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C.R.P(PD).No.2510 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P(PD).No.2510 of 2022

and

C.M.P.No.12924 of 2022

1.D.Sathya Vijaya Kumari
2.Dhanasingh Philomina Farjana
3.D.Rajesh Kumar
4.D.Jaswanth Raj
5.K.Stella Padmini
6.Sharmila Anthony Raj
7.D.Naveen Prem Kumar

... Petitioners

Vs

ME.Mariappan

... Respondent

Prayer:- Petition is filed under Article 227 of the Constitution of India, pleaded to allow the Civil Revision Petition and set aside the fair and decretal order passed by the XVII Assistant Judge, City Civil Court, Chennai dated 01.03.2022, passed in I.A.No.1 of 2019 in O.S.No.733 of 2018.

For Petitioners : Mr.S.Baskaran



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ORDER

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This Civil Revision petition has been preferred challenging the order dated 01.03.2022 made in I.A.No.1 of 2019 in O.S.No.733 of 2018 by the learned XVII Assistant Judge, City Civil Court, Chennai.

2.The revision petitioners are the defendants 1 to 7 in the suit in O.S.No.733 of 2018 filed by the respondent/plaintiff for the relief of declaration that the demolition made by the defendants 8 and 9 in the common area, and creation of new entrance on western side facing Mahalingapuram main road are unlawful and for mandatory injunction for directing the defendants 8 and 9 to restore the demolished portions of the common area and also for permanent injunction.

3. During the pendency of the suit, the defendants 1 to 7 filed an interlocutory application in I.A.No.1 of 2019 to reject the plaint. The said petition was dismissed. Aggrieved over the same, the defendants 1 to 7 have filed the present revision petition.

4. The learned counsel for the revision petitioners submitted that despite an



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earlier suit in O.S.No.2488 of 2013 was filed which is pending, the respondent/plaintiff has filed a new suit in O.S.No.733 of 2018 without any cause of action and that the wall is not a common wall. The learned trial Judge has not considered the documents filed in support of the petition filed to reject the plaint and passed an erroneous order dismissing the petition.

4. On perusal of the plaint averments, it is seen that the respondent/plaintiff has raised a claim that there is a common wall and it was demolished and in which certain new features were made. In view of the above averments, the plaintiff has sought the relief of declaration, mandatory injunction and also permanent injunction. In the present suit, the respondent/plaintiff has also stated about the filing of the earlier suit. Hence, there is no suppression of facts. The issue whether the wall is a common wall or separate wall belonging to the defendants or the entitlement of the plaintiff to get it demolished are all the matters to be dealt during a full-fledged trial. The plaintiff has filed the suit basing on his own averments and the cause of action pleaded by him. Since the defendants denied the averments in the plaint and the cause of action, there are certain triable issues on the basis of the respective pleadings made by the respective parties. Hence, the Court is obliged to



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conduct the trial.

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6. Since the plaint has to be taken on file basing on the *prima facie* proof to show the cause of action on in which the suit has been filed, the Courts cannot conduct a roving enquiry even before the parties entered into trial. The learned trial Judge had appreciated sufficiency of the *prima facie* materials for conducting the case, after framing issues. Hence, it cannot be accepted that the suit has been filed without any cause of action. Since the learned trial Judge has rightly dealt the issue, it does not require any interference.

6. In view of the above, this Civil Revision Petition is dismissed and the order dated 01.03.2022 made in I.A.No.1 of 2019 in O.S.No.733 of 2018 by the learned XVII Assistant Judge, City Civil Court, Chennai is confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Speaking Order/Non-Speaking order

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To

The XVII Assistant City Civil Court,
Chennai



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R.N.MANJULA, J.

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