among the parties, which may reach finality.

8. Considering the facts and circumstances of the case, as well as the age of the revision petitioner, this Court directs the learned Principal District Munsif, Poonamallee, to dispose of the suit in O.S.No.163 of 2017 and pass appropriate orders on merits and in accordance with law, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

9. With the above observations and directions, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

msm

To

- 1.The Principal District Munsif, Poonamallee.
- 2.The Section Officer, V.R.Section, High Court of Madras.

+1 CC to Mr.D.Murthy, Advocate sr 22482.

SSV(CO)
SP(30/07/2020)

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