



C.R.P.No.2792 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.2792 of 2021

and

C.M.P.No.20265 of 2021

V.G.Thulasingham

..Petitioner

Vs.

Villupuram TNEB Employees
Co-operative House Building Society,
CL. Special 264 Rep. By its then President,
P.Pannerselvam S/o. Palan,
No.127, Aruppa Nagaram,
Koliyanur Post, Villupuram Taluk.

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure praying to set aside the impugned order dated 14.09.2021 in I.A.No.4 of 2020 in A.S.No.15 of 2016 passed by the learned Additional District Judge, FTC, Villupuram.

For Petitioner : Mr.V.P.Sengottuvel, Senior Counsel
for Mr.S.Natarajan

For Respondent : Mr.N.Suresh



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ORDER

The Revision is against the order of the Appellate Court refusing to reject the appeal filed by the Society, which, according to the petitioner, has been dissolved even in the year 2010.

The facts that are required for the disposal of the Revision are as follows:-

2. A Co-operative Society which was formed with the object of aggregating lands, laying it out into house sites and allotting it to the members, who are workmen of TNEB purchased the properties and laid out the same into 153 housing plots. The said layout was also approved by the Director of Rural Development, Chennai in the year 1997. Thereafter, the Society sold the properties to its various Members. Out of 153 plots that were allotted, about 67 houses were constructed. Claiming that certain persons are attempting to put up construction on the link road which connects the layout with NH45, a writ petition was filed in this Court by some of the plot owners. This Court allowed the writ petition after recording a finding that the construction would restrict the access of the members of the Society viz., plot owners to the main road.



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3. On an appeal the said order was set aside granting liberty to the Society to move the appropriate civil Court. The suit for declaration and mandatory injunction came to be filed thereafter. Pending the said suit the Society was dissolved. However, the factum of dissolution was not brought to the notice of the civil Court and the civil Court proceeded with the trial of the suit and eventually dismissed the same by the judgment and decree dated 30/11/2015. Aggrieved, the Society represented by its then President had filed an appeal in A.S.No.15 of 2016. In the appeal the 4th respondent filed the instant application in I.A.No.4 of 2020 to reject the appeal since the society itself is not in existence.

4. The learned trial Judge however dismissed the application on the ground that the reasons assigned do not come under Order 41 of the Code of Civil Procedure. The learned appellate Judge concluded that while rejection of the plaint is possible under Order 7 Rule 11 of the Code of Civil Procedure, an appeal cannot be rejected. It is this order which is subject matter of challenge in this Revision.



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5. Heard Mr.V.P.Sengottuvel, learned senior counsel appearing for the petitioner and Mr.N.Suresh, learned counsel appearing for the respondent.

6. Mr.V.P.Sengottuvel, learned senior counsel appearing for the petitioner would vehemently contend that the appellant, the then President of the Society is guilty of suppression of facts and therefore the appeal is liable to be rejected.

7. Mr.N.Suresh, learned counsel appearing for the respondent would bring to my notice that the land owners who are purchasers of land from the Society had filed applications under Order XXII Rule 10 of the Code of Civil Procedure seeking to substitute themselves as appellants in the place of the Society. Since the right claimed itself was on behalf of the owners of land in the layout that was promoted by the Society, the said application in I.A.Nos.6 and 7 of 2022 are stated to be pending. In view of the said pendency, I do not think I should go into the merits of the rival contentions in this Revision. It is open to the land owners who are purchasers of the property from the Society to espouse their rights in the appeal.



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8. After all, the suit was filed by the Society to protect their right of pathway. Now the land owners who are affected because of the alleged obstruction made by the petitioner over the access which is claimed to be a public road, their rights will have to be adjudicated upon by the Court. Rejecting the appeal at this point of time would only lead to multiplicity of proceedings. I therefore do not think that the order under Revision should to be set aside and the appeal be rejected in order to drive those persons who are already seeking to substitute themselves as appellants in the appeal for a fresh round of litigation.

9. Hence, the Revision is **dismissed**. The lower appellate Court will dispose of IA. Nos.6 and 7 of 2022 without being influenced by any of the observations made either in the order that is under challenge in the revision or in the order made by me in in this revision. No costs. Consequently, the connected miscellaneous petition is closed.

19.01.2024

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Index : No
Internet : Yes
Neutral Citation : No
Speaking order



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R.SUBRAMANIAN,J.

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To

The Additional District Judge,
FTC, Villupuram.

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