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C.R.P.No.2

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2152 of 2024

Mrs.Thanga Rani
W/o P.Sankaran

.. Petitioner

-VS-

1. Mrs.S.Vijayalakshmi
2. Mr.S.Rajinikanth

.. Respondents

Memorandum of Grounds of Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 11.03.2024 passed in I.A.No.6 of 2023 in O.S.No.3158 of 2020 by the learned XV Assistant Judge, City Civil Court, Chennai.

For Petitioner :: Mr.N.Sivaprakash

For Respondents :: Mr.L.G.Sahadevan

ORDER

This civil revision petition arises against the order passed by the learned XV Assistant City Civil Judge, Chennai in I.A.No.6 of 2023 in O.S.No.3158 of 2020 dated 11.03.2024.

2. The civil revision petitioner is the defendant. O.S.No.3158 of 2020 is a suit for



permanent injunction restraining the defendant from in any manner putting up construction including balcony or sunshade over the 'C' schedule mentioned property and for permanent injunction restraining the defendant or anyone from interfering with the plaintiffs' peaceful possession and enjoyment of the 'C' schedule.

3. The plaintiffs and defendant are neighbours. The issue before the Court is whether the defendant is entitled to put up construction over the common passage, which has been denominated as the 'C' schedule to the suit. The defendant took out an application in I.A.No.6 of 2023 to dismiss the suit as infructuous. Her plea is that the suit had been presented on 15.10.2020, whereas the construction, which gives cause of action for the suit, had been completed even as early as in March, 2020. Therefore, she would plead that nothing remains for adjudication in the suit and the suit has to be dismissed. After receiving a counter from the respondents, the learned trial Judge proceeded to dismiss the application. Hence the revision.

4. Heard the respective parties.

5. It is pleaded by the defendant that the relief of permanent injunction cannot be granted when the construction itself is over. Hence the suit has become infructuous even



on the date of presentation of the plaint.

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6. Per contra, Mr.Sahadevan would submit that he has moved an application for amendment in I.A.No.7 of 2024 seeking for amendment of the plaint from the relief of permanent injunction to the relief of mandatory injunction.

7. To dismiss the suit as infructuous, as directed by the Supreme Court in *Shipping Corporation of India Limited v. Machado Brothers and others, AIR 2004 SC 2093*, the entire cause of action should have vanished. It is not in dispute that insofar as the second prayer is concerned, the entitlement of the plaintiffs to peaceful possession and enjoyment of the property is still to be adjudicated. Mr.Sivaprakash would submit that the defendant has conceded in her written statement as well as in her counter affidavit that the plaintiffs have a right to use the common passage. Point remains that this issue is yet to be adjudicated by the trial Court. Therefore the suit cannot be said to have become infructuous in its entirety. Apart from the aforesaid facts, the application for amendment is still pending consideration before the Court. If the amendment is ordered, then the suit will certainly not become infructuous even with respect to the first prayer. Considering the overall circumstances, I do not find any error in the order passed by the learned XV Assistant Judge. Civil revision petition is dismissed. Order passed by



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the trial Court stands confirmed. Consequently, C.M.P.No.11416 of 2024 is closed. No costs.

8. The learned trial Judge is requested to take up I.A.No.7 of 2024 for disposal. Both sides agree that the next date of hearing is 18.09.2024 and that they will address arguments in the application on 25.09.2024. The learned Judge is requested to hear the arguments of both sides on that date and dispose of the application for amendment and pass an order on or before 16.10.2024. The compliance of this portion of the order shall be reported to this Court on 17.10.2024.

Call on for compliance on 18.10.2024.

Index: yes/no

04.09.2024

Neutral citation : yes/no

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To

1. The XV Assistant Judge
City Civil Court, Chennai



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V.LAKSHMINARAYANAN, J.

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