



C.R.P.(PD)No.1711 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.1711 of 2023

and

C.M.P.No.11238 of 2023

P.M.Rajkumar

.. Petitioner

Vs.

1.A.B.Sai Divya

2.The Commissioner,
Greater Chennai Corporation,
Rippon Buildings,
Chennai – 600 003

3.The Executive Engineer,
Zone – 9, Greater Chennai Corporation,
Lake Area, Nungambakkam,
Chennai – 600 034

4.The Deputy Director (Public Health),
Greater Chennai Corporation,
Lake Area, Nungambakkam,
Chennai – 600 034



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5.The Superintending Engineer,
(Canals & Water Ways),
Public Works Department,
Chepauk,
Chennai – 600 005

6.The Tahsildar,
Egmore – Nungambakkam Taluk,
Spur Tank Road, Chetpet,
Chennai

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order, dated 17.02.2023, passed by the learned VIII Assistant City Civil Judge at Chennai in I.A.No.5 of 2022 in O.S.No.4065 of 2021.

For Petitioner : Mr.K.M.Ramesh
Senior Counsel for
Mr.T.D.K.Govindarajan

For R1 : Mr.P.Raja

For R5 & R6 : Ms.Amritha Dinakaran

ORDER

The present Civil Revision Petition arises against an order dismissing the petition under Order VII Rule 11 of the Code of Civil Procedure.

2. O.S.No.4065 of 2020 is a suit for declaration that the plaintiff is entitled to easementary right over her northern boundary wall, and for permanent injunction restraining the defendants from interfering with her



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possession, and for restraining the 1st defendant from putting up any wall on the northern side of the plaintiff's property, and also for mandatory injunction directing defendant Nos.2 to 6 to remove the encroachment and construction made on the "Corporation Canal" by the 1st defendant.

3. The case of the plaintiff is that the plaintiff's vendor's mother had purchased the property in the year 1979 and subsequently, the property was settled in favour of the plaintiff's vendor and was acquired by the plaintiff.

4. According to the plaintiff, the 1st defendant had encroached upon the "Corporation Canal" on 06.03.2020 and thereafter, the parties went before the police. The police had directed them to approach the Civil Court as the matter was civil in nature. The plaintiff claims that the northern wall has been sold to her by her vendor and since the 1st defendant attempted to interfere with the same by putting up a construction, she felt aggrieved and approached the Civil Court for the aforesaid reliefs.

5. A detailed written statement was filed by the 1st defendant on 16.08.2021 followed up by the written statement filed by the State



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authorities. Thereafter, the learned Judge framed the issues and posted the matter for trial.

6. P.W.1 filed her proof affidavit on 18.10.2022 and cross examination was commenced on 27.10.2022. Thereafter, a request for adjournment was made for deferring the cross examination so as to enable the learned counsel appearing on behalf of the 1st defendant to continue the cross examination. The said request was rejected and the evidence of P.W.1 was closed. After that stage, an application was filed for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure. The two grounds that were urged and which were also pressed before me are as follows :

(1) As the plaintiff claims declaration of easement of light and air, a period of 20 + 2 years should have gone by prior to the presentation of the plaint in terms of the Easements Act and as the plaintiff had purchased the property in the year 2013 and put up the construction thereafter, 20 years had not gone by before the presentation of the plaint in the year 2020.



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(2) The suit is barred by virtue of the judgment of this Court in

Consumer Action Group vs. The State of Tamil Nadu [(2006) 4 CTC 483].

The learned Judge received a counter from the plaintiff and dismissed the petition holding that the suit is not barred.

7. Aggrieved by the said order, the present civil revision petition has been presented before this Court.

8. Heard Mr.K.M.Ramesh, learned senior counsel for Mr.T.D.K.Govindarajan, appearing on behalf of the petitioner, Mr.P.Raja, appearing on behalf of the 1st respondent and Ms.Amritha Dinakaran, appearing on behalf of respondent Nos.5 and 6.

9. Mr.K.M.Ramesh reiterated the contentions put forth before the trial Court and drew my attention to Section 15 of the Easements Act, whereby, an ordinary right gets statutory recognition as an easement only on passage of 20 + 2 years. He would submit that the suit having been presented before the aforesaid period is not maintainable and is liable to be rejected. He would also draw my attention to Paragraph No.32 (XV) of the ***Consumer***



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Action Group's judgment and would argue that as the Division Bench has barred filing of suits against statutory bodies and therefore, the suit is liable to be rejected.

10. Mr.P.Raja, appearing on behalf of the 1st respondent, would submit that whether Section 15 of the said Act applies or not is a matter which has to be necessarily gone into by the Court after evidence. He would further state that apart from the relief of declaration, he has sought 3 other reliefs and therefore, the fact that he may not be entitled to the 1st prayer does not mean that the other 3 prayers would stand rejected. He would urge that the plaint cannot be rejected in part. Therefore, he would seek confirmation of the order.

11. Ms.Amritha Dinakaran, appearing on behalf of respondent Nos.5 and 6, would reiterate the stand that had been taken by the defendants in the written statement filed in the Court below.

12. For the purpose of rejection of plaint, the averments made in the plaint alone matter. I am not concerned with the defence that has been taken



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by the 1st defendant nor am I concerned whether if the suit goes for trial, a judgment would be pronounced in favour of the plaintiff. Order VII Rule 11 of the Code of Civil Procedure is a plea in demurrer and I have to take the statements made in the plaint to be true and proceed thereon. The plaintiff has no doubt prayed for the relief of easement right by necessity and it is the duty of the plaintiff to prove that right.

13. For the fact that even if the period of 20 years has not gone by, the power of the Court to grant the relief under the head of *quasi easements* is not barred. The period that is fixed under Section 15 applies *stricto sensu* only to the rights which have fructified into easements. The plaintiff can seek for a high relief of an easement but the Court is always empowered to grant a lesser relief, if it is shown on evidence that she is entitled to the same.

14. The plea of Section 15 of the said Act requiring evidence, it will not fall within the scope of Order VII Rule 11 of the Code of Civil Procedure. Therefore, that plea is rejected.



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15. Insofar as the bar of suits under the judgment of the **Consumer Action Group** is concerned, I have to read Paragraph No.32(XV) in order to see whether the suit is barred. The Division Bench had directed the Civil Courts in the following terms :

“32.(xv). No Civil Court shall entertain any suit or proceedings or Application in respect of the action taken by the CMDA or Corporation in respect of the illegal construction and encroachments on roads and pavements. All pending and future petitions filed/to be filed against CMDA and the Corporation relating to the illegal and unauthorised construction of buildings and or encroachment, and the demolition notice shall be placed before the special bench to be nominated by the Chief Justice.”

16. A reading of this clause would show that the Civil Courts are barred from entertaining any suits or proceedings in respect to any action to be taken by the CMDA or the Corporation in respect of illegal constructions and encroachments made on road and pavements. This does not cover any construction that has been made over water bodies which is the allegation of the plaintiff.



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17. Secondly, the bar that has been placed by the Division Bench is only with respect to the suits which challenge the action that has been taken by defendant Nos.2 to 6. The plaintiff contends that defendant Nos.2 to 6 have not taken any action as against the encroachment on the “Corporation Canal” that has been made by the 1st defendant. The bar on the suits would apply if action had been initiated, and the 1st defendant herein as plaintiff had approached the Court challenging the said action.

18. Section 39 of the Specific Relief Act contemplates the grant of mandatory injunction. Under that Section, a Court can grant a mandatory injunction to compel the performance of certain acts which the Court is capable of enforcing.

19. If the suit were to be decreed holding that the 1st defendant had encroached upon the “Corporation Canal”, in terms of Section 39 of the said Act, certainly a direction can be given to defendant Nos.2 to 6 to take action against the same. In case, they fail to do so, execution proceedings can also be initiated to enforce the directions given. Therefore, the suit is very much entertainable by virtue of Section 39 of the Specific Relief Act.



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WEB COPY 20. The reliance placed upon the judgment of **Consumer Action Group**, in my opinion, is misplaced. Therefore, in the light of the above discussion, I do not find any error or irregularity in the order of the learned Judge.

21. At this stage, Mr.K.M.Ramesh would point out that the learned Judge in order to dispose of the suit expeditiously had closed the evidence of the plaintiff while she was in the witness box and in the hands of the 1st defendant who was cross examining her. He would state that after closing the evidence of P.W.1, he had also closed the evidence of the 1st defendant and soon thereafter of the other defendants as well. Insofar as the State defendants are concerned, they do not seem to have moved any application for reopen. While a suit has to be disposed of expeditiously, it should not have the effect of hindering the right of cross examination or chief examination of the defendants. This would violate the fundamental principles of fairness on the basis of which the Code of Civil Procedure has been founded. Though the parties have not preferred a separate petition to reopen and recall, taking into consideration the circumstances of the case, I



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am of the view that the evidence of P.W.1 can be reopened in order to continue with the cross examination.

22. Mr.P.Raja, appearing on behalf of the 1st respondent/plaintiff, has no objection to this course of action and he would state that as the suit is pending for more than four years, it requires disposal at an early date.

23. Therefore, by consent, it is agreed that the plaintiff will present herself for cross examination on 08.07.2024. Mr.T.D.K.Govindarajan undertakes to complete the cross examination on 08.07.2024. Mr.T.D.K.Govindarajan also undertakes that he will file his proof affidavit of the documents on or before 22.07.2024. Mr.P.Raja also undertakes that the cross examination of the 1st defendant will be completed on or before 26.07.2024.

24. The defendant Nos.2 to 6 shall file their proof affidavit on or before 31.07.2024 and their cross examination shall be completed on or before 09.08.2024. The arguments shall be completed in the suit on or before 30.08.2024 and the judgment shall be pronounced on or before



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30.09.2024. The time limit is fixed only with the consent of the parties and it is made clear that in case, any attempt is made to divert from the time limit which has been so fixed, the Court is entitled to invoke the provisions under Order XVII of the Code of Civil Procedure and proceed to pronounce the judgment on the merits of the case.

25. With the above directions, the Civil Revision Petition stands dismissed. The cost that has been imposed at the time of dismissing of application under Order VII Rule 11 of the Code of Civil Procedure shall be converted as costs for the purpose of reopening the evidence of the plaintiff. The said cost shall be paid by the 1st defendant on or before 08.07.2024. Only on payment of costs, the 1st defendant will be entitled to cross examine the plaintiff. Failing which, the right granted under this order shall stand forfeited. The connected Civil Miscellaneous Petition is closed.

21.06.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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V. LAKSHMINARAYANAN, J.

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To

The learned VIII Assistant City Civil Judge,
Chennai

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and

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