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C.R.P.(PD).No.3800 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3800 of 2024
and C.M.P.No.20837 of 2024

M.R.Kala

.. Petitioner

Versus

1. S.Sudharssaan
2. Executive Engineer,
Zone No.115, Chennai Corporation,
Dr.Muthurlakshmi Salai,
Adayar, Chennai - 600 020.
3. Member Secretary,
CMDA, Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
4. The Commissioner,
Corporation of Chennai,
Chennai - 600 003.
5. T.A.Murugan

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order made in I.A.No.2 of 2021 in



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O.S.No.8042 of 2009, dated 09.07.2024 on the file of the XII Assistant Court, City Civil Court, Chennai.

For Petitioners : Mr.Haja Nagirudeen A.A.G.I,
for Mr.M.Venkateswaran

ORDER

This Civil Revision Petition arises against the order, dismissing an application for rejection of plaint in I.A.No.2 of 2021 in O.S.No.8042 of 2009, dated 09.07.2024. For the sake of convenience, the parties are referred to as per their ranks in the suit.

2. The plaintiff, the first defendant and the fifth defendant are neighbours. The first defendant is the husband of the fifth defendant. Pleading that the plaintiff is the owner of the A-schedule property and the first defendant is the owner of the B-schedule property, the suit came to be presented. According to the plaintiff, the first defendant i.e., the husband of the fifth defendant, had started putting up a construction encroaching upon the five feet set-back space that ought to have left between the two buildings. The plaintiff would plead that he had brought to the notice of the



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third defendant, the violations that have been committed by the first defendant. As the third defendant did not initiate any action, the plaintiff presented a suit for mandatory injunction directing the defendant Nos.2 & 4 namely, the Executive Engineer, Zone - 115, Corporation of Chennai; the Member Secretary, CMDA and the Commissioner, Corporation of Chennai to initiate action against the illegal construction.

3. In addition to this prayer, the plaintiff pleads that on account of the construction that has been made by the first defendant, the access to air and light was being obstructed and therefore, he sought for the relief of declaration of his easementary right and for permanent injunction restraining the first defendant from proceeding with the construction.

4. Pending the suit, the fifth defendant filed an application to implead herself on the ground that she is the owner of the property and it is not the first defendant who is the owner. The learned Trial Judge, accepting the plea of the fifth defendant, impleaded her as a party defendant in the suit pursuant to the order made in I.A.No.15380 of 2010, dated 23.02.2018.



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5. The fifth defendant took out an application in I.A.No.2 of 2021 pleading as follows:-

(i) the suit is barred by virtue of the provisions under the Tamil Nadu Town and Country Planning Act, 1971;

(ii) There is no cause of action for the suit; and

(iii) No relief has been sought for as against the fifth defendant.

6. Notice was ordered in the said application and after receipt of a counter-affidavit, the learned Trial Judge dismissed the application. Hence this revision.

7. Heard Mr.Haja Nagirudeen, learned Senior Counsel for Mr.N.Venkateswaran, learned Counsel for the petitioner.

8. I have carefully gone through the records and have considered the plea.

9. Insofar as rejection of plaint is concerned, the averment made in the plaint alone matters. At the time of consideration of Order VII Rule 11 of



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the Code of Civil Procedure, I have to take the averments made in the plaint to be true and thereafter see whether the suit lacks cause of action or is covered by any one of the provisions of Order VII Rule 11 (a) - (d).

10. A reading of paragraph No.3 of the plaint would specifically show that the plaintiff has pleaded that the defendants are constructing the property contrary to the approved plan. It proceeds that on 03.08.2009, the plaintiff informed the authorities of the C.M.D.A that the construction is contrary to the approved plan that had been obtained and that the five feet set-back space that should exist between the A and B schedule mentioned properties, is being violated by the first defendant. Whether the violation actually exists or not is not for me to consider at the time of rejection of the plaint. It would necessarily require that the respondent Nos.2 to 4 to show before the Court that the construction is as per the approved plan and that there are no deviations. Hence, I find a cause of action.

11. Insofar as the bar under the provisions of the Town and Country Planning Act, 1971 the relevant provision is Section 101. Under Section 101, any decision taken by the Tribunal or the Government or the planning



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authority or any other authority constituted under the Act, cannot be challenged before a Civil Court. The relief that has been sought for in the suit is for a mandatory injunction directing the defendant Nos.2 to 4 to initiate action for the alleged unauthorised construction said to have been indulged in by the first defendant. Section 101 does not bar such a suit. There is a statutory duty which is imposed on the defendant Nos.2 to 4 to ensure that the construction is in accordance with the approved plan. In case, there is a breach of such a statutory duty, the Civil Court always has the jurisdiction under Section 39 of the Specific Relief Act to issue a mandatory injunction.

12. Insofar as the third point, that there is no cause of action, is concerned, a careful perusal of the plaint shows two aspects. First, the alleged unauthorised construction indulged in by the first defendant and second, the plaintiff seeks for declaration and consequential permanent injunction that the construction that had been put up by the defendants is illegal and is affecting the easementary right of light and air. This shows that a cause of action does exist for the plaint. Whether the averments made in the plaint are true or false is not for me to see at the time of disposal of a



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revision dealing with an application under Order VII Rule 11 of the Code of Civil Procedure. I do not find any error in the order passed by the XII Assistant Court, City Civil Court, Chennai.

13. This Civil Revision Petition is dismissed. The order of the learned Trial Judge stands confirmed. No costs. Consequently, connected miscellaneous petition is closed.

23.09.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

1. The XII Assistant Court,
City Civil Court, Chennai.
2. The Executive Engineer,
Zone No.115, Chennai Corporation,
Dr.Muthurlakshmi Salai,
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3. The Member Secretary,
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V.LAKSHMINARAYANAN, J.

grs

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