



C.R.P.(PD) No.2026 of 2021

and

C.M.P.Nos.15384 of 2021 and 7830 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 30.06.2022

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THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

C.R.P.(PD) No.2026 of 2021

and

C.M.P.Nos.15384 of 2021 and 7830 of 2022

M/s.Wellington Estates Society (201/1986)

represented by its Secretary

Mrs.Akila Vijayakumar

... Petitioner/Petitioner / Defendant

Vs

M/s.Mohideen Trust

represented by its Managing Trustee

Mr.M.S.Abdul Khader (M.S.A.Khader)

...Respondent/Respondent /Plaintiff

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decreetal order passed by the learned XIII Assistant Judge (Fast Track Court) VI Assistant Judge, City civil Court, Chennai, in I.A.No.6 of 2021 in O.S.No.4425 of 2020 dated 16.08.2021.

For Petitioner

..

Mr.K.Azhagu Raman



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For Respondent

..

Mr.M.B.Mustaque Ahamed

ORDER

This Civil Revision Petition is filed challenging the dismissal order dated 16.08.2021 passed by the learned XIII Assistant Judge, (Fast Track Court) VI Assistant Judge, City civil Court, Chennai, in I.A.No.6 of 2021 in O.S.No.4425 of 2020, wherein the petitioner herein prayed for rejection of the plaint filed by the respondent/plaintiff.

2. M/s.Mohideen Trust, represented by its Managing Trustee Mr.M.S.Abdul Khader (M.S.A.Khader) - respondent herein, claiming itself as sublessee under the chief lessee/Messrs.Wellington Estate for a perpetual period of 99 years, has filed the plaint in O.S.No.4425 of 2020 against the petitioner herein for the following reliefs:-

a) Mandatory injunction directing the defendant to restore basic amenity of water supply and Internet connection to the suit schedule property;

b) Permanent injunction restraining the defendant, either by



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themselves or through their agents, friends, relatives, henchmen etc., from interfering with the peaceful possession of the plaintiff in respect of the suit schedule property.

c) To grant cost of the suit.

3. Along with the said suit/plaint, the respondent herein/plaintiff also filed two petitions, viz., I.A.No.2 of 2020 for interim mandatory injunction directing the revision petitioner herein/defendant to restore the basic amenity of water supply and Internet connection to the suit schedule property till the disposal of the suit and I.A.No.3 of 2020 for interim injunction restraining the revision petitioner herein/defendant from interfering with peaceful possession of plaintiff for the suit property till the disposal of the suit. The trial Court has granted interim mandatory injunction on 05.12.2020 in I.A.No.2 of 2020 in respect of water connection. The revision petitioner herein/defendant filed common counter in both the I.As.



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4. After filing common counter in both the above I.As, the petitioner herein/defendant filed I.A.No.6 of 2021 for rejection of the plaint filed by the respondent herein/plaintiff, stating that the plaintiff trust was not existing on the date of filing the suit and the functioning of the trust came to an end in the year 1995 itself, but M.S.Abdul Khader claiming to be the Managing Trustee of plaintiff trust filed the suit in the name of Mohideen Trust and therefore, M.S.Abdul Khader has given false statement into the judicial proceedings, which amounts to perjury and the plaintiff is not a member of petitioner society and there is no cause of action for the suit and the suit is also bad for non-joinder of necessary parties/tenants.

5. Refuting I.A.No.6 of 2021, the respondent herein/plaintiff averred that M/s.Mohideen Trust, represented by its Managing Trustee Mr.M.S.Abdul Khader (M.S.A.Khader), is a sublessee under the chief lessee Messrs. Wellington Estates for a perpetual period of 99 years through a registered lease deed Document No.247/1986 dated



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27.02.1986 and the plaintiff is in occupation, possession and enjoyment of the same and rented out the premises to tenants on monthly rent. As a holder of the schedule premises, they are entitled to enjoy and occupy the same with all provisions and facilities attached therein and the plaintiff is paying maintenance charges to the defendant association till date, in time. But the defendant, in the end of August 2020, illegally disconnected the water supply and Internet facility to the premises of the plaintiff, thereby causing inconvenience to the tenants and therefore, the tenants, due to want of basic amenities, have vacated the premises. Hence, there is cause of action for the suit. The respondent/plaintiff is contesting the suit to protect its own rights of residence of the suit premises. Hence, it is not necessary to implead the tenants as parties of the suit, as they are eventually represented by the plaintiff.

6. The learned trial Judge, after hearing both sides and perusing the documents produced, came to the conclusion that the plaintiff trust was functioning on the date of filing the suit; the question of



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existing or non-existing of the plaintiff trust will be decided at the time of trial; the allegation against the plaintiff for perjury will be decided only after the conclusion of trial; the plaintiff, in para-23 of the plaintiff pleaded cause of action; the plaint cannot be rejected on the basis of the defense made in the written statement; even the beneficiary of the trust, namely M.S.A.Khader can maintain the suit by way of necessary amendment in the plaint and this court while granting interim mandatory injunction found that the plaintiff has proved prima facie case. On the above finding, the trial Judge dismissed the petition to reject the plaint. Challenging the said dismissal order, the petitioner/defendant is before this Court by way of present Civil Revision Petition.

7. Heard the learned counsel for the revision petitioner/defendant and learned counsel for the respondent/plaintiff.

8. The main submission of the learned counsel for the revision petitioner/defendant is that the suit was filed in the name of non-existing



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trust by M.S.Abdul Khader and the the trust came to end on 27.04.1995 and the plaintiff is not a member of the defendant society. The plaintiff averred false statements before this Court, which amounts to perjury. There is no cause of action for the suit and the suit is bad for non-joinder of tenants as parties. Hence, he prayed to reject the plaint and allow this Civil Revision Petition.

9. Per contra, learned counsel for the respondent/plaintiff submitted that even though, it is stated in the trust deed dated 28.04.1985 that, *“the trust shall be for a period of 10 years from the execution of this deed and shall come to an end with the close of 27th April 1985”*, it is also stated in the said trust deed that, *“Janab M.S.A.Khader shall be the Managing Trustee for life time or till his death or resignations and the affairs of the trust should be managed by the said Managing Trustee along with other Trustees/s acting jointly or severally. The trustees may however, dissolve the trust at any time by an unanimous resolution of the trustees”*. Learned counsel for the



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respondent/plaintiff further submitted that since the plaintiff trust is a registered trust, it should be dissolved by a registered dissolution deed, and so far, the trust is not dissolved, hence it is in existence. Learned counsel also submitted that the plaintiff trust entered into a lease deed with chief lessee for a perpetual period of 99 years and is in possession of suit property and therefore, by default, it is a member of defendant society and it is paying maintenance charge to defendant society till date, in time and without fail. As the defendant is interfering with the peaceful possession of the tenants of the plaintiff in the suit schedule property and disconnecting water connection and Internet connection, there is cause of action for the suit. Since the respondent/ plaintiff is contesting the suit to protect its own rights, tenants are not necessary to be impleaded in the suit. Hence, the suit is maintainable. The learned trial Judge, after considering all these aspects, dismissed the petition to reject the plaint. Therefore, he prayed for dismissal of this Revision Petition by confirming the order of the learned trial Judge.



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10. Considered the rival submissions made on both sides and perused the materials available on record.

11. From the perusal of records, it is seen that the suit was filed in the name of M/s.Mohideen Trust, represented by its Managing Trustee Mr.M.S.Abdul Khader (M.S.A.Khader). It is stated in the plaint, petitions as well the submission of learned counsel for the respondent/plaintiff that it is a sublessee under the chief lessee for a perpetual period of 99 years through a registered lease deed dated 27.02.1986 and the plaintiff is in occupation, possession and enjoyment of the same and rented out the premises to tenants on monthly rent. To prove the same, plaintiff filed Trust Deed dated 28.04.1985, lease deed dated 27.02.1986 and Property tax receipts issued by Chennai Corporation.

12. On perusal of Trust Deed dated 28.04.1985, it is seen that “Janab M.S.A.Khader shall be the Managing Trustee for life time or till his death or resignations and the affairs of the trust should be managed



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by the said Managing Trustee” Hence, it is clear that M.S.A.Khader is the life time Managing Trustee.

13. But the learned counsel for the revision petitioner/defendant, by relying on the trust deed dated 28.04.1985, submitted that the suit was filed in the name of non-existing trust. The learned counsel for the respondent/plaintiff submitted that the trust is in existence and it is not dissolved so far. Hence, this Court is of the view that the respondent/plaintiff must be given an opportunity to prove its case and the issue regarding (i) the existence/non-existence of the trust and (ii) whether the suit filed in the name of Trust is maintainable ? could be decided after or at the time of trial.

14. That apart, the suit is filed only for restoration of basic amenities, ie., water and Internet connection and for mandatory injunction. From the perusal of lease deed dated 27.02.1986 (*lease for premium of Rs.2,08,000/-. No rent reserved*) entered between



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Messrs.Wellington Estate, a duly registered partnership firm, represented by its Managing Partners, viz., (1) N.G.George and (2) Mohan K.Mirpuri and **Mohideen Trust** represented by its Managing Trustee Mr.M.S.A.Khader, it is clear that Mohideen Trust, respondent/plaintiff was granted sub lease to possess and enjoy the suit schedule property, without any rent, for the unexpired period of 99 years as and from the date of commencement of lease between the Trust and the Chief Lessee which expires on 25th April 2081, which prima facie shows that the plaintiff is entitled to possess, occupy and enjoy the suit property till 25.04.2081, without any interruption. In addition to that, the Property tax receipts dated 13.02.2018 and 13.09.2021 issued by Chennai Corporation in the name of Assesse 'Mohideen Trust' also strengthen the case of the respondent/plaintiff.

15. It is also the submission of the respondent/plaintiff that as a holder of the schedule premises, they are entitled to enjoy and occupy the same with all provisions and facilities attached therein and the plaintiff is



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paying maintenance charges to the defendant association, till date. To prove the same, they filed receipts dated 12.03.2016, 31.03.2016, and 14.03.2017 issued by Chennai Metropolitan Water supply and sewerage Board in the name of M/s.Mohideen Trust, Covering letter dated 06.10.2020 from the petitioner/defendant to respondent/plaintiff, Tax invoices dated 01.11.2020, 01.02.2021 and 01.03.2021 issued by the revision petitioner/defendant in the name of respondent/plaintiff and the mails exchanged between the parties. It is prima facie seen from the Tax invoices for maintenance charges, issued by the defendant society that they have issued receipts for receiving maintenance charges from the plaintiff trust not only before filing of the suit, but also even after the filing of the suit, ie., during 2021. It is seen from the mails exchanged between the parties that the revision petitioner/defendant challenged/questioned the ownership of suit property and rent agreement. The defendant is only a welfare association and it cannot prevent from using the basic amenities by the holders of the premises and it cannot refrain the holders from peaceful possession and enjoyment.



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Assistant Judge (Fast Track Court) VI Assistant Judge, City civil Court,
Chennai, in I.A.No.6 of 2021 in O.S.No.4425 of 2020 dated 16.08.2021.

The trial Court is directed to proceed further with the suit in O.S.No.4425
of 2020. No costs. Consequently, connected Civil Miscellaneous Petitions
are closed. It is made clear that if the basic amenity of water supply is
not restored, the respondent/plaintiff is at liberty to proceed with the
Contempt Petition.

30.06.2022

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Index : Yes / No

Internet : Yes

Speaking order : Yes / No

To,

1. The XIII Assistant Judge
(Fast Track Court)
VI Assistant Judge,
City civil Court,
Chennai.



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S.KANNAMMAL, J.,

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order in
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