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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.381 of 2017
and
CMP.No.8907 of 2017

S.Nagaraja

... Appellant/Plaintiff

Versus

Victoria Gardens Flat Owners Association
Rep.by the Secretary,
No.20, Victoria Gardens
Inner Ring Road, Koyambedu,
Chennai - 600 107.

... Respondent/Defendant

The Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 30th November 2016 passed in A.S.No.63 of 2016, on the file of the XVIII -Additional City Civil Court, Chennai, thereby reversed the Judgment and Decree, dated 30.04.2015 passed in O.S.No.609 of 2014 by the XI-Assistant City Civil Court, Chennai.

For Appellant : Mr.T.Ganesan

For Respondent: Mr.S.J.Jagadev

JUDGMENT

The second appeal has been filed challenging the Judgment and Decree dated 30.11.2016 made in A.S.No.63 of 2016 on the file of the XVIII -Additional City Civil Court, Chennai, reversing the Judgment and Decree, dated 30.04.2015 passed in O.S.No.609 of 2014 by the XI-Assistant City Civil Court, Chennai.

2.The learned counsel for the Appellant submitted that the appellant is owner of one of the flats in Victoria Gardens and also a member of the Victoria Gardens Flat Owners Association/respondent herein. He is the owner of a flat measuring 851 sq.ft. There are 10 Flats measuring of 851 sq.ft, 30 Flats having measurements of 998 sq.ft, 10 flats measuring 851 sq.ft, There are also larger flats measuring 1200 sq.ft and 2200 sq.ft Flats and 30 Flats with 1400 sq.ft, plinth area.

3.According to the appellant, as an owner of a flat measuring 851 sq.ft, he is liable to pay the maintenance charge proportionate to the undivided share of common area purchased



by him as stated in the Sale deed. However, the Respondent/Association has been charging a flat rate of Rs.1,500/- as maintenance charge every month from all the flat owners irrespective of the area of undivided share purchased by them. It is also stated that such amount is being charged since 2007 and the appellant is also paying the maintenance charges from 2001 to 2014, until the date of filing the suit.

4.The main contention raised by the Appellant in the present case is that as per Section 19(1) of the Tamil Nadu Apartments Ownerships Act, 1994, the Respondent/Association cannot charge a flat rate for maintenance from all the flat owners irrespective of the area of undivided share of land purchased by him. On the other hand, in terms under Section 19 (1) of the above said Act, the respondent should charge according to the percentage of undivided share of land purchased by the owner in the common area specified in the sale deed. He fairly admitted that there is no undivided share indicated in the any of the Sale Deeds. Hence, he submits that the receipt of maintenance charge by the respondent is contrary to Section 19(1) of the Tamil Nadu Apartments Ownerships Act, 1994. This aspect was not considered by the Appellate Court, though it was rightly appreciated by the trial court while decreeing the suit. Therefore, he pleaded to admit the Second Appeal on the following substantial questions of law:-

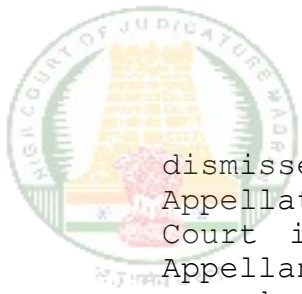
"a) Whether the by-law of the individual apartment prevailed over the Tamil Nadu Apartment Ownership Act,1994?

b) Whether the defendant collecting the maintenance charges in the basic of flat rate is against the Constitution of India?

c) Whether the defendant charging the maintenance charge on the basic of the flat rate is against law and natural justice?"

5.Earlier when the appeal came up for hearing before this Court, this Court was not inclined to admit the appeal, but this Court ordered notice to the respondent with regard to admission. Therefore, the learned counsel for the Respondent also made his submissions by stating that the Appellant has been paying maintenance charges to the respondent from 2001 to 2014 without any dispute. The association was incorporated in the year 2007. Thereafter, a resolution was passed on 18.07.2010 by the respondent, as the power has been conferred to the respondent in terms of By-law No.9(b)(i), in the Special General Body meeting. A special resolution was passed to charge maintenance at flat rate and it was also admitted by the Appellant herein and paid the same for more than three years. The appellant filed the present suit after a period of four years from the date of passing the said resolution.

6.Furthermore, he has brought to the notice of this Court that the resolution was not challenged by the Appellant. As long as the resolution was not challenged in the present suit and the present suit has not been filed within the period of limitation, it is not maintainable and it is liable to be



dismissed. These aspects were well-considered by the First Appellate Court and the same have not considered by the Trial Court in proper perspective. Therefore, he submits that the Appellant has not made out any case for admission and there are no substantial questions of law that arise, as proposed by the Appellant in the Appeal. Therefore, he pleaded for dismissal of the Second Appeal.

7. Heard the learned counsel for the Appellant and the learned counsel appearing for the Respondent and perused the materials available on record.

8. Admittedly, the Appellant herein is one of the Flat Owners residing in a flat measuring 851 sq.ft. There are five types of Flats with different plinth area. The main contention of the Appellant was that since there are different flats with varied plinth areas available, the respondent ought to have charged maintenance from each flat owner, on the basis of the plinth area or atleast based on the undivided share of land in the common area as specified under Section 19(1) of the Tamil Nadu Apartments Ownership Act, 1994. In the present case, the said provision was not complied with. But, without complying with the said provision, the respondent has passed the resolution to charge Flat rate.

9. However, on perusal of the provisions, it appears that the maintenance shall be charged on the basis of undivided percentage of the ownership of the common area specified on the deed of Apartments and there was nothing mentioned in the deed about the common areas. The decision taken by the respondent to charge Flat rate was also agreed and paid the maintenance charges at flat rate by the Appellant for more than 3 years. While so, it is not proper for the appellant to file the suit after 3 years and dispute the manner in which maintenance amount is charged. Further, the respondent passed the resolution for the convenience of its members, to meet out the expenses in the absence of any specific mention about the undivided common area in the Sale deed which may be due to the reason that all the flat owners are going to enjoy equally in the common area including the electricity, water and other amenities.

10. Taking into consideration that there was no restriction to use the common area by the Appellant or anybody else the resolution would have been passed. The said resolution was not challenged by the appellant. As long as the appellant has not made any challenge to the resolution, the present suit is not maintainable.

11. All these aspects have been well-considered by the First Appellate Court including the fact with regard to the failure of the Appellant to challenge the resolution passed in the extraordinary General Body meeting of the Association. It would be appropriate to extract the relevant portion of paragraph no.12 &13 in the judgment of the First Appellate Court hereunder:-



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"12.While so on careful consideration of the appeal ground and lower court records it has been founds that to substantiate the plaintiffs claim plaintiff himself examined as PW1 in the lower court and Ex.A1 to Ex.A6 are marked through him and one R.Sundaram examined as PW.1 in this casse and Ex.B1 to Ex.B6 are marked through him. While gone through the judgement delivered by the lower court the learned judge decreed the suit in a conclusion in page No.9 by in one line " and flat rate fixing of maintenance and other charges is abritary and violatin to the act and hence the plaintiff is entited for the relief prayed for with costs" No separate answer was given to each and every issues.

13.In this connection on careful consideration of the section 7 of the Tamil Nadu Apartments Ownership Act, 1994 it clearly reveals every apartments Ownership is requires to apply strictly with the byelaws and with administrative rules and regulations contained in the bye laws. And further as per section 23 of the same act also speaks about all the flat owners are binding upon the bye laws govern by the association. Now in this case there is a bye law for the plaintiffs association and it has been marked as Ex.A1. On keen perusal of the Ex.A1 e.e Victtoria Gardens Flat Owners Association in Section 9 B reveals that monthly maintenance charges to be paid by the every flat owners on or before 10th day of every month in advance as per the resolution passed in the General Body Meeting. Hence, this is point out by the plaintiff to pay the monthly maintenance charges fixed by the defendant association as per 9 B of the bye-laws and sec. 7 and 20 of the Tamil Nadu Apartments Ownership Act, 1994. Even assuming that the plaintiff aggrieved by the charges fixed by the resolution opposition in the General Body Meeting. He has agitate the same before this Court by way of declaring the petition made by association in the General Body Meeting as null and void. Without challenging the resolution of the general Body Meeting the plaintiff cannot sought for permanent injunction and other reliefs means. In my opinion the lower court failed to discuss any one of the point in the judgment and blindly decree the suit by way of one line is arbitrary against rule of law and without answering each and every issues the lower court without applying his mine decree the suit. Hence, it is just and necessary to interfere the judgment and decree of the lower court and the point for consideration is decided infavour of the appellant/defendant."

<https://hcservices.ecourts.gov.in/hcservices/> 12.On perusal of the above said Judgment, it is evident that the First Appellate Court clearly dealt with all these aspects including both oral and documentary evidences, but the same was not considered by the Trial Court. Therefore, the



First Appellate Court has rightly reversed the Judgment of the Trial Court. Thus, this Court does not find any infirmity on the Judgment passed by the First Appellate Court below. This Court is not inclined to interfere with the well-considered of the Judgment of the First Appellate Court.

13. In view of the above, this Court does not find any substantial questions of law that arise for consideration in the present Second Appeal and it deserves for dismissal.

14. Accordingly, the Second Appeal is dismissed by confirming the Judgment and Decree dated 30th November 2016 passed in A.S.No.63 of 2016, on the file of the XVIII -Additional City Civil Court, Chennai reversing the Judgment and Decree, dated 30.04.2015 passed in O.S.No.609 of 2014 on the file of XI-Assistant City Civil Court, Chennai. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

klr

To

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

2. The XI-Assistant Judge,
City Civil Court, Chennai.

+1cc to Mr.T.Ganesan, Advocate SR.No.7447

S.A.No.381 of 2017 and
CMP.No.8907 of 2017

CA (CO)
HS (08/09/2021)