

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD) NO.496 OF 2015
AND M.P.NO.1 OF 2015

Varalakshmi

... Petitioner

Vs.

Arulmigu Ekambareswara Thirukkoil
Rep. By its Executive Officer

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 04.08.2014 in I.A.No.7952 of 2013 in O.S.No.7349 of 2008 on the file of the XIV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.V.Raghupathi

ORDER

This Civil Revision Petition is directed against the order dated 04.08.2014 passed in I.A.No.7952 of 2013 in O.S.No.7349 of 2008 by the learned XIV Assistant Judge, City Civil Court, Chennai.

2.The petitioner is the defendant in O.S.No.7349 of 2008 pending on the file of the XIV Assistant Judge, City Civil Court, Chennai. The respondent Temple had instituted the suit against the petitioner for recovery of possession and for damages.

3.The case of the respondent / plaintiff is that the Devasthanam is the owner of the suit property and the suit property was let out to the petitioner / defendant on a monthly rent of Rs.100/-. When the rent was increased to Rs.1,678/- as per the Government Order, the defendant failed to pay the enhanced rent and filed writ petitions. The defendant filed his written statement in the month of March 2009 and has been contesting the case.

4.When the suit was posted in the special list, the petitioner filed an application in I.A.No.7952 of 2013 under Order VII Rule 11 of the Code of Civil Procedure to strike off the plaint. The contention of the petitioner is that the writ petitions viz., W.P.Nos.23541 and 23542 of 2008 were admitted by this Court and during the pendency of the writ petitions, the suit cannot be filed. Further, the plaintiff is interested only in getting huge amount of rent and hence, increased the rent unilaterally at exorbitant rate. The application was opposed by the respondent by filing a detailed counter affidavit asserting that the Devasthanam is the owner of the suit property and as per the Town Survey

Land Register, the temple is the owner of the property. It is further stated that only to protract the trial, the application was filed. The Trial Court dismissed the application on 04.08.2014. Challenging the same, the present Civil Revision Petition is filed.

5.Mr.V.Raghupathi, learned counsel for the petitioner has submitted that the Settlement Tahsildar had issued joint patta in the name of the temple as well as the petitioner as per order dated 31.03.1971, which fact was suppressed by the plaintiff while filing the suit. The learned counsel has further submitted that there is no cause of action to file the suit.

6.The learned counsel for the petitioner has relied upon the judgment of the Honourable Supreme Court in ***CHURCH OF CHRIST CHARITABLE TRUST AND EDUCATIONAL CHARITABLE SOCIETY VS. PONNIAMMAN EDUCATIONAL TRUST [2012 (8) SCC 706]*** in support of his contention that at any time, even after conclusion of trial, the application under Order VII Rule 11 of the Code of Civil Procedure can be filed.

7.The Trial Court, having found that the plaint discloses cause of action and the contention of the petitioner can be decided only after trial, dismissed the application. It is settled law that while considering the application

under Order VII Rule 11 of the Code of Civil Procedure, the averments contained in the plaint has to be taken into consideration and the averments in the written statement should not be considered. The contention of the petitioner that she is the joint owner of the suit property could be decided only after trial. I am of the opinion that the petitioner has not made out any case to strike off the plaint under Order VII Rule 11 of the Code of Civil Procedure. The Trial Court, rightly dismissed the application, which does not warrant interference by this Court.

8. In fine, this Civil Revision Petition is dismissed. The Trial Court shall dispose of the suit, on merits and in accordance with law, without being influenced by the observation made in this order, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

06.02.2015

Index : Yes/No
Internet : Yes/No
TK

To

The XIV Assistant Judge
City Civil Court
Chennai.

K.KALYANASUNDARAM, J.
TK

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