

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.3572 of 2016 and
CMP.No.18210 of 2016

1.S.Elavazhagan
2.E.Premalatha

..Petitioners

Vs.

1.Dr.A.Dhanaraj
2.D.Mahalingam

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 17.12.2015 made in CMA.No.71 of 2015 on the file of the V Additional City Civil Court, Chennai dismissing the Civil Miscellaneous Appeal, confirming the fair and decretal order dated 19.03.2015 made in IA.No.5559 of 2014 in OS.No.1898 of 2014 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.B.Dayaalan

For Respondents : No Appearance

ORDER

This civil revision petition is directed as against the fair and decretal order dated 17.12.2015 made in CMA.No.71 of 2015 on the file of the V Additional City Civil Court, Chennai thereby confirming the fair and decretal order dated 19.03.2015 passed in IA.No.5559 of 2014 in OS.No.1898 of 2014 on the file of the XVIII Assistant Judge, City Civil Court, Chennai thereby dismissed the petition for interim injunction in respect of suit property.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed suit for declaration and permanent injunction in respect of the suit schedule property. The petitioners are the owners of the shop and car parking as mentioned in the schedule and they have purchased the same by the registered sale deed dated 26.05.2004 in respect of undivided share to an extent of 800 sq.ft. vide document No.2669 of 2004 in the Office of the Sub Registrar, Velachery. They had entered into sale and construction agreement with M/s.Jayam Builders for construction of four shops bearing Door Nos.1,2,3 & 4 inclusive of common area and exclusively parking and utility area for shop owners in the ground floor of the western wing of the complex. They also purchased 'C' schedule property to an extent of undivided share of

468 sq.ft. in the land of 'A' schedule property by the registered sale deed dated 26.05.2004 registered vide document No.2670 of 2004. The respondents herein purchased the remaining undivided share of 1612 sq.ft. While being so, the respondents caused notice to the petitioners stating that 'F' schedule of suit property is common passage and is not only belong to the petitioners and also to the defendants and called upon the petitioners to remove the shop thereon which was constructed by the petitioners in the year 2005. Thereafter, the respondents made attempt to interfere with the peaceful possession and enjoyment of the 'F' schedule of suit property by illegal means. Hence, the petitioners filed suit. Initially, the court below granted injunction and subsequently by order dated 19.03.2015 dismissed the interim injunction petition.

3. On perusal of the documents, the main contention of the petitioners is that they have been allotted exclusive right of car parking and utility area in respect of 'F' schedule of suit property as per the construction agreement. Whereas the respondents contended that undivided share as per the sale deed, no exclusive right has been mentioned in the recital of the sale deed in respect of 'F' schedule of suit property. However, the petitioners had put up construction of shops and

they are in possession and enjoyment of the same. The exclusive right of car parking and utility area in respect of 'F' schedule of suit property has to be decided in the main suit by let in evidence.

4. Therefore, the petitioners as well as the respondents are directed to maintain 'status quo' as on today till the disposal of the main suit. Considering that the suit is of the year 2014, the trial court is directed to dispose of the suit within a period of six months from the date of receipt of copy of this order.

5. With the above observations, this civil revision petition is disposed of. Consequently, connected miscellaneous petition is closed. No order as to costs.

31.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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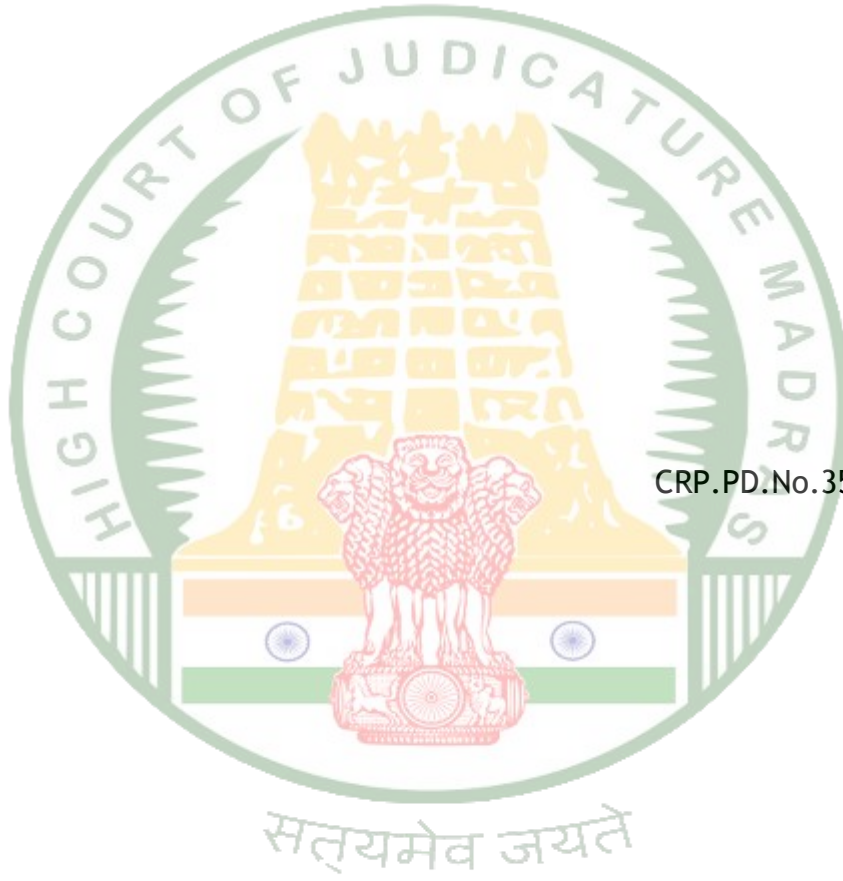
- 1.The V Judge,
Additional City Civil Court,
Chennai
- 2.The XVIII Assistant Judge,
City Civil Court, Chennai.



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G.K.ILANTHIRAIYAN,J.

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