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A.No.3285 of 2022 in C.S.No.919 of 2008

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Reserved on 07.09.2022	Pronounced on .09.2022
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G.CHANDRASEKHARAN, J.

This application is filed to implead the applicant herein as the 16th defendant in C.S.No.919 of 2008. The learned counsel for the applicant submitted that he is the President of Appa Rao Co-operative Housing Society. The suit was filed by the respondents 1 to 5 against the defendants 1 to 14 to quit and deliver the vacant possession of the suit property by removal of the construction if any put up thereon and in default, permit the plaintiffs to remove all the super structures and constructions and recover the cost of the same from the defendants.

2.The defendants 2 to 14 are the members of the applicant Society and they had been residing in their respective portions from the year 1978. They paid an advance sale consideration and possession had been handed over. However, sale agreement has not been completed till date. M/s.Apparao Garden Cooperative Housing Site Society represented by its



Special Officer is the first defendant. The first defendant filed a mechanical statement and did not follow the Court procedures properly. He has not taken any fruitful efforts to defend the suit. He did not appear before the Court for letting evidence. PW1 was not properly cross examined. The Registrar of the Societies dissolved the applicant Society/proposed 16th defendant in the year 2017 and the entire registers had been taken by the Registrar of Societies. The Appellate Authority directed the Special Officer to handover the records of the Society to the proposed 16th defendant. Then only, the part of the records have been handed over to the present office bearers of the Society. The Special Officer has no right to represent without specific instructions from the members of the Society. Therefore, this application is filed for impleading the proposed 16th defendant, permitting him to file the written statement, give evidence, re-open the evidence of the plaintiffs and recall the PW1 for further cross examination.

3.Per contra, the learned counsel for the respondents submitted that the plaintiffs are the owners of the suit property. The first defendant Society agreed to buy a suit property for their members. The Society was not able to perform its part of the contract. However, it plotted out the property of the



A.No.3285 of 2022 in C.S.No.919 of 2008

plaintiffs along with the other properties without the knowledge and prior consent of the plaintiffs. The Special Officer filed a suit in O.S.No.7732 of 1998, for the relief of specific performance, on the file of the VII Assistant City Civil Court, Chennai. The suit was dismissed on 08.09.2004. The appeal filed in A.S.No.360 of 2005 was also dismissed. Meanwhile, the plaintiffs filed the above suit for delivery of possession. When the matter was listed for arguments in 2011, the learned counsel for the Society prayed this Court for clubbing the Second Appeal in S.A.No.1411 of 2008 along with the suit. Then this case was not listed in the list. Second Appeal in S.A.No.1411 of 2008 was also disposed of. He further submitted that now this application is filed frivolously. The Special Officer and his counsel successfully dragged the proceedings till now and filing of this application is another attempt to further delay the proceedings.

4.Considered the rival submissions on either side and perused the records.

5.From the submissions made by the learned counsel appearing for the parties, it is made clear that the suit in C.S.No.919 of 2008 is filed for



A.No.3285 of 2022 in C.S.No.919 of 2008

delivery of possession and other reliefs. Previously, the first defendant filed a suit in O.S.No.7732 of 1998 for the relief of specific performance and that was dismissed. The appeal filed in A.S.No.360 of 2005 also resulted in dismissal followed by the disposal of Second Appeal in S.A.No. 1411 of 2008. Even as per the admitted case of the applicant, the execution of the sale deed in respect of the properties in the possession of the defendants is not completed. Only on the basis of the agreement to sell, it appears that the first defendant plotted out the lands and allotted to its members. Subsequent efforts to enforce the sale agreement by filing specific performance suit, resulted in dismissal. In the suit in C.S.No.918 of 2008, not only the Society was impleaded, but the members have been impleaded as defendants 2 to 14. If the members/defendants 2 to 14 are of the view that the first defendant has not properly conducted the case, it is always open to them to seek the permission of the Court to conduct the case by another Advocate chosen by them to defend their claim. It is not necessary to implead the applicant as the 16th defendant in this suit. It is an unnecessary exercise that will drive the matter back to the square one. The applicant now prays permission to file the written statement, examine the witnesses, re-open the evidence of the plaintiffs and recall the PW1 for



A.No.3285 of 2022 in C.S.No.919 of 2008

further cross examination. If this application is entertained, it will lead to further delay in the proceedings in this case. As already stated, the defendants 2 to 14 can individually or collectively appoint an Advocate to choose their course of action in the matter of defending their right.

6. There is no merits in this application and accordingly, this application is dismissed. No Costs.

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16.09.2022



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Pre-Delivery Order in
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16.09.2022