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C.R.P. (PD) No.1906 of 2022
and C.M.P. No.9715 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.R.P. (PD) No.1906 of 2022
and C.M.P. No.9715 of 2022

1.G.Danasekaran
2.G.Sampath
3.G.Madan

...

Petitioners /
Defendants 1 to 3

versus

S.Ruth Saral

...

Respondent /
Plaintiff

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 01.04.2022 passed in I.A.No.15470 of 2017 in O.S.No.773 of 2013 on the file of the learned XVI Assistant Judge, City Civil Court, Chennai and consequently pass an order rejecting the plaint filed in O.S.No.773 of 2013.

For Petitioners : Mr.P.K.Sabapathi

For Respondent : Mr.M.Selvaraj
for Caveator

ORDER



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This Civil Revision Petition has been preferred challenging the order of the learned XVI Assistant Judge, City Civil Court, Chennai made in I.A.No.15470 of 2017 in O.S.No.773 of 2013.

2. The revision petitioners are the defendants 1 to 3 in the suit. The plaintiff has filed the suit in O.S.No.773 of 2013 for the relief of permanent injunction. The revision petitioners have filed a petition under Order VII Rule 11 of C.P.C. to reject the plaint and the same was dismissed. Aggrieved over that, the petitioners have preferred this Civil Revision Petition.

3. The learned counsel for the petitioners submitted that as per the proceedings of the Tamil Nadu Slum Clearance Board, Chennai, dated 20.07.2012, the allotment given to the respondent / plaintiff in respect of the suit property has been cancelled and in the said order, it has been observed that the respondent was not in enjoyment of the said plot. The learned counsel further submitted that since the above document would show the non-occupation of the respondent in the suit property, the learned trial Judge ought to have rejected the suit itself, as not maintainable.



4. On perusal of the averments in the plaint, it is seen that the plaintiff has alleged that in pursuance of the allotment in her favour in respect of the Plot No.43, she was paying the installments regularly. She has further stated that she got electricity service connection and also given with a subsidy of Rs.1,30,000/- under the Urban Land Development Scheme for constructing a house in the said plot.

5. The learned trial Judge has observed in his order that the validity of cancellation proceedings has already been challenged by the plaintiff in W.P.No.4341 of 2013. In such context of a finding as to the validity of the cancellation, the plaintiff cannot be made to give up her case even before the commencement of the trial by rejecting the plaint.

6. It is needless to state that the cause of action for the suit is as how it is pleaded by the plaintiff. Even if the defendants might have a good defence, the plaintiff has got a right to maintain the suit on the basis of the cause of action so pleaded by her and fight the case.

7. Supposing if the plaintiff is not established the case by placing the reliable and relevant materials before the Court, the risk goes with her. Having made out a *prima facie* case on the basis of the pleadings,



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she cannot be pushed away at the threshold itself on the basis of one document, which is also still under challenge. The learned trial Judge has rightly appreciated the maintainability of the plaint in the context of the pending question of the validity of the cancellation order. Hence, I do not find ground for interference.

8. Hence, this Civil Revision Petition is dismissed and the order dated 01.04.2022 passed by the learned XVI Assistant Judge, City Civil Court, Chennai in I.A.No.15470 of 2017 in O.S.No.773 of 2013 is hereby confirmed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

22.06.2022

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

sri

To

The XVI Assistant Judge,
City Civil Court, Chennai

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R.N.MANJULA, J.

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