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C.R.P.No.1037 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.1037 of 2024
and CMP.No.12081 of 2024

1.Kavitha
2.Priyadarsini
3.Lavanya
4.Deepika

... Petitioners

Vs

M/s.Vox Realities Private Limited
Rep. by its Managing Director Mr.G.Ravanan
No.5, Warren Road, Chennai - 600 004.

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to strike down the plaint in O.S.No.7059 of 2023 pending on the file of XXIII Assistant City Civil Court at Chennai.

For Petitioners : Mr.Perumbulavil Radhakrishnan
Mr.G.Karthikeyan

For Respondent : Mr.L.Murali Krishnan
for Mr.K.P.Sathish Kumar



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ORDER

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This civil revision petition seeks to strike off the suit in O.S.No.7059 of 2023 pending on the file of XXIII Assistant City Civil Court, Chennai. The parties shall be referred to as per their rank in the suit. The defendants are the revision petitioners herein.

2.The plaintiff claims to have purchased the suit property in an auction sale held by Sri Kandaswamy Permanent Fund Ltd. The admitted facts in the plaint are that the property belonged to one Pachaiyammal, the grandmother of the defendants. She had executed a settlement deed on 02.02.1961 retaining life interest in herself and granted life estate in favour of her son Murugesan and vested remainder in favour of the defendants, who are the daughters of Murugesan (the revision petitioners herein).

3. Be that as it may, Murugesan, the son of Pachaiyammal had executed a mortgage over the suit property in favour of Sri Kandaswamy Permanent Fund Ltd., on 22.08.1994. Challenging the said mortgage, the defendants had presented C.S.No.738 of 2003 before this Court. That suit was subsequently transferred to II Additional City Civil Court, Chennai and



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renumbered as O.S.No.2485 of 2015. The said suit was decreed on 29.06.2017.

4. Subsequently, the defendants in the present suit filed O.S.No.384 of 2019 on the file of II Assistant City Civil Court, Chennai, against Murugesan, Sri Kandaswamy Permanent Fund Ltd., M/s.Vox Realities, and Sub Registrar, Mylapore seeking the relief of mandatory injunction and also for a direction to the auction purchaser viz., M/s.Vox Realities to quit and deliver vacant possession of the property. The said suit was decreed on 01.08.2023. Challenging the same, M/s.Vox Realities preferred an appeal in A.S.No.284 of 2023 before the XIX Additional City Civil Court, Chennai and the same is pending consideration.

5. Fearing that the plaintiff-M/s.Vox Realities will be dispossessed in a manner not in accordance with law, the present suit in O.S.No.7059 of 2023 had been filed. On being served with summons, the defendants have entered appearance and filed their counter. Pending this suit, the plaintiff has taken out an application in I.A.No.2 of 2023 seeking interim injunction. The said application came to be allowed on 21.02.2024, and injunction was granted



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and it was made absolute after contest.

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6. Challenging the said order in I.A.No.2 of 2023, the defendants preferred an appeal in CMA.No.22 of 2024 before the Principal City Civil Court, Chennai and the same is pending.

7. Alleging that the suit in O.S.No.7059 of 2023 is an abuse of process of law, the present civil revision petition has been filed by the defendants 1 to 4 to strike off the plaint in O.S.No.7059 of 2023. In the revision petition, this Court had ordered notice to the respondent and granted interim stay.

8. On service of summons, Mr.K.P.Sathish Kumar has entered appearance and he is being led by Mr.L.Murali Krishnan.

9. When the matter was heard, I asked Mr.Perumbulavil Radhakrishnan, the counsel for the defendants/revision petitioners, whether the defendants are going to dispossess the plaintiff after resorting to the execution of the decree in O.S.No.384 of 2019. His answer was in the affirmative. He would state that his clients would take possession of the



property from the plaintiff herein namely M/s.Vox Realities, only after resorting to execution proceedings as contemplated under Order XXI Rule 35 of Code of Civil Procedure. He would further state that his clients do not have the capacity to take possession of the property by adopting any ulterior means. This statement is recorded.

10. The prayer in the suit itself is that the plaintiff must not be dispossessed of the suit property, even otherwise in accordance with law. As the counsel for defendants/revision petitioners had given a clear and categorical statement before this Court that the defendants would resort to execution and take delivery of the property thereafter, I find the cause of action for the suit is vanished. Therefore, keeping O.S.No.7059 of 2023 pending on its file, can only increase the docket of the XXIII Assistant City Civil Court, Chennai and would not serve any other purposes.

11. To conclude, the suit in O.S.No.7059 of 2023 pending on the file of XXIII Assistant City Civil Court, Chennai, having lost its cause of action to continue, it shall be dismissed by the trial Court. The learned Judge shall record in its judgment the fact that the defendants have given an undertaking



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before this Court that they will not take possession of the property, except or otherwise in accordance with law.

12. With the above directions and observations, this civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

01.07.2024

Index:Yes/No

Neutral Citation : Yes / No

Speaking order / Non-speaking order
ds



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To:

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- 1.The XXIII Assistant Judge
City Civil Court
Chennai.
- 2.The Section Officer,
VR Section, High Court, Chennai.



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V.LAKSHMINARAYANAN,J.

ds

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