

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2015

CORAM

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.No.4904 of 2014

and

M.P.No.1 of 2014

Sarala ... Petitioner/2nd Respondent
2nd Defendant

Vs

1. M/s.Senniyappa Ramasamy Mudaliar
Charity Trust for Education and Medical Relief
represented by its Managing Trustee
S.R.Kumarashanmugam ... Respondent/Petitioner/Plaintiff
2. V.Venkatesh ... Respondent/1st Respondent
1st Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 24.09.2014 passed in I.A.No.635 of 2014 in O.S.No.369 of 2012 by the learned Principal District Munsif, Erode.

For Petitioner : Mr.V.S.Kesavan

For Respondent-1 : Mr.S.Chandrasekaran

For Respondent-2 : No appearance

ORDER

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent.

2. Challenging the impugned order dated 24.09.2014 passed in I.A.No.635 of 2014 in O.S.No.369 of 2012 allowing the amendment petition filed under Order VI Rule 17 CPC, the petitioner has come forward with this Revision.

3. The learned counsel for the revision petitioner/second defendant would submit that the first respondent herein as plaintiff filed a suit for recovery of possession, for arrears of rent and also damages for use and occupation and other reliefs. The defendants filed Written Statement and contesting the suit. During the pendency of the suit, the respondent/plaintiff filed I.A.No.635 of 2014 for amending 3rd prayer in the plaint viz., ''direct the defendants to pay damages for use and occupation at Rs.1750/- per month from the date of suit till date of actual surrender of possession''. The plaintiff wanted to amend Rs.5000/- instead of Rs.1750/- in 3rd prayer of the plaint. The said amendment petition was allowed. Against which, the present Revision has been filed by the second defendant.

4. The learned counsel for the revision petitioner/second defendant would further submit that in the plaint, the plaintiff has not stated anything about the damages for use and occupation, so he is not entitled to amend the plaint. The learned counsel further submitted that the first respondent/plaintiff is not entitled to receive both rent and damages and that factum was not considered by the trial Court. He would further submit that upto June 2014, the defendants paid arrears and upto date, they paid rent also. Hence, he prayed for setting aside the order of the trial Court.

5. Resisting the same, the learned counsel for the first respondent/plaintiff would submit that the revision petitioner/second defendant herself in her written statement in paragraph-6(d) has specifically stated that the plaintiff demanded the defendant to pay enhanced monthly rent at the rate of Rs.5,000/- from April 2012 and the defendant refused to oblige the said illegal demand and aggrieved against, a frivolous notice has been issued by the plaintiff and the present suit has been filed. The learned counsel would further submit that from the perusal of Written Statement, it is seen that the second defendant herself admitted that the respondent/plaintiff demanded Rs.5,000/- per month as enhanced monthly rent and therefore, for use and occupation, the plaintiff sought for enhancement. He would further submit that the trial Court has considered the same in proper perspective and allowed the application for amendment and hence, he prayed for dismissal of the Revision.

6. I have considered the rival submissions made on either side and perused the materials available on record.

7. The first respondent as plaintiff has filed the suit for recovery of possession and for arrears of rent and also damages for use and occupation stating that the monthly rent fixed was Rs.1,750/- per month and from October 2010, the defendant is default in payment of rent. Since the property belongs to a Trust, after passing resolution and after issuing notice and receiving reply, they filed the suit for recovery of possession, for arrears of rent and also damages for use and occupation. While claiming damages for use and occupation, instead of Rs.5,000/- it was mentioned as Rs.1,750/-.

8. The first point argued by the learned counsel for the revision petitioner/second defendant is that in the plaint he has not stated anything about the enhanced rent of Rs.5,000/- and hence, he is not entitled to claim the same. Admittedly, in paragraph-6(d) of the Written Statement filed by the second defendant, it was specifically stated that from April 2012, the plaintiff demanded enhanced rent of Rs.5,000/- per month; since she refused, the plaintiff issued notice for ejection. In such circumstances, the rent is entirely different for damages for use and occupation. So the first respondent/plaintiff has rightly filed an application for amending 3rd prayer. So the argument advanced by the learned counsel for the revision petitioner that nothing has been mentioned in the plaint, does not merit acceptance.

9. The second argument advanced by the learned counsel for the petitioner is that the defendants have paid rent arrears and also the contractual rate of rent at Rs.1,750/- upto June 2014, and therefore, the plaintiff is not entitled to amend the plaint to Rs.5,000/- instead of Rs.1,750/-. But that argument is also unacceptable, because when they have entered an agreement and from October 2010 onwards rent has not been paid, this suit has been filed in the year 2012. At that time, the damages for use and occupation is entirely different from contractual rate of rent. In such circumstances, I am of the view that the amendment sought for granted by the trial Court is not suffered from any illegality or infirmity and the order of the trial Court is confirmed and the Civil Revision Petition deserves to be dismissed.

10. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

11. At this stage, the learned counsel on either side prayed for a direction to the trial Court to dispose of the suit at an early date. Considering the submissions, the trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mra

To

The Principal District Munsif,
Erode.

+1cc to Mr.V.S.Kesavan, Advocate, S.R.No.68243

+1cc to Mr.S.Chandrasekaran, Advocate, S.R.No.67930

C.R.P.No.4904 of 2014
and
M.P.No.1 of 2014

PPA (CO)
CA(08/01/2016)

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