

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29.06.2021

PRONOUNCED ON: 23.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 2870 of 2019

1. Mr. Ananth Sankaranarayanan

2. Mrs. Sandhya Subramanian

... Petitioners/D6 & D7

Vs.

1. Ms. Diya Rayapati

2. Mr. Ashwant Akula Venkatram

3. Mrs. Sunitha Venkatram

4. Mr. Venkatram Akula

5. Mr. Ranjit Pratap

6. Mr. Badri Narayanan

... Respondents 2 to 6 / Defendants 1 to 5

7. Housing Development Finance Corporation
II Floor, ITC Centre,
760, Anna Salai, Chennai – 600 002.
8. The Sub Registrar
Sub Registrar's Office
No.51, 1st Floor,
Kamrajar Avenue 2nd Street,
Adyar, Chennai – 600 020
9. Mrs. Anjani Bobji
10. ICICI Bank
represented by its Manager
1, Cenotaph Road, Chennai – 600 018.

... Respondents 7 to 9/Defendants 8 to 11.

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off a portion of paragraph 13 starting with the words “*Moreover, in utter defiance...*” at the 6th line of the said paragraph until the end and Item No.2 of the suit schedule property from the plaint in O.S.No. 246 of 2014 pending on the file of the V Additional Judge, Family Court, Chennai and further to strike off the array of the petitioners herein as defendant Nos. 6 & 7 in the said Original Suit.

For Petitioners : Mr. S.Rajasekar

For 1st Respondent: Mr. T. Gowthaman

For RR 2, 3, 5 to 7
9 to 10 : No appearance

For 4th Respondent : Mr. S.P.Aarthi

For 8th Respondent: Dr.S. Suriya
Government Advocate

ORDER

This Civil Revision Petition had been filed under Article 227 of the Constitution of India by the 6th and 7th defendants in O.S.No. 246 of 2013 to strike off a portion of paragraph 13 of the plaint and to strike off Item No.2 of the suit schedule property and to strike out the petitioners / 6th and 7th defendants as parties to the suit.

2. O.S.No. 246 of 2013 had been filed by the plaintiff against her husband as the 1st defendant, her mother-in-law as the 2nd defendant, her father-in-law as the 3rd defendant and the brother of the mother-in-law as the 4th defendant. The revision petitioners are the 6th and 7th defendants and they are purchasers of Item No.2 property given in the schedule to the plaint from the 4th defendant. There are other defendants also to the suit.

3. The suit had been filed seeking a Judgment and Decree to grant permanent injunction restraining the 1st to 7th defendants from attempting to change the nature and character of the property morefully described in the schedule to the plaint and for a permanent injunction restraining the 9th defendant / Sub Registrar, Adyar, from receiving any further documents of transfer or alienation with respect to the properties described in the schedule to the plaint and for a mandatory injunction of freeze the account of the 9th defendant held with 10th defendant and for costs of the suit.

4. Since the suit is still pending consideration, it may not be proper on my part to examine the merits of the contentions raised in the plaint. The revision petitioners herein are concerned only with Item No.2 property given to the schedule of the plaint. The said property is land measuring 6 grounds or thereabouts including a tennis Court and a 16 ft., common pathway at No. 11, Ranjith Road, Adyar, Chennai.

5. Even before examining the circumstances under which the revision petitioners purchased the said property a few background facts will have to be stated.

6. The plaintiff and the 1st defendant had entered into a matrimonial relationship on 25.11.2012. In the plaint, it is claimed that it did not turn out to be a happy relationship. The plaintiff had stated various circumstances which led to her suffering mental agony. Since further narratives with respect to the same are not germane to determine the issue in the present revision petition I refrain from stating anything further.

7. It must be pointed out that the plaintiff filed M.C.No. 70 of 2013 invoking the provisions of the Protection of Woman from Domestic Violence Act, 2005 against the 1st, 2nd and 3rd defendants before the XXIII Metropolitan Magistrate Court at Saidapet. The said Court by order dated 07.10.2013 had granted an interim exparte injunction in favour of the plaintiff restraining the 1st, 2nd and 3rd defendants from disturbing her peaceful possession and enjoyment over the matrimonial home. It was also ordered that she was permitted to share the household in the building in Door No. 11-B, 3rd Floor, La Terrazo Apartment, Ranjith Road, Kotturpuram, Chennai. It was also specifically stated that free ingress and egress of the petitioner to and out of her shared household should not be disturbed in any manner.

8. A further travel backward in time is required.

9. O.S.No. 4799 of 2007 had been filed by the 1st defendant herein against her brother, Ranjit Pratap, the 4th defendant herein, and also against Ranjit Enterprises, a Proprietorship concern. The relief was for delivery of vacant possession of land measuring 6.116 ground described as tennis Court area. This is the property mentioned a Item No.2 of the plaint in O.S.No. 246 of 2013. That suit in O.S.No. 4799 of 2007 which was on the file of the VIII Assistant Judge, City Civil Court, Chennai was compromised between the parties and a memorandum of compromise had been presented on 27.01.2011 and a compromise decree was also passed. By way of that compromise decree, among various conditions, the said property measuring about 6.11 grounds was agreed to be settled by the 1st defendant herein in favour of the 1st defendant herein for adequate compensation.

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10. Accordingly, a settlement deed was also executed and registered on 22.10.2013 as Document No. 2577 of 2013 in the office of the Sub Registrar, Adyar. Thus, the 4th defendant herein, namely, Rajit Pratap,

became the owner of Item No.2 of the property as described in the plaint. He sold that particular property to the revision petitioners herein by sale deed registered as document No. 2579 of 2013 dated 22.10.2013. Thus, the revision petitioners became the absolute owners of the said property. They became the owners by their purchase by sale deed dated 22.10.2013. This particular property was included as Item No.2 in O.S.No. 246 of 2013, the suit which the revision petitioners claim in this revision petition should be struck off.

11. The only reason the property was included as Item No.2 was that it had a passage which according to the plaintiff provided her access to the flat where she had been granted shared household rights in her petition filed under the Protection of Woman from Domestic Violence Act 2005. However, she had included the entire property and had not restricted her claim to the passage alone.

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12. This stand taken by the plaintiff has been seriously questioned by Mr. S.Rajasekar, learned counsel for the revision petitioners/6th and 7th defendants. According to him, the revision petitioners had purchased the

entire property given as Item No. 2 to the schedule of the plaint and therefore, the plaintiff cannot claim any right over the same much less right of ingress and egress to the flat in which she has been permitted a right to reside by the XXIII Metropolitan Magistrate Court at Saidapet. The learned counsel also pointed out that the plaintiff has already an alternate way to access the flats and therefore, claimed that it was highly unreasonable on her part to include the entire property and not just the passage and owing to such inclusion asserted, that a cloud of suspicion has arisen over the title, right and interest of the revision petitioners to the said property.

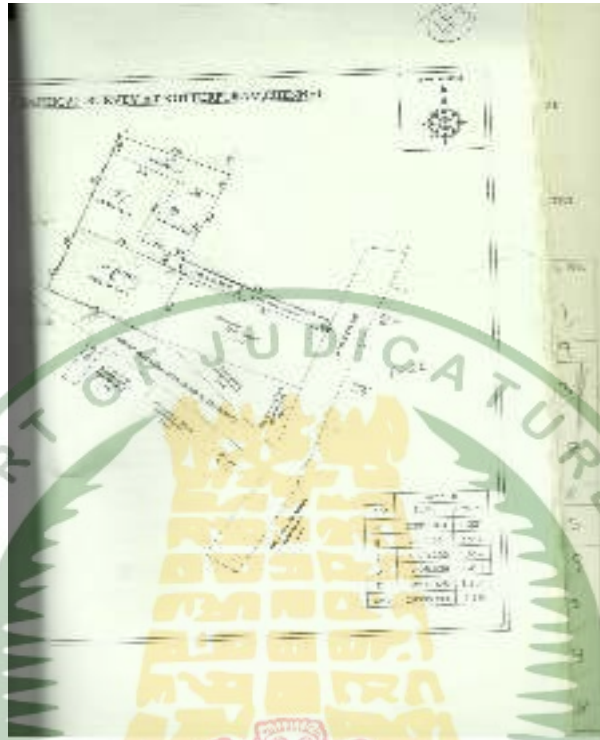
13. It is under these circumstances, claiming injustice over the institution of the suit by impleading the revision petitioners as defendants and including the entire item No.2 property which had been sold for valuable consideration by the 4th defendant in the suit, this Revision Petition has been filed under Article 227 of the Constitution of India to strike down the plaint in so far as the said 6th and 7th defendants are concerned and to strike out item No2 property given in the schedule to the plaint and the pleadings relating to the same.

14. Mr. T.Gowthaman, learned counsel for the 1st respondent/plaintiff however stated that the plaintiff cannot be directed to use the alternate way of ingress and egress to a flat in which a right to reside has been recognised by law and a lawful right has been granted. The learned counsel therefore justified inclusion of Item No. 2 property to the schedule of the plaint but stated that the plaintiff does not claim any title to the said property but only seeks to use the passage as an far ingress and egress to the flat in which she had been granted right by a competent Court.

15. I have carefully considered the arguments advanced and the materials available on records.

16. For better appreciation, it would only be appropriate that a rough lay out of the entire property is reproduced below:-

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17. The portion marked red above is Item No.2 property. It consists of a passage from Ranjith Road leading to the other portion of item No.2 towards the north and to LA TERAZA flats towards the south. The respondent/plaintiff has been given a right to reside in the flats at LA TERAZA. There is an alternate way from Perry Road to the said flats. However, a competent Court, namely, XXIII Metropolitan Magistrate Court at Saidapet had granted a right to reside to the first respondent/plaintiff in the said flats at LA TERAZA. That order is not under question or challenged before this Court. In the said order, the learned Magistrate had

also stated as follows:-

“The free ingress and egress of the petitioner at her shared housed hold should not be disturbed in any manner.”

18. By this, it is to be understood by the parties that the path leading to LA TERAZA from Ranjith Road had been indicated by the Magistrate. Since that particular order is not under challenge in this revision petition, I would refrain from clarifying the same or interfering with the same. But, it is to be noted that the first respondent/plaintiff has an alternate way through Perry Road to the flat to which she had granted a right to reside. The clarification regarding which access was meant in the order stated above, can be given only by the XXIII Metropolitan Magistrate Court at Saidapet.

19. At this stage, the scope of this revision petition is to examine whether to determine the disputes between the plaintiff and the 1st, 2nd and 3rd defendants, the revision petitioners, who are strangers to the family and 6th and 7th defendants are necessary parties to the suit.

20. They are not.

21. They had purchased item No.2 property from the 4th defendant for valuable consideration. The property had been settled by the 2nd defendant on the 4th defendant pursuant to a compromise recognised by VIII Assistant City Civil Court, Chennai, in O.S.No. 4799 of 2007 which ended in a decree dated 27.01.2011.

22. Therefore, the plaintiff has with some mischief intention included the whole property in item No.2. She could very well have with much grace, stated that she is entitled to use the passage as an ingress and egress to her flat and had sought that particular right in her suit. Including the entire property purchased by the revision petitioners show a mala fide intention or rather an attempt to use the Court as a platform to leverage and vent her grievances against the 1st, 2nd and 3rd defendants. There is no cause of action at all as against the present revision petitioners herein. They are wholly unnecessary parties to the family dispute among the plaintiff and the 1st, 2nd and 3rd defendants. The revision petitioners as repeatedly pointed out are strangers to the family. They can never resolve the grievances of the plaintiff.

23. In view of these facts, I hold that this Court should interfere with the suit in so far as the present revision petitioners are concerned and strike them out as parties and also strike out. Item No.2 of the plaint schedule, and leave out only the passage leading to the flats where the plaintiff has been granted a right to reside. Consequently, the associated pleadings in paragraph 13 of the plaint as indicated in the prayer to this Revision Petition are also struck off.

24. I grant liberty to revision petitioners to approach the concerned Magistrate Court and point out that the 1st respondent herein has an alternate way of ingress and egress to the flat to which she had been granted a right to reside and that her claim to use this particular passage in item 2 is only superfluous.

25. If any such application is filed, the learned XXIII Metropolitan Magistrate Court at Saidapet may take it on file and proceed in manner known to law. The learned Magistrate may also keep in mind that ingress and egress to LA TERAZA flat is also available through Perry Road and therefore, the complainant therein would not be put to any serious difficulty.

Even otherwise the matter could have been very well settled, had the plaintiff voluntarily come forward restricting her right to temporary ingress and egress without any claim for title over the said passage in item No.2. But she had not done so. Therefore, she would have to suffer an order of her plaint being struck off in so far as the revision petitioners/6th and 7th defendants are concerned and Item No.2 being removed from the plaint schedule property leaving a right to use the passage alone in the particular pathway shown in the sketch above with no further right of title or claim to title. The consequential pleadings in paragraph 13 as stated in the relief sought in the Revision Petition are also struck off.

26. This Revision Petition is allowed. Liberty is granted to the revision petitioner to approach the XXIII Metropolitan Magistrate Court at Saidapet, for further reliefs as indicated above. Connected Miscellaneous Petitions are closed. No order as to costs.

23.07.2021

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Index: Yes/No
Internet: Yes/No.

Speaking / Non speaking

C.V.KARTHIKEYAN, J.

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Pre-Delivery Order made in

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