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C.R.P.No.193 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.193 of 2019
and C.M.P.No.1559 of 2019

M/s. Ramaniyam Real Estates Pvt. Ltd.,
17/35, Second Main Road,
Gandhi Nagar, Adyar,
Chennai – 600 020

... Petitioner

Vs.

1. P.Girija Iyer
2. C.M.Padmanaban
3. K.Vijayarathi
4. Sudha Chandrasekaran
5. J.Jayalakshmi
6. E.S.Chandrasekaran
7. Saroja chandrasekaran
8. Sabita Shankar
9. Aswin Ram Mohan
10. Bindu Sundaram Shankar

11. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
P.H.Road,
Chennai – 600 003.



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12. The Chairman Cum Managing Director,
CMDA, Thalamuthur Natrajan Building,
Egmore, Chennai – 600 008.

13. The Tahsildar,
Velachery Taluk Office,
No.113, V.V.Kovil Street,
Institute of Road Transport Centre Complex,
Taramani 100 Feet Road,
Velachery, Chennai – 600 013.

14. The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai – 600 035.

15. The Secretary,
Bay View Flat Owners Association,
121/5, 33rd Cross Street,
Besant Nagar,
Chennai – 600 090.

16. The Registrar of Societies,
No.100, Santhome High Road,
Chennai – 600 028.

... Respondents

Prayer :- Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.15247 of 2017 in O.S.No.3738 of 2016 on the file of the learned VII Assistant Judge, City Civil Court, Chennai, on 03.04.2018 by allowing the Civil Revision Petition and reject the plaint in O.S.No.3738 of 2016 on the file of the VII Assistant City Civil Court, Chennai.



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For Petitioner : Mr.S.Sundaresan

For Respondents

For R2 : Mr.K.Surendar

For R12 : Ms.P.Veena Suresh
Standing Counsel for CMDA

For R13 : Mr.C.Sathish
Government Advocate

For R15 : Mr.G.Santhosh Kumar

For R1, R3, R4 to
R11, R14, R16 : Not ready in notice

ORDER

The Civil Revision Petition has been filed as against the fair and decreetal order dated 03.04.2018 passed by the learned VII Assistant Judge, City Civil Court, Chennai, in I.A.No.15247 of 2017 in O.S.No.3738 of 2016, thereby dismissing the petitions filed by the petitioner under Order VII Rule 11 of C.P.C., to reject the plaint.

2. The petitioner is the 9th defendant in the suit filed by the respondents 1 & 2 herein. The respondents 1 & 2 filed suit with the following prayers :-

“(a) declaring that the joint patta in C.A.No.09 of 2016 dated 06.01.2016 issued by the 12th defendant



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Tahsildar in favour of the defendants 1 to 8 is null and void.

(b) declaring that Resolution dated 28.02.2016 passed by the 14th defendant Bay View Flat Owners Association in favour of the defendants 1 to 8 for demolition and reconstruction of block 119 on the basis of illegal patta granted by 12th defendant Tahsildar is null and void.

(c) granting permanent injunction restraining the defendants 1 to 8 from demolishing the building consisting of six flats at Door Nos.119/1, 119/2, 119/3, 119/4, 119/5 & 119/6, Block No.119 and from putting up new construction encroaching into the common areas belonging to all the flat owners of the complex known as Bay View Flats.

(d) granting permanent injunction restraining the 9th defendant from entering upon the property and carrying out any demolition or reconstruction activities in the common areas belonging to 102 Flat Owners of Bay View Flats.

(e) granting permanent injunction restraining the 10th defendants from according approval of any planning permission for demolition and reconstruction of building adjacent to the site of the Block No.119, Bay View Flats, 33rd Cross Street, Besant Nagar, Chennai – 600 090.

(f) pass an order of costs and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.”



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3. The case of the respondents 1 & 2 is that they are the owners of their respective flats in Flat Nos.117/1 & 123/1 and they have been purchased the same from the Tamil Nadu Housing Board and they are in possession and enjoyment of the same. The respondents 3 to 10 herein are the owners of their respective flats in Block No.119. All the respondents 1 to 10 and 94 flat owners are in the same residential complex known as Bay View Flats consisting of 102 flats in 17 blocks in Besant Nagar, Chennai. The Tamil Nadu Housing Board formed the above said residential complex under a group housing scheme in the year 1975. The flats were constructed and sold out to the respective owners by the registered sale deeds. All the flat owners are having equal share of all other common infrastructure assets including the undivided common land. As the total area of the land in the said complex and the share of the each owner of the common land are not found in the records and in the sale deeds.

4. While being so, the flat owners in block No.119 viz., the respondents 3 to 10 herein entered into a construction agreement with the petitioner herein for demolition and reconstruction of block No.119.



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Accordingly, they approached the revenue authority viz., the third respondent herein and obtained patta in respect of the block No.119 alone for the extent of 4 acres and 80 sq.mts., and also obtained planning permission from the CMDA to construct flat.

5. However, the respondents 1 & 2 herein objected the same, since the sale deed itself did not contain any undivided share of each land owners. Therefore, the entire area is a common land or unless otherwise separate and undivided share allotted to each flat owners, the respondents 3 to 10 alone cannot sub-divided and cannot construct flats and they are not entitled to issue any patta. Therefore, the respondents 1 & 2 filed suit with the above mentioned prayer. Since the petitioner being a builder, he also added as party to the suit and relief sought for in the suit. While pending the suit, the petitioner being the ninth defendant filed petition for rejection of plaint and the same was dismissed by the Court below. Aggrieved by the same, the petitioner filed this present Civil Revision Petition.



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6. The learned counsel appearing for the petitioner submitted that earlier the Civil Revision Petition was allowed by this Court by an order dated 18.03.2019 and thereby the suit was rejected. Thereafter, the respondents 1 & 2 herein filed petition in C.M.P.No.19865 of 2012 to set aside the order dated 18.03.2019, since they are not heard at the time of allowing the Civil Revision Petition. The said petition was allowed by an order dated 21.12.2021 and the order dated 18.03.2019 was set aside and the restored the Civil Revision Petition.

6.1. He further submitted that as far as the construction agreement is concerned the respondents 3 to 10 herein had approached the petitioner and the petitioner is being the builder completed the construction and all the respondents 3 to 10 had already occupied their respective flats. The entire construction is over and the petitioner is nothing to do with the averments made in the plaint. Therefore, he prayed to allow this Civil Revision Petition.



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7. Heard Mr.S.Sundaresan, learned counsel appearing for the petitioner, Mr.K.Surendar, learned counsel appearing for the second respondent, Mrs.P.Veena Suresh, learned Standing Counsel appearing for the 12th respondent, Mr.C.Sathish, learned Government Advocate appearing for the 13th respondent and Mr.G.Santhosh Kumar, learned counsel appearing for the 15th respondent.

8. On a perusal of plaint, the averments made in the plaint are mixed question of facts and law. There are bundle of issues in the present suit and therefore, it cannot be rejected as contended by the petitioner on its threshold, since it has to be decided only by full fledged trial. As far as the petitioner is concerned, they already entered into agreement for construction with the respondents 3 to 10 and completed the entire construction and handed over the possession of the suit schedule property to the respective flats in favour of the respondents 3 to 10 herein. Therefore, the petitioner is not a necessary party to the suit and they need not to undergo for the trial.

9. Accordingly, the entire pleadings cannot be rejected and the



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Court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below. However, the trial Court viz., the learned VII Assistant Judge, City Civil Court, Chennai, is directed to delete the petitioner viz., nine defendant and proceed with the suit as against other defendants. The trial Court also directed to dispose the suit within a period of 12 months from the date of receipt of a copy of this Order.

10. With the above directions, the Civil Revision Petition stands disposed of. Consequently, connection miscellaneous petition is closed. There shall be no order as to costs.

05.01.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

rts

To

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City Civil Court, Chennai,
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Corporation of Chennai,
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