



C.R.P.No.28 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Civil Revision Petition No.28 of 2024

and

Civil Miscellaneous Petition No.107 of 2024

1. M/s. G.R.Natarajan & Co.,
rep. By its partner,
Civil Engineering, Contractors and Consultants,
No.144, North Usman Road,
T. Nagar, Chennai 600 017.
2. N. Sairam, Partner,
M/s. G.R.Natarajan & Co.,
Civil Engineering, Contractors and Consultants,
No.144, North Usman Road ,
T.Nagar, Chennai – 600 017. ... Petitioners

Vs

D.Chandra Regha ... Respondent



C.R.P.No.28 of 2024

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set-aside the fair and decreetal order dated 30.10.2023 in I.A.No.5 of 2023 in O.S.No.6422 of 2022 pending on the file of the Hon'ble XXII Assistant City Civil Court, Chennai.

For Petitioner : Mr G. Vijayakumar

For Respondent : Mr. Sharukumar

ORDER

This Civil Revision Petition has been filed to set-aside the fair and decreetal order passed by the XXII Assistant Judge, City Civil Court, Chennai in I.A.No.5 of 2023 in O.S.No.6422 of 2022 dated 30.10.2023.

2. The respondent/plaintiff had filed a suit in O.S.No.6422 of 2022, against the petitioners herein for permanent injunction restraining the 2nd defendant, his men, agents or any persons acting on his behalf or under him in any manner whatsoever from disturbing the plaintiff's peaceful possession and enjoyment of the suit schedule property, in which, the respondent /plaintiff



C.R.P.No.28 of 2024

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had filed an application in I.A.No.5 of 2023 under Section 94(e) r/w. 151 of CPC to direct the revision petitioners herein to restore the basic amenities, such as electricity, water connection and provide the access card to enter into the suit property and remove the abandoned car in the registered car parking in the suit schedule property. The Trial Court, after considering the contentions of the counsels on both sides, by an order dated 30.10.2023 allowed the same and directed the respondents to provide electricity connection, water connection, access card and car parking pending disposal of the suit. Aggrieved over the same, the present revision has been filed.

3. The learned counsel for the petitioners submitted that the respondent/plaintiff had not paid the entire amount as agreed in the Construction Agreement dated 16.07.2021 and the UDS Sale deed date 04.08.2021. So far, the respondent has paid a sum of Rs.1,68,10,000/- vide receipts dated 21.10.2020, 21.11.2020, 16.07.2021, 13.08.2021 and 29.07.2022. Further, since the balance amount is remained unpaid, the petitioners herein had not handed over the flat as agreed to the



C.R.P.No.28 of 2024

WEB COPY

respondent/plaintiff, however, she had forcibly encroached and occupied the same. Now, by way of filing this suit, the respondent/plaintiff got interim injunction for restoring the mandatory amenities, such as electricity and water connection and the access card to enter into the suit property, which is unsustainable as she being encroacher and she has not paid the entire amount.

4. The learned counsel further submitted that without getting possession letter from the petitioners, the respondent had committed a criminal trespass with the help of henchmen by breaking open th main doors of the suit property and hence, the petitioners lodged a complaint and after completing the investigation, charge sheet had also been filed before the jurisdiction magistrate. The respondent, without making the balance payment of Rs.71,02,581/-, is trying to usurp the property. The respondent without making agreed payment and trespassed into the property and thereby committing a crime and is expecting this Court to support for an illegal enjoyment of the suit property and hence, it has to be set aside and thus pleaded to allow the revision.



C.R.P.No.28 of 2024

WEB COPY

5. The learned counsel for the respondent supported the impugned order of the Trial Court and further contended that as on date, the respondent had paid a total sum of Rs.2,32,18,820/- to the revision petitioners/defendants. Even thereafter, they had miserably failed to perform their part of the contract. The possession of the suit property was handed over to the respondent/plaintiff on 09.09.2022 after the revision petitioners agreed to settle the excess sum of Rs.22 lakhs, which was spent by the respondent for completing the work. However, on 11.09.2022, the revision petitioners had visited the suit property and interfered with the possession by demanding a further sum of Rs.5 lakhs, hence, the respondent lodged a police complaint against the revision petitioners. Since the revision petitioners restrained the basic amenities to the suit property, the respondent herein filed the suit and got interim injunction.

6. He further submitted that after paying the entire sale consideration for the suit property, the respondent is in possession of the same and she is in lawful possession of the suit property. The revision petitioners herein had also



C.R.P.No.28 of 2024

WEB COPY

filed a suit in O.S.No.1901 of 2023 before the VII Additional City Civil Court, Chennai for recovery of money against the respondent herein. He further submitted that the petitioner is the rightful and absolute owner of the suit property and there is no infirmity in the impugned order granting basic amenities to her and thus, seeks to dismiss the revision.

7. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records carefully.

8. The respondent herein had filed a suit in O.S.No.6422 of 2022 before the XXII Assistant City Civil Court, Chennai for permanent injunction restraining the 2nd defendant and his men from disturbing the plaintiff's peaceful possession and enjoyment of the suit schedule property, and she had filed an application in I.A.No.5 of 2023 for restoration of the basic amenities, such as electricity, water connection, etc., and the same was allowed on 30.10.2023, against which, the present revision has been filed.



C.R.P.No.28 of 2024

WEB COPY

9. Admittedly, it is not disputed that the revision petitioners are the builder and the respondent is the purchaser of the flat constructed by the revision petitioners. According to the revision petitioners, for want of balance sale consideration, the flat was not handed over to her, however, the respondent herein is in possession of the property and filed a petition to restore the basic amenities before the Trial Court and the same was allowed. Upon hearing the argument on both sides, it is clarified that the revision petitioners had the procedure for handing over the flats to the allottees by giving letter and obtaining signature from the allottees. This Court also gone through the Handing Over Letters dated 28.07.2022 by the Revision Petitioners to one Krishna Kodiyalam and one P.Shashank. On perusal it is seen that, the revision petitioners are having this type of procedure adopted by them while handing over the flats to the allottees. However, hand, the respondent is not able to produce any document to prove the fact that the revision petitioners had handed over the flats to her. Apart from this, as per the contention of the revision petitioners, a criminal case has been given



C.R.P.No.28 of 2024

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against the respondent for illegal trespass, in which, final report has been filed and the same is pending before the Criminal Court. Under these circumstances, it is clear that the flat is not legally handed over by the petitioners to the respondent/plaintiff. Under these circumstances, direction to restore the basic amenities to the flat is unsustainable and liable to be set aside.

10. Accordingly, this Civil Revision Petition is allowed and the impugned order passed by the XXII Assistant Judge, City Civil Court, Chennai in IA.No.5 of 2023 dated 30.10.2023 is hereby set aside.

27.02.2024

Index: yes/no
Internet:yes/no
mrp

To
XXII Assistant Judge,
XXII Assistant City Civil Court,
Chennai.



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C.R.P.No.28 of 2024

V. SIVAGNANAM, J.

mrp

C.R.P.No.28 of 2024

27.02.2024