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C.R.P.(PD).No.442 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26/4/2022

C O R A M:

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

C.R.P.PD.No.442 of 2014
a n d C.M.P.No.2674 of 2020

Sunshine Flat Owners' Association
rep. By its Secretary
N.No.32, O.No.72 West Jones Road
Saidapet
Chennai 600 015.

...

Petitioner

Vs

1. J. Gothamchand Lodha
2. Arunkumar
3. Sardar Bai
4. Sushila Bai
5. Ladu Bai
6. P. Meena Bai
7. P. Navrathan Singh Lodha
8. N. Vijayakumar Lodha
9. Reshma
10. Suman
11. C. Prema
12. B. Malli Bai
13. Leela Bai
14. R. Vasantha Devi
15. Indus Citiscapes Constructions Pvt Ltd
rep. By its Director
Mr.Narendra Lunawath



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16. Narendra Lunawath

17. Gapathlal Bafna

18. Chandralekha

...

Respondents

(Impleaded as R.18, by order, dated 26/4/2022,
made in C.M.P.No.2674 of 2020 by JNBJ)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 5/11/2013 passed by the learned VII Additional City Civil Judge, Chennai, in I.A.No.14318 of 2013 in O.S.No.7255 of 2010.

For petitioners

...

Ms.K.Bhanumathi

For respondents

...

Mr.D.Dharmchand Jain

for R.R.1 to 17

Mr.S.Murugan

R.18

ORDER

The petitioner Association has preferred this Civil Revision Petition, challenging the Award passed by the learned VII Additional City Civil Judge, Chennai, in I.A.No.14318 of 2013 in O.S.No.7255 of 2010.

2. The facts in brief are as follows:-

The petitioner is an Association registered under the Tamil Nadu Societies Registration Act. The defendants 1 to 18 are the joint owners of the land comprised in Resurvey No.242/2, T.S.No.212 part and T.S.No.212/8 measuring 51



grounds. The fifteenth defendant is a Private Limited Company carrying on business as a promoter of flats.

3. The petitioner Association filed a suit in O.S.No.7255 of 2010 seeking for permanent injunction against the respondents 1 to 17, restraining them from dealing with any portion, in Block “A” of the property, viz., Sunshine Apartments, New No.32, Old No.72, West Jones Road, Saidapet, Chennai, in any manner either by sale, mortgage or lease. In the meanwhile, the petitioner Association and the respondents 1 to 17 herein entered into a Memorandum of Compromise, dated 12/2/2013, whereby, it has been stated that they have settled all the issues between themselves. Hence, the petitioner Association had filed a petition, under Order 23 Rule 3 and Section 151 of the Code of Civil Procedure to record the Memorandum of Compromise, dated 12/2/2013 in I.A.No.14318 of 2013 before the City Civil Court, Chennai.

4. During the pendency of the suit, the eighteenth defendant herein has filed a petition to implead herself as one of the respondents and subsequently, she was impleaded as eighteenth defendant in the suit and it was submitted by the learned counsel appearing for the eighteenth defendant that the petitioner Association and the respondents 1 to 17 have filed the compromise memo without including the



eighteenth defendant. Thereafter, the eighteenth defendant also filed a written statement with counter claim for mandatory injunction against the respondents 1 to 17 to delete the property of the eighteenth respondent from all subsequent sale deeds executed in favour of 133 members of the petitioner's Association and to remove all the cable lines passing through the eighteenth respondent's property.

5. Even though the eighteenth respondent is not a party to I.A.No.14318 of 2013, the City Civil Court, Chennai had issued notice to the eighteenth respondent and she also filed a counter to the petition. After she was impleaded as eighteenth respondent, the petitioner Association approached her for settlement and sent a draft copy of compromise memo and the same was not accepted by the eighteenth defendant because the petitioner Association undertook the liability of shifting the electricity overhead cable lines passing over her property, but did not agree to pay liquidated damages of Rs.3 lakhs in the event of non-performance.

6. After hearing the arguments advanced on either side, the learned VII Additional Judge, held that whether the eighteenth defendant is having any right or not is a point to be decided during the trial of the suit, and therefore dismissed



the petition. Being aggrieved over the dismissal of the same, the petitioner Association has come before this Court, praying for the relief as stated supra.

7. Today, when the matter is taken up for hearing, the learned counsel appearing for the respondents 1 to 17, who are the adjacent owners of the petitioner's property, submitted that the petitioner Association is using the out-gate of 17 feet of the property, which is in issue.

8. Per contra, the learned counsel appearing for the petitioner Association submitted that they are not using the out-gate of the plaint schedule property for any purpose. He further submitted that underground cables are deployed for transmission and distribution of electric power and no overhead cables run over the property of the eighteenth defendant. Therefore, the eighteenth defendant has to work out her remedy only before the Electricity Department and not with the respondents.

9. The specific contention of the learned counsel for the petitioner Association is that the property of the eighteenth defendant is separated by a compound wall and it has nothing to do with the plaint schedule property.



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Therefore, the learned Judge ought to have allowed the application filed under

Order XXIII Rule 3 of the Code of Civil Procedure.

10. Heard Ms.K.Bhanumathi, learned counsel for the petitioner Association, Mr.D.Dharmchand Jain, learned counsel for the respondents 1 to 17 and Mr.S.Murugan, learned counsel for the eighteenth respondent and perused the materials available on record.

11. Perusal of the entire records as well as the counter filed by the eighteenth defendant would clearly reveal that the out-gate/exit gate of the plaint schedule property has nothing to do with the property of the eighteenth defendant. Now, the learned counsel for the petitioner Association as well as the respondents 1 to 17 would state that the exit gate of the property has been kept closed and the same remains unused. Therefore, the eighteenth defendant shall not have any grievance over the memo of compromise entered between the petitioner Association and the respondents 1 to 17. In the considered opinion of this Court, the learned Judge ought to have recorded the memo of compromise.



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12. In view of the above facts and circumstances of the case, the Memorandum of Compromise, dated 12/2/2013 entered between the petitioner Association and the respondents 1 to 17 is hereby recorded and the original Compromise Memo shall also form part of this order.

13. It is also made clear that with regard to the passing of overhead electricity lines, as stated by the eighteenth defendant, it is always left open to the eighteenth defendant to workout her remedy in the manner known to law by way of approaching the Electricity Board for redressal of her grievance. Accordingly, this Civil Revision Petition stands Allowed and the order, dated 5/11/2013, passed by the learned VII Additional City Civil Judge, in I.A.No.14318 of 2013 in O.S.No.7255 of 2010 is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

26.04.2022

Index : Yes/No
Internet : Yes/No

mvs/sts

J.NISHA BANU, J.,



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sts

To:

1. The VII Additional City Civil Judge,
Chennai.

Order made in
C.R.P.(PD) No.442 of 2014

Dated:
26.04.2022