



CRP No.484 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.484 of 2024 and
CMP No.2290 of 2024

1. Mohana Priya
2. Ashwini
3. Anitha

... Petitioners

Vs.

1. T.Vikas
2. Sankari
3. S.Karthik
4. S.M.Aarif Ameen
5. Saligha Basheer Ahmed

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 12.12.2023 passed in I.A.No.5/2022 in O.S.No.4294/2021 by the II Additional Judge, City Civil Court, Chennai.



CRP No.484 of 2024

For Petitioner : Mr.G.K.R.Pandian

ORDER

This Civil Revision Petition has been filed to set aside the order dated 12.12.2023 passed in I.A.No.5/2022 in O.S.No.4294/2021 by the learned II Additional Judge, City Civil Court, Chennai.

2. The petitioner herein are the plaintiffs and the respondents herein are the defendants in O.A.No.4294/2021. The petitioners have filed the above said suit with the following prayer;

i) for declaration, declaring that the plaintiffs are the absolute and exclusive owners of the open space area in the second floor as per clause 14 of the Joint Venture Agreement dated 20.04.2012 and

ii) for granting permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property.

Pending suit, they filed an application in I.A.No.5/2022 to direct the Chief



CRP No.484 of 2024

Manager, HDFC Bank, 2nd floor, ITC Center, 760 Anna Salai, Chennai-2, to produce the copy of the original builder agreement dated 24.11.2012 submitted by the 3rd respondent S.Karthik, for the loan account No.60794126 with the HDFC Bank , vide Memorandum of deposit the title deeds registered as document No.1942/2013 on the file of Sub Registrar Office, Sembium, Chennai on 25.03.2013. The above petition was dismissed, vide order dated 12.12.2023. Challenging the above order, this civil revision petition has been filed.

3. Heard the learned counsel for the petitioners and I have perused the materials on record.

4. Admittedly, the petitioners herein have filed the above suit for declaration and permanent injunction as stated supra. It is the contention of the petitioners that, as per clause 14 of the Joint Venture Agreement, dated 20.04.2012, the petitioners have exclusive right over the open space in the II floor, along with the flat allotted to them and no other flat owners have any



CRP No.484 of 2024

right to use the same. According to the petitioners, as per clause 12 of the above agreement, only the vacant space in the Top floor (terrace) was allotted for the common usage of all the six flat owners; however, the defendants are demanding right to use the open space in the second floor. Further, it is contended by the petitioners/plaintiffs that the respondents having connived with the erstwhile builder, have fabricated the builder agreement and added certain clauses, subsequent to the filing of the suit and by which, they were making the claim over the open space of the second floor. It is also contended by them that the third respondent, while availing the loan from HDFC Bank, has filed the original builder agreement with the bank and hence, to prove the truth, the above builder agreement has to be summoned from the HDFC Bank.

5. According to the petitioners, they have exclusive right over the open space of the II floor, as per Clause 14 of the Joint Venture Agreement. It is to be noted that, while filing the suit, the above Joint Venture



CRP No.484 of 2024

agreement, dated 20.04.2012 has been filed as document No.2, along with the plaint. Though according to the petitioners, the defendants sought different claim by creating a forged document, it is not the duty of the petitioners/plaintiffs to disprove the defendants' claim. Further, the petitioners/plaintiffs have to prove their claim, on their own documents alone, not asking the builders agreement entered into between the builder and the third respondent and also the memorandum of title deed, which was entered into between the bank and the third respondent. Therefore, the learned Trial Judge has rightly observed that the petitioners have to prove their case independently through the documents relied in the pleadings and they cannot take advantage of the defendants case. As such, I find no infirmity in the orders passed by the Trial Judge to interfere over the same and the instant civil revision petition is liable to be dismissed as it has no merits.



CRP No.484 of 2024

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6. In the result, the civil revision petition is dismissed and the impugned order passed by the learned Trial Judge is upheld. No costs. Consequently, connected miscellaneous petition is closed.

08.02.2024

Index: Yes/No
Internet: Yes/No
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To

The II Additional Judge, City Civil Court, Chennai.



WEB COPY



CRP No.484 of 2024

V.SIVAGNANAM, J.,

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CRP No.484 of 2024

08.02.2024

7 of 7