



C.R.P.No.4234 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2024

CORAM:

THE HON'BLE MR.JUSTICE P.DHANABAL

C.R.P.No.4234 of 2022

1.Mohana Priya
2.Ashwini
3.Anitha

...Petitioners

vs.

1.T.Vikas
2.Sankari
3.S.Karthik
4.Aarif Ameen
5.Saligha Basheer Ahmed

... Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair order dated 30.09.2022 made in I.A.No.6 of 2022 on the file of the II-Additional City Civil Court at Chennai.

For Petitioners : Mr.C.K.R.Pandiann

For Respondents : Mr.C.S.Dhanasekaran
for Mr.A.Balaji

ORDER



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This Civil Revision had been filed against the order passed by the trial Court in I.A.No.6 of 2022 in O.S.No.4294 of 2021 on the file of the Additional City Civil Court – II, Chennai, wherein, the petitioners herein had filed a petition under Order XVI Rule 6 r/w. Section 30 of CPC to issue subpoena to the District Registrar (Admin.), in the cadre of Assistant Inspector General of Registration, Central Madras Registration Office, Pycrafts Road, (Opp. Express Estate), Royapettah, Chennai-14 to produce the registers containing the details of the stamps sold to various persons for the period during November and December 2012 and August, September and October 2013 by the stamp vendor N.R.Varadharajan, License No.45/V3/200, residing at Door No.594, Ponnuvel Pillai Garden, Aminjikarai, Chennai – 29. The said prayer was declined by the trial Court and the petition was dismissed. Aggrieved over the order of the trial Court, the petitioners have filed the present Civil Revision Petition.

2. According to the petitioners, they had filed a suit before the trial Court for relief of declaration and permanent injunction as against the respondents herein. The defendants have purchased flats in the year 2013



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and 2014 and they have questioned about their exclusive rights of the petitioners over the second floor open terrace. In fact, as per the agreement between the owner and the builder, the said second floor open terrace was exclusively owned by the petitioners/ plaintiffs. The respondents had connived with the erstwhile builder and have fabricated a builder agreement to suit their baseless allegations. Therefore, it is just and necessary to produce the register containing the details of the stamps sold to various persons for the said period.

3. One of the respondents viz., S.Karthik, availed a loan from the HDFC Bank by mortgaging his flat by which he has filed the original builder agreement with the HDFC Bank. The Memorandum of Deposit title deed was registered as Document No.1048 of 2013 on the file of S.R.O.Sembiam, Chennai. However, the copy of the above said builder Agreement submitted with the HDFC Bank has to be summoned and hence, suitable notice has to be sent to the HDFC Bank.

4. The gist of the counter filed by the respondents is that the second



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floor open terrace was common and is enjoyed by the plaintiffs and defendants jointly ever since from the purchase and the builder have stated that the second floor open terrace as common property from the inception of apartment. At the time of purchase, the respondents approached the builder for conveyance and construction of the building and the builder executed a builder agreement to the respondents and the stamp papers were purchased by the builder for the execution of the builder's agreement and as a purchaser either by the third respondent/ third defendant or other respondents they are in no way connected to the purchase of stamp papers. The respondents/ defendants had availed the HDFC Bank mortgage loan and submitted all the necessary relevant documents with the bank. The builder agreement was executed by the builder and hence there no need to summon those documents for the purpose of proving petitioner/plaintiff's case. The examination of the builder as witness in the suit will bring the true facts into light before this Court 50: 50 share of the building are allotted to the owner and builder. Therefore, claiming exclusive rights over the second floor terrace in the building does not arise and prayed for dismissal of the present Civil Revision Petition.



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5. Before the trial Court, no oral documents were adduced by either side. After hearing both sides, the trial Court dismissed the petition. Aggrieved over the said order, the petitioners have preferred the present Civil Revision Petition.

6. The learned counsel for the petitioner would contend that originally the petitioners are the owners of the property who had jointly entered into a venture agreement with the builder dated 20.04.2012. In the said agreement, under Clause 14, the owner alone has the exclusive right in the title and interest over the open space area in Second floor available in the flat allotted to her comprising builtup area of 900 sq.ft., and no other flat owner has such right to use the same. The said agreement is signed by both the parties, but, now the respondents are claiming right over upon the open space area in the second floor and they are relying upon the agreement between the builder and the respondents. In order to prove the said agreement, the stamp papers registered pertaining to the agreement are essential. Therefore, he had filed



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the petition to summon the documents to the trial Court. The trial Court without considering these facts had erroneously dismissed the petition and hence, prayed for allowing this Civil Revision Petition.

7. The learned counsel for the respondents would contend that the agreement between the respondents and the builders are in respect of the properties and in the said agreement, the second floor open terrance are also common for all. However, all the petitioners are now claiming exclusive rights over the property. They can prove the same with the documents available with the petitioner and not through the documents of the respondents. As per Section 101 of Indian Evidence Act, the petitioners has to prove their case and cannot disprove the documents by filing the documents of the respondents. Therefore, the petition filed is in no way helpful to this case. The registers pertaining the stamp papers, the trial Court also after discussion had held that the summoning of the stamp papers is in no way helpful to decide the case and examination of the witness in this suit will bring the true facts. Therefore, the question of summoning the documents for the period during November and December 2012 and August,



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September 2013 would ordinarily not arise as the claim of the petitioners' counsel appears to be not only tall claim but also illusionary as it will cause enormous delay in the trial proceedings and that will not be helpful in deciding the case and the trial Court passed order of dismissal.

8. In this case, it is an admitted fact that the case is posted for trial. At this stage, the petitioner had filed a petition to summon the registers containing the details of the stamps sold to various persons for the period during November and December 2012 and August, September and October 2013 by the stamp vendor. According to the petitioner, the agreement between the petitioner and the builder and in that agreement, there is a clause 14 which reads as follows:-

“....

14. The owner alone has exclusive right title and interest over the open space area in second floor available in the flat allotted to her comprising built up area of 900 Sq.ft., and no other flat owner has such right to use the same.”

9. Therefore, there is a clause for the owner of the property. So, the



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petitioner very well establish his right through the said agreement and if the respondents produced the documents or the said agreement. The petitioner is at liberty having right to examine the documents in respect of the stamp papers and therefore, there is no need ...from the cross-examination of the witness as rightly held by the trial Court, the summon to call for the documents for the said period is no way helpful to decide the case of the petitioners and the petitioners can establish their case through any documents. Therefore, the order passed by the trial Court is in order and does not warrant any interference.

10. In the result, this petition is dismissed and the parties are at liberty to establish their claim before the trial Court based on the available documents.

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gba
Index : Yes/No
Speaking order : Yes/No

To

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P.DHANABAL, J.

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