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C.R.P[PD].No.4775 of 2024
and C.M.P.No.26735 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.[PD]No.4775 of 2024
and C.M.P.No.26735 of 2024

Karthikeyan Manimozhi

.. Petitioner

Vs.

1.Mohan Kumar

2.Sivakumar

3.Soundarajan

4.Senthivel

5.Manoj

6.Saleem

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, pleaded to set aside the order passed in I.A.No.2 of 2024 in O.S.No.4564 of 2023 on the file of the XI Assistant City Civil Court, Chennai.

For Petitioner : Mr.K.Nirmal Kumar



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ORDER

This Civil Revision Petition arises against the order passed in I.A.No.2 of 2024 in O.S.No.4564 of 2023 dated 25.07.2024.

2.The suit is one for recovery of money and for a declaration that the defendant liable to pay separate maintenance charges and corpus fund for the Flat Nos.G2 and F2, Vinod Venue Apartment, Anna Nagar, Chennai 40. The defendant is the revision petitioner.

3.The case of the plaintiffs is that the property in 'A' Schedule was developed into several flats. Two such flats were purchased by the defendant. The flat owners decided that they will share the maintenance for the common areas amongst themselves. They formed a Residents Welfare Association. However, the same was not registered under the Societies Registration Act. They pleaded that the defendant is the owner of two flats. Though, he assured that he will bear maintenance for both the flats in the year 2004, he did not pay maintenance for the flats. Thus, due to such non-



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payment, the charges had been borne by other flat owners. Hence, they filed O.S.No.4564 of 2023 pleading that the defendant is liable to pay monthly maintenance charges for both flats and sought for declaration with respect of that relief.

4.The defendant filed an application seeking to reject the plaint in the said suit on the ground that the suit is bared by limitation.

5.The learned trial Judge after the receipt of counter from the plaintiff, dismissed the said petition. Hence, this Civil Revision Petition has been filed by the defendant.

6.I have heard Mr.K.Nirmal Kumar for the revision petition.

7.Mr.K.Nirmal Kumar states that the suit has been filed for recovery of money, which is barred by time. According to him, the period of limitation for presenting such suit cannot be twelve years as pleaded by the plaintiff. He states that the plaintiffs are the members of un-registered



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association and they are not entitled to make such claim as sought for in the suit. Hence, he seeks the order made in I.A.No.2 of 2024 to be reviewed.

8.He also relied upon a judgment of the Supreme Court in ***Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) (D) thr Lrs. & Others, 2020 (5) CTC 471*** and submitted that since the plaint is barred by limitation, under Order VII Rule 11 (d) of CPC, it is liable to be rejected.

9.I have carefully considered the submission of Mr.K.Nirmal Kumar, learned counsel for the petitioner.

10.When it comes to rejection of plaint, a Court has to go as per the averments made in the plaint and the documents filed there with. The defense raised by the defendant is not germane at this stage. The plaint alleges that the defendant has defaulted in paying the monthly maintenance charges. Under Section 18 of the Tamil Nadu Apartments Ownership Act, 2022, every apartment owner is liable to pay the maintenance amounts. In case of default, a charge is created over the property. A reading of the plaint



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shows that the plaintiff has not paid the maintenance charges for one flat though he is occupying two flats from 2004 onwards.

11.In terms of Article 62 of the Limitation Act, the limitation period is 12 years for filing of suit for enforcement of charge.

12.Regarding the plea on cause of action, every month that the defendant defaults on the maintenance charge, it gives fresh cause of action to file the suit. It is not necessary to the plaintiffs to file one suit after the other for every month's default. In this case, the plaintiffs have given up their claim from April 2004 till April 2011 and filed the suit by restricting the claim. Plaintiffs are entitled to restrict their claim and present the suit for recovery of amounts within a period of limitation. For an example, if a tenant has defaulted three years and one month of rent, the landlord can give up one month and can file a suit for the default of three years. In the present suit, according to the plaintiffs, the default commenced from 2004 onwards. The plaintiffs had given up their claim till 2011 and since 2011 to April 2023, is within the 12 years period, they presented the plaint. *Prima facie*, I



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am of the view that the suit is not barred by time.

13.As far as the plea that the suit suffers for non-joinder of parties , I have to point out that in terms of Order 1 Rule 9 CPC, no suit can be defeated for non-joinder of parties. A Court, while exercising its power under Order VII Rule 11 CPC, would determine if assertions made in the plaint are contrary to statutory law or judicial *dicta*, for deciding whether a case for rejecting the plaint at the threshold is made out. In the present case, according to the petitioner, the plaint is liable to be rejected on the ground that the suit claim is barred by time.

14.However, a reading of Paragraph No.17 of the plaint discloses that since a statutory charges stands created over the “B” schedule property for the suit amount, the suit can be filed within 12 years from 26.04.2011 as per Article 62 of the Limitation Act, 1963. The charge is said to have been created by the Tamil Nadu Apartment Ownership Act, 2002. Therefore, I Court cannot conclude that the suit claim is barred by time.

15.In the light of the above, this Civil Revision Petition is dismissed. It



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is left open to the petitioner to plead that he is entitled to be treated as a single owner since he was not occupying the other flat. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

To:

The District Munsif, Tindivanam.



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V.LAKSHMINARAYANAN, J.

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and C.M.P.No.26707 of 2024

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