



C.R.P(PD)No.2287 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 06.07.2023

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P(PD)No.2287 of 2023
and C.M.P.Nos.13831 & 13834 of 2023

- 1.Mr.A.Krishnaswamy
- 2.Mr.A.Somasundaram
- 3.A.Shanmugasundaram
- 4.Mr.A.Sivamani

...Petitioners

VS.

- 1.Scott Villas Residents Welfare Associations
Represented by its Secretary Mr.D.Ananda Kumar,
Residing at No.B-30, 31, Scott Villas,
Chinnavedampatti,
Behind Ramani Mayuri,
Coimbatore – 641 049.
- 2.M/s.Whitehouse Residencies India Pvt. Ltd.,
Rep. by its Managing Director,
Mr.D.Ramachandra Prabhu,
E-43, Scott Villas,
Thudiyalur Road,
Chinnavedampatti,
Behind Ramani Mayuri,
Coimbatore – 641 049.
- 3.The Sub Registrar,
Gandhipuram Sub Registrar Office,
Kalapatti Road,
Saravanmpatti,



C.R.P(PD)No.2287 of 2023

Coimbatore – 641 035.

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to strike off the plaint in O.S.No.133 of 2023 pending on the file of the Principal District Munsif Court, Coimbatore.

For Petitioners : Mr.K.Venkateswaran

For Respondents : Mr.S.Rajendra Kumar

ORDER

The Civil Revision Petition has been filed seeking to strike off the plaint in O.S.No.133 of 2023 pending on the file of the Principal District Munsif Court, Coimbatore.

2.The brief facts of the case is that the suit was initiated by the first respondent viz., Scott Villas Residents Welfare Associations, Represented by its Secretary. According to the petitioners, they are the owners of the lands which were developed into various villas and plots. The respondents 1 & 2 are the purchasers of the lands which is 62% of lands which were given to the developers for development and 38% of lands will be retained by the petitioners herein who are the owners of the said land. The agreement was entered between the parties would show that the petitioners are entitled for the following:



C.R.P(PD)No.2287 of 2023

S.No.	Facing of site	Site No.	Site area/Sq.ft	Built up area/Sq.ft
1	North	53	2189	2925
2	North	58	2305	3103
3	North	3	2135	2752
4	North	4	2091	2752
5	North	5	2091	2752
6	North	6	2078	2744
7	North	12	2091	2752
8	North	19	1651	2061
9	North	28	2313	3172
10	North	30	2322	3113
11	South	2	2206	3057
12	South	10	2255	2902
13	South	9	2200	2901
14	South	18	2213	2814
15	South	17	2145	2808
16	South	16	2145	2808
17	South	15	2201	2899
18	West	34	2175	2962
19	West	33	2193	2970

(i).38% of the sites and built up area retained by the owners out of the total extent of land mentioned in Schedule 'A', which is totally 4.21 acres of land in S.F.Nos.540/4, 531/2C and 531/3, Chinnavedampatti Village, Coimbatore which has been given planning permission vide Na.Ka.No.95/2015 dated 27.05.2015 by the local Planning Authority, Coimbatore and the Commissioner of Coimbatore Corporation vide Na.Ka.No.09342/2014/H1(Va)/M.H3(Va) dated 12.08.2015.



C.R.P(PD)No.2287 of 2023

3.Learned counsel for the petitioner submitted that the properties in

Schedule 'B' would be retained by the petitioners as owners which will not be sold by the developers. Schedule 'C' there are 25 villas that would be sold by the developers in the 62% of the lands retained by them. Schedule 'B' sites and built up areas to be developed and constructed by the developers for the common usage of Scott Villas community and not to be sold either by the owners or the developers which are shop sites to an extent of 1,838 sq. ft. and EWS sites from 37 to 52 & 61 to 68 which comes around 14,501 sq.ft.

4.According to them, as per Joint Development Agreement, the said properties were allotted to the common usage of Scott Villa's community and a Supplement Agreement was also entered into between the respondents 1 to 4 (land owners) and the fifth respondent (developer). According to the said development agreement, the common facilities/amenities are to be provided by the second respondent to the Association. But the developer has not complied with the conditions such as bringing up amenities like Gym, Shuttle Court, Temple, Open Theatre, RO plant and CCTV camera which are the salient features of the project.



C.R.P(PD)No.2287 of 2023

Failure on the part of the second respondent, the first respondent can only take necessary action before the appropriate Court of law for such deficiency in service.

5.He would further submit that the entire suit at the instance of the first respondent is a clear misuse and abuse of process of the Court and Trial Court had also failed to look into the fact that in an earlier round the members of the society had come forward to file a suit in O.S.No.697 of 2022 pending before the Trial Court with a similar relief. Hence, he prayed this Court to allow this Civil Revision Petition.

6.Learned counsel for the respondent Association would submit that the suit has been filed by the Association for mandatory injunction against the second respondent herein to construct and develop the remaining common amenities and for permanent injunction against the defendants 1 to 4/petitioners. Pending suit, the respondent Association filed I.A.Nos.2 & 3 of 2023 under Order 39 Rule 1 & 2 of C.P.C. The Trial Court vide its order dated 09.02.2023 had granted an ad interim injunction restraining the defendants/petitioners not to alienate or



C.R.P(PD)No.2287 of 2023

encumber the suit property mentioned in Schedule III and Schedule IV.

He also submitted that the Trial Court had rightly granted ad interim injunction and prayed to dismiss the present petition.

7.Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material available on record.

8.On scrutiny, it is seen that the petitioners filed a Civil Revision Petition to strike off the plaint before the Trial Court on the ground of res judicata and abuse of process of law. Further, contended that the Trial Court without considering the fact had granted interim injunction and the petitioners are not in a position to proceed further on their own as owners of the properties concerned in Schedule 'B'.

9.On going through the averments, it is seen that the Schedule 'C' and Schedule 'D' have been found in the properties which have been injunctive from the usage by the developers as well as the owner are only two in number and the trial Court has not considered the fact that the first respondent owner has got right over 19 items of the properties in



C.R.P(PD)No.2287 of 2023

Schedule 'B' and in which all the item numbers were wrongly mentioned by the Welfare Association Member in which the developer has got no right. The petitioners have got right only for the lands developed by the developer for usage and selling it to the purchaser viz., some of the purchasers of the Association. The Association can have an injunction only with regard to the property dealt by the developer and not for the properties which are exclusively left in the hands of the owners. Hence, the order of the Trial Court is modified that the properties in Schedule 'B' in which the properties mentioned by the owners will not be falling with the site Nos.4, 5, 9, 12, 16, 17, 18, 28, 30 & 33 that alone will be excluded from the injunction granted by the Court.

10.Considering the facts and circumstances of the case and the submissions made by the learned counsel appearing on either side, this court is of the view that the civil revision petition may be disposed of. Accordingly, this Civil Revision Petition is disposed of. The trial Court is directed to dispose of the suit as expeditiously as possible as per the seniority. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed, if any.



C.R.P(PD)No.2287 of 2023

11.As regards Schedule Schedule 'C' and Schedule 'D', the petitioners and the respondents are permitted to work out the remedy before the Competent Court. However, the petitioners are at liberty to file an appropriate petition before the trial Court and proceed further in the manner known to law.

06.07.2023

Index: Yes/No

Speaking Order/Non-Speaking Order
pam



WEB COPY

To

The Principal District Munsif Court, Coimbatore.



C.R.P(PD)No.2287 of 2023



WEB COPY



C.R.P(PD)No.2287 of 2023

V.BHAVANI SUBBAROYAN, J.

pam

C.R.P(PD)No.2287 of 2023

06.07.2023