



CRP No.473 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

CRP No.473 of 2017
and CMP No.2302 of 2017

1. P.Anandraj Swaminathan
2. A.S.Sahayamary
3. G.Soundari
4. N.K.Natarajan
5. V.Thiraviam
6. Sumathy Dora Monoranjini
7. T.Venkatesan
8. V.Mangalam
9. G.Appakudam
- 10.Sylvia Hepsibah Rani
- 11.M.S.Chandrasekaran
- 12.R.Ganapathy
- 13.N.S.Shanmugam

.. Petitioners

-VS-

1. N.Sekar
2. Dr.G.Dhandapani
3. Chennai Metro Rail Limited,
Rep. by its Managing Director,
'Hasini Towers', No.7, Conran Smith Road,
Gopalapuram, Chennai 600 086.

.. Respondents



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Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 02.12.2016 passed in I.A.No.4159 of 2016 in O.S.No.803 of 2014 on the file of XIII Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.J.R.Jayanth
for Mr.S.J.Jagadev

For Respondents : Ms.Vasudha Thiagarajan
for R-1
: Not ready in notice reg. R-2
: Mrs.Rita Chandrasekaran
for R-3

* * * * *

ORDER

This civil revision petition arises against an order passed by the learned XIII Assistant Judge, City Civil Court, Chennai, in I.A.No.4159 of 2016 in O.S.No.803 of 2014 dated 02.12.2016.

2. The civil revision petitioners are the plaintiffs in the suit. They presented O.S.No.803 of 2014 for the relief of permanent injunction restraining the defendants 1 and 2 from in any manner interfering or

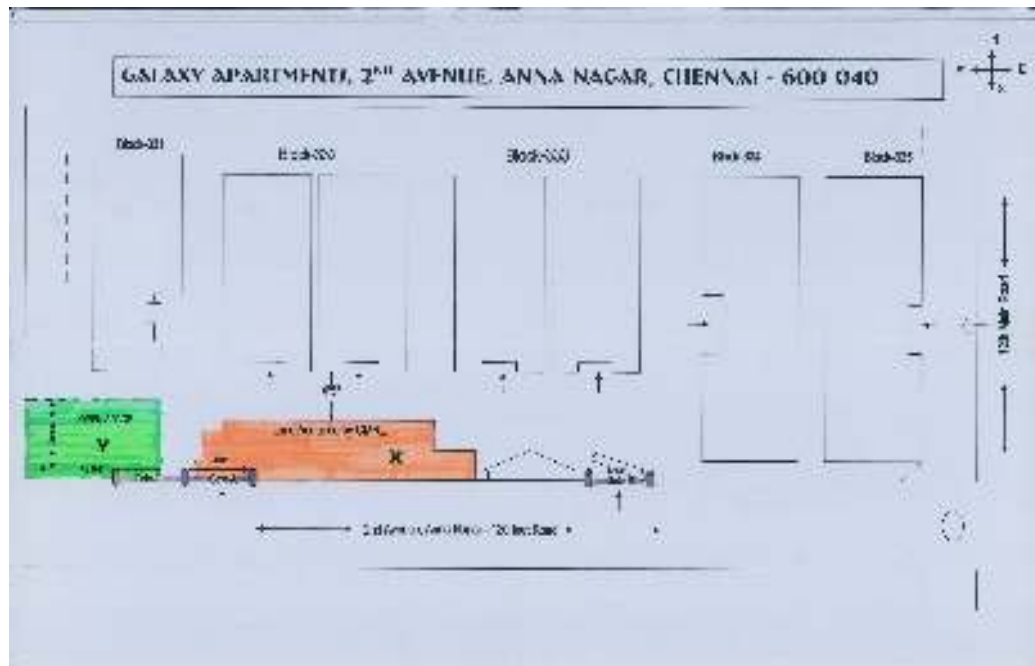


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obstructing the plaintiffs' right of use of suit common area marked "Y" adjacent to Block No.331 for parking of vehicles and also for opening 12 ft. width new common Gate-C next to main Gate-A, acquired by CMRL for metro rail project in Galaxy Apartments, 2nd Avenue, Anna Nagar West, Chennai - 40.

3. For ready understanding, the plan that has been given by the plaintiffs is scanned and appended herein:





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4. Block Nos.331 to 335, named 'Galaxy Apartments', was developed by the Tamil Nadu Housing Board. An area of around 5000 sq.ft. had been acquired by CMRL. The acquisition included Gate-A as seen from the plan set forth above. The issue today is that on the southern side of Block No.331, an extent of 20 x 42 feet is lying vacant. The plaintiffs claim that this area has to be enjoyed in common by all the block owners from Block Nos.331 to 335. This right is denied by defendants 1 and 2, who are having apartments in Block No.331. According to the defendants, the area marked "Y" exclusively belongs to the owners of Block No.331 and the owners of Block Nos.332 to 335 do not have any right, title or interest over the same.

5. To the plaint, a detailed written statement was filed and both sides agree that the matter is now listed for trial. Pending the suit, all the residents of Block Nos.331 to 335 have received compensation for the acquisition made by CMRL. This includes both the plaintiffs and the defendants. The second defendant is said to have sold the property in favour of the first defendant and therefore, the cause of action against the



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second defendant devolves on the first defendant.

6. Mr.Jayanth states that the suit itself has been not pressed as against the third defendant/CMRL. Therefore, nothing remains insofar as the third respondent is concerned. It is essentially a dispute between the first defendant and the civil revision petitioners/plaintiffs.

7. Pending the suit, an application was taken out in I.A.No.4159 of 2016. The plaintiffs wanted to amend the plaint and introduce a new prayer for a mandatory injunction directing the first defendant to remove a shed which had been placed over the area marked "Y". This application was resisted by the first defendant by filing a detailed counter. The learned trial Judge came to a conclusion that the amendment will change the cause of action and therefore, dismissed the application. Hence, this revision.

8. I heard Mr.Jayanth and Ms.Vasudha Thiagarajan for respective parties.



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9. The narration of the aforesaid facts would go to show that the Court is yet to decide the issue whether the space on the southern side of Block No.331 is a space common to all or exclusively belongs to the owners in Block No.331. Even before that decision, the plaintiffs want to amend the prayer which, if granted, pre-supposes that the area marked "Y" is a common area. Ms.Vasudha Thiagarajan points out that the shed that is sought to be removed had been put up in and around the year 2000. Hence, she states the relief sought for in the amendment application cannot be granted.

10. The position of law for an amendment to the plaint is that if it introduces a new cause of action or changes the frame of the suit, it should not be granted as a course, even if it is a pre-trial amendment. The cause of action to seek for mandatory injunction would arise if and only if the Court were to come to the conclusion that the area marked "Y" in the plan set forth above is a common area. Since the shed was already put up prior to the presentation of the plaint, the plaintiffs ought to have sought for the said



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relief even on the date they presented the plaint. It is not an event which has come apart pending litigation. The position with respect to amendments to bring forth facts which were already available to the parties on the date of presentation of the plaint has been settled by this Court in ***Gopal Krishnamurthi vs. Shreedhara Rao, AIR 1950 Mad 32***. This Court held that if the relief was available to the plaintiff on the date of presentation of the plaint and still the plaintiff has not sought for the relief, he cannot introduce the same by way of an amendment to the plaint.

11. In any event, I feel that by confirming the order of the learned trial Judge, the plaintiffs would not suffer. This is because if the suit is decreed holding that the area marked "Y" is a common area, then any construction that is put up by the defendants would necessarily have to be removed when the permission for retaining the superstructure stands revoked at the instance of other co-owners. Therefore, leaving it open to the parties to work out their rights in the event the suit is decreed, this civil revision petition is dismissed.



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12. Both sides state that the suit is listed for filing of additional written statement on 18.11.2024. Considering that this is a litigation between neighbours, where one party wants to have access to the main road and the other is insisting for a pound of flesh in the form of removing some unauthorised construction, before granting the access, the learned trial Judge is requested to broach the possibility whether the matter can be settled by way of mediation. If the parties are agreeable, he may refer the matter for settlement by mediation to the Mediation Centre attached to this Court.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Neutral Citation : Yes/No

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The XIII Assistant Judge,
City Civil Court, Chennai.



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V.LAKSHMINARAYANAN, J.

(sra)

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