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C.R.P.No.2021 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2021 of 2015
and M.P.No.1 of 2015

Rajesh

.. Petitioner

VS

1.L.Subramanian
2.L.Gopal
3.S.Murugan
4.K.Divakar
5.Gnana Durga Lakshmi

6.The Commissioner
Corporation of Chennai
Ripon Buildings,
Chennai – 600 003.

7.The Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi Irwin Road,
Egmore, Chennai – 600 008.

.. Respondents

Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 31.03.2015 passed in IA No.8507 of 2014 in O.S.No.2507 of 2012 on the file of learned VII Asst.Judge, City Civil Court, Madras.

For Petitioners : Mr.V.V.Sairam

For Respondents : R1 to R5 – NRN
R6, R7 – No appearance

ORDER

The allegation in the plaint is that plaintiff nos. 1 to 3 and defendant nos. 1 to 3 are co-owners of a flat.



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2. The third defendant was attempting to put up construction illegally encroaching upon the common area. On this allegation, the plaintiffs presented the suit for relief of permanent injunction that the defendants should not put up construction contrary to the approved plan and for a mandatory injunction to remove the illegally put up bedroom.

3. The plaint was sought to be rejected on two grounds (i) that the civil court does not have jurisdiction under the Town and Country Planning Act and (ii) that no suit will lie against the co-owner.

4. Taking the second point first, it is settled rule that a co-owner cannot maintain a suit for injunction against the another co-owner. The exception to the said rule is if the right of the co-owner is infringed or jeopardised by an unilateral act of the other co-owner, suit is very much maintainable.

5. On the first point, with respect to the bar of jurisdiction of civil court under the Town and Country Planning Act, it is only with respect to actions initiated by the authorities under the said Act. In other words, if any authority under the Town and Country



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Planning Act were to initiate action, civil courts will not have jurisdiction to injunct the said proceedings.

6. The Town and Country Planning Act is not a complete code which takes away the power of the civil court to grant mandatory injunction under the provisions of the Specific Relief Act. Both the points having failed, I have to confirm the order of the trial Court in I.A.No.8507 of 2014 in O.S.No.2507 of 2012 dated 31.03.2015.

7. For the above reasons, this civil revision petition is dismissed. No costs. Connected miscellaneous petition is closed.

20.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

- 1.The learned VII Asst.Judge,
City Civil Court, Madras.
- 2.The Commissioner
Corporation of Chennai
Ripon Buildings,Chennai – 600 003.
- 3.The Member Secretary,
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V. LAKSHMINARAYANAN,J.

ssm

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