



C.R.P.(PD)No.3053 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.3053 of 2024

and

C.M.P.No.16430 of 2024

Life Insurance Corporation of India,
Represented by its Southern Zonal Office,
102, Anna Salai,
Chennai – 2

.. Petitioner

Vs.

The Society for the Promotion of Education in India,
Represented by its President Mr.S.M.Natarajan,
39, New No.10, Second Cross Street,
Chennai – 28

.. Respondent

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the interim order made in I.A.No.6 of 2023 in O.S.No.2526 of 2023, dated 01.08.2023, on the file of the learned XXIV Assistant City Civil Judge at Chennai.

For Petitioner : Mr.S.Karthikei Balan



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ORDER

The present Civil Revision Petition arises against an order passed by the learned XXVII Assistant City Civil Judge at Chennai (Full Additional Charge of the XXIV Assistant City Civil Court at Chennai) in I.A.No.6 of 2023 in O.S.No.2526 of 2023 dated 01.08.2023.

2. For the sake of convenience, the parties will be referred to as per their rank in the suit.

3. O.S.No.2526 of 2023 was presented for the following reliefs :

(a) Declaring that the plaintiff/Society has right of passage, as an easementary of necessity, over the property in Schedule B, being the sole pathway to the property in Schedule A.

(b) Granting an order of permanent injunction restraining the defendant and their men and agents from causing any obstruction to or preventing in any manner the enjoyment of the said easementary right of usage of pathway morefully described in Schedule B, the sole access to the property in Schedule A, by the plaintiff, its student, staff and agents.



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(c) Granting an order of mandatory injunction directing the defendant corporation to remove the gate put up in the passage in Schedule B obstructing the access to the property in Schedule A.

(d) Directing the defendant to pay a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) to the plaintiff as damages till date of filing suit.

4. The case of the plaintiff is that 'A' schedule mentioned property was purchased by one South Indian Teachers Union (SITU) on 18.10.1954. On 25.01.1956, 29.02.1964 and 06.11.1993, letters were addressed by that Society to the defendant/Life Insurance Corporation of India stating that they have a right of passage from the Vannan Petta Street, now called Thiruvengadam Street, by virtue of their purchase. The plaintiff concedes that the defendant is the owner of the 'C' schedule mentioned property, and even at the time of sale which had been made in favour of the defendant/Life Insurance Corporation of India, it was conceded that the SITU has the right of access from the School.

5. The plaintiff further proceeds that on 30.06.2022, the plaintiff/Society



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was granted Patta with respect to the 'B' schedule mentioned property identifying the same as a passage. In January 2023, the building that was owned by the plaintiff was dilapidated and required renovation. Therefore, the School was shifted elsewhere, and only a kitchen was operating in the 'A' schedule mentioned property. Taking advantage of this fact, the defendant closed the gate which had been kept open since the year 2007 for having access to Thiruvengadam Street. Citing the closure of the gate as a cause of action, the plaintiff came forward with the suit for the aforesaid reliefs.

6. On service of summons, the defendant filed a detailed written statement denying the right of the plaintiff.

7. It was also pleaded that the SITU had merged itself with the Tamil Nadu Asiriyar Kazhagam, and therefore, SITU itself is not in existence. They would state that being a Central Government institution, the period of limitation is 30 years, and on that ground itself, the suit deserves to be dismissed.

8. They would also invoke the provision of Order VII Rule 11 of the



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Code of Civil Procedure to reject the plaint. The pleas that they raised in the rejection of plaint are as follows :

- (i). The suit is barred by limitation.
- (ii). The property vests with the defendant/Life Insurance Corporation of India
- (iii). Easementary right cannot be created by the parties themselves, and it requires documentary proof; and therefore, the plaint ought to be rejected.

9. After receipt of a counter from the plaintiff, the learned trial Judge went on to dismiss the petition on 01.08.2023. Against which, the present revision has been presented before this Court.

10. Heard Mr.S.Karthikei Balan, appearing on behalf of the petitioner.

11. Mr.S.Karthikei Balan would invite my attention to the plaint document in document No.8, dated 18.09.1969, and document No.11 dated 10.11.1994, and would plead that both the documents are in contravention of Section 30 of the Tamil Nadu Societies Registration Act and therefore, the



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petitioner has no *locus standi* to maintain the suit.

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12. He would plead that by virtue of Section 30 of the Tamil Nadu Societies Registration Act, an amalgamation of the Society requires prior approval of the Registrar, and that not having been pleaded in the present case, the plaintiff has no right to the present the plaint. He would also point out that the Life Insurance Corporation of India had put up a compound wall and a gate as early as in the year 1993, and the suit having been filed in the year 2023 is barred by time.

13. I have carefully considered the arguments made by Mr.S.Karthikei Balan and I have carefully perused the records produced by him.

14. The position of law insofar as the rejection of plaint is concerned, I have to go through the averments made in the plaint and taking them to be true and thereafter, I have to come to a conclusion that whether the plaint is barred by law or lacks cause of action or any other vice which attracts Order VII Rule 11 of the Code of Civil Procedure.



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15. In the present case, taking the averments made in the plaint to be true, the specific case of the plaintiff is that the original owner/SITU merged with the Tamil Nadu Asiriyar Kazhagam and subsequently, the said Tamil Nadu Asiriyar Kazhagam merged with the plaintiff/Society. Therefore, whatever rights were vested with SITU got transferred to Tamil Nadu Asiriyar Kazhagam and thereafter, the same were transferred to the plaintiff. If I were to take this position to be true, then certainly a right which vested with SITU or with Tamil Nadu Asiriyar Kazhagam if infringed, then the plaintiff would also be entitled to maintain the suit as it is successor in interest for the aforesaid institutions. It is here that I have to take note of the argument of Mr.S.Karthikei Balan that prior approval of the Registrar not having been taken, the amalgamation falls foul of Section 30 of the Tamil Nadu Societies Registration Act.

16. A reading of Section 30 of the said Act makes it clear that in case of amalgamation, prior approval of the Registrar is mandatory. There is a whole ocean of difference between what is meant by merger if permitted by bye-laws and what is meant by amalgamation as contemplated under Section



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30. Section 30 of the said Act contemplates a situation of amalgamation and not a case of merger.

17. What is contemplated under Section 30 of the Act are twin situations. Under Section 30(1) of the Act, two or more societies may amalgamate themselves into one society with or without the resolution or division of funds of the registered societies or any of them. Under Section 30(2), a registered society may divide itself into two or more societies by passing a special resolution. Both Section 30(1) and Section 30(2) require an approval of the Registrar.

18. A look at the plaint would show that the plaintiff has specifically pleaded that by way of a special resolution on 18.09.1969, the general body of South Indian Teachers Union Society convened for the said purpose took a decision to merge itself with the Tamil Nadu Asiriyar Kazhagam. This resolution cannot be challenged on the grounds of Section 30 because the Tamil Nadu Societies Registration Act itself came into force only on 25.08.1975. How the plaintiff came about to take over the property, which is not by virtue of merger as seen from paragraph 6 of the plaint but by virtue



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of the resolution dated 10.10.1994 whereby the plaintiff took over the assets and liabilities of the said Tamil Nadu Asiriyar Kazhagam. Whether this will attract Section 30 or not is a matter which requires trial. In fact in paragraph 5 and 6 of the written statement, the plaintiff has questioned this take over. Thereby, it becomes a triable issue. If it is a triable issue, it cannot be a subject matter of rejection of plaint.

19. The next submission being the cause of action, a perusal of the plaint makes it very extremely clear that the right of the plaintiff/Society to have access in Thiruvengadam Street was obstructed by the staff of the defendant/Life Insurance Corporation of India on 27.01.2023. If the obstruction had taken place on 27.01.2023, a suit filed on 27.03.2023 cannot said to be barred by time. Furthermore, the plaintiff has clearly and categorically pleaded that he had been enjoying the right of way for about 60 years and above.

20. The plea that the limitation as against the Government is 30 years is true by virtue of Section 15 of the Easement Act. This applies only to the Governments, namely the State and Union Government. It does not apply to



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a Corporation, which have a separate legal status and entity with a permanent seal, though they are floated by the Central or the State Government. There is a distinct difference between the Corporation and the Government.

21. In any event, the plea in the plaint is that the plaintiff is enjoying the access for 60 years. Therefore, this is being a plea in demurrer, I have to take the averments made in the plaint to be true, and assume that the plaintiff had been enjoying the property for that period of time. If I come to that conclusion that the suit is obviously not barred by limitation, my reading of the plaint discloses the cause of action, and I have also concluded that it is not an amalgamation.

22. Therefore, the argument of Mr.S.Karthikei Balan does not deserve any consideration. Consequently, the order passed by the learned XXIV Assistant City Civil Judge at Chennai stands confirmed.

23. Accordingly, the Civil Revision Petition stands dismissed. No



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costs. The connected Civil Miscellaneous Petition is closed.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

To

The learned XXIV Assistant City Civil Judge,
Chennai



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V. LAKSHMINARAYANAN, J.

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