



C.R.P.(PD)No.3647 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.3647 of 2023

and

C.M.P.No.22898 of 2023

J.Prabhakar

.. Petitioner

Vs.

1.Orchard Manor Members Association,
Represented by its Secretary Mr.Kishore,
2/12, Diwan Rama Road, Purasawakkam,
Chennai – 600084

2.V.R.Pattabiraman

.. Respondents

Prayer : The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order, dated 11.09.2023, passed in E.A.No.3 of 2022 in E.P.No.1944 of 2016 in O.S.No.6710 of 2013 by the learned XXVIII Assistant City Civil Judge at Chennai.

For Petitioner : Mr.A.M.O.Gurunaryana Rao

For R1 : Mr.N.Manikandan

For R2 : Not Ready in Notice, No Appearance



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ORDER

The present Civil Revision Petition arises against an order passed by the learned XXVIII Assistant City Civil Judge at Chennai. It is an order dismissing an application filed under Section 47 of the Code of Civil Procedure.

2. O.S.No.6710 of 2013 is a suit for the relief of permanent injunction restraining the defendants, their men, agents and subordinates from obstructing the free flow of passage in the flat of Orchard Manor flats and for mandatory injunction directing the defendants to remove their office situated in and over the suit schedule mentioned property which, according to the plaintiff, causes nuisance to the flat owners. This suit was presented by the members of the Orchard Manor Members Association represented by its Secretary.

3. Summons was served on the suit and a written statement was also presented by the 2nd defendant/civil revision petitioner.

4. Thereafter, the suit was not contested which resulted in passing of



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an *ex parte* decree on 18.04.2016. The *ex parte* decree has become final because no application has been taken out to set aside the *ex parte* decree nor an appeal has been preferred therefrom.

5. Since the decree remained unsatisfied, a petition in E.P.No.1944 of 2016 was filed to execute the same. Summons were issued in the execution petition and the civil revision petitioner entered appearance through a counsel and filed a detailed counter.

6. With the creation of new Courts at Allikulam complex, the execution petition stood transferred from the file of the learned X Assistant City Civil Judge at Chennai to the file of the learned XXVIII Assistant City Civil Judge at Chennai. At that stage, an application was filed under Section 47 of the Code of Civil Procedure. This application was taken on file as E.A.No.3 of 2022. After receiving a counter in the petition, the learned executing Judge proceeded to dismiss the Section 47 application. Against which the present revision has been presented before this Court.

7. Heard Mr.A.M.O.Gurunaryana Rao, appearing on behalf of the



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petitioner and Mr.N.Manikandan, appearing on behalf of the 1st respondent.

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8. Mr.A.M.O.Gurunaryana Rao would submit that the Society itself having been struck off from the file of the Registrar of Societies, it has no standing to present the suit or the execution petition. Therefore, he would state that the decree passed thereon is a nullity.

9. His second plea is that the property belongs to the 1st defendant and not to the plaintiff and therefore, they could not have sought the relief of permanent injunction or mandatory injunction.

10. Mr.N.Manikandan, appearing on behalf of the 1st respondent/decreed holder, would submit that the scope of Section 47 of the Code of Civil Procedure is not in the nature of the appeal over the decree. The stand taken by the civil revision petitioner was never urged before the trial Court in the written statement. Furthermore, he would point out that as against the removing of the name of the plaintiff from the file of the Registrar, an appeal has been preferred to the Government and the same is pending consideration. He would state that there is no merits in the present



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revision and seeks dismissal of the same.

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11. I have carefully considered the arguments on either side and I have gone through the records.

12. In terms of the Tamil Nadu Societies Registration Act, 1975, the cancellation of Register is in the terms of Section 37 of the said Act. Under Section 37 of the said Act, an enquiry has to be conducted under Section 36 of the said Act. The registration of a Society can be cancelled only if the Registrar, after conducting such enquiry, is satisfied as follows :

- (a) Society has contravened the provisions of this Act and the Rules.
- (b) the registered Society is insolvent or must necessarily become so.
- (c) the business of the registered Society is being conducted in a fraudulent manner and not in accordance with the objects specified in the memorandum or in the Register of the Registrar.

13. It is only when an order is passed in terms of Section 37 of the said Act, the provision of Section 39 of the said Act would kick in. Unless and until an order is passed under Section 37 of the said Act, the Society is



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entitled to continue to function.

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14. An addition to this rule is that the Society itself can pass a resolution to dissolve itself in terms of Section 41 of the Tamil Nadu Societies Registration Act, 1975. The cancellation of the Society itself in terms of Section 37 of the said Act does not put an end to the Society. After such an order is passed, a liquidator must be appointed by the Registrar of Society to liquidate the assets and pay the liabilities of the creditors of the Society.

15. What has happened in the present case is that since the filing of the papers had not been done in accordance with the said Act, the name of the Society was removed from the register of the Registrar. This can be called as house keeping exercise done by the Registrar to remove from his files the unnecessary names of Society which have become defunct.

16. However, as per the provisions of the Act, the Society unless and until a winding up order is passed in terms of Section 40 continues to have an existence. It is "killed" or liquidated only when the procedure under



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Section 40 is completed. It is not in dispute that an order under Section 40 had not been passed and no liquidator had been appointed for the Society. In fact, the liquidator is also entitled in terms of Section 40(2) to continue with the proceedings that may be initiated against the Society whilst it was under the management of the elected office bearers.

17. I have discussed the Sections of the Societies Registration Act only in order to point out that till the liquidator finally liquidates the Society, it has an existence and can continue to defend or initiate proceedings. The society not having been liquidated in the present case, it has the right, title and interest to initiate proceedings which would affect the interest of itself or of its members. In fact, the suit was filed in the year 2013 and the “house keeping” exercise was undertaken in the year 2014. Therefore, the first point raised by the learned counsel for the civil revision petitioner that as the Society has been removed from the Register by an administrative order of the Registrar, it has lost its right to continue to litigate does not hold water.

18. Insofar as the argument that an application under Section 47 of the Code of Civil Procedure is maintainable, I have to look into the scope of



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the said provision. Section 47 of the Code of Civil Procedure relates to executability, discharge or satisfaction of the decree. In the present case, the discharge or satisfaction does not arise and the matter has to be looked at only on executability.

19. The learned VII Assistant City Civil Judge at Chennai, who granted the decree, had the pecuniary, territorial as well as the necessary jurisdiction to pass the decree. Furthermore, in terms of Section 11 of the Code of Civil Procedure, an objection which might or ought to have been raised during the course of trial is barred from being raised during the time of execution. The objection taken, namely striking the Society off from the Register maintained by the Registrar of Societies should have been raised at the time of trial. A perusal of the written statement shows that no such plea was taken. Having missed the boat in the year 2014, it is not open to the 2nd defendant to attempt to board it in the year 2022. In fact, Section 11 of the Code of Civil Procedure bars him from doing so.

20. In the light of the above discussion, I am of the opinion that on merits as well as the virtue of principles of *res judicata*, the application



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under Section 47 of the Code of Civil Procedure is not maintainable.

Therefore, the order passed by the learned XXVIII Assistant City Civil Judge at Chennai is a well reasoned one and does not suffer from any illegality or perversity. The learned Judge has applied the correct principles of law to the facts of the case.

21. Accordingly, the Civil Revision Petition stands dismissed. No costs. The connected Civil Miscellaneous Petition is closed.

19.06.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

V. LAKSHMINARAYANAN, J.

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To
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The learned XXVIII Assistant City Civil Judge,
Chennai

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