

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

CIVIL REVISION PETITION No.5048 OF 2008

ORDER:-

This Revision is preferred against the judgment, dated 28.02.2008, in S.C.No.17 of 2005 on the file of the Senior Civil Judge, Kovur, Nellore District.

2. Brief facts leading to this Revision are as follows:

Revision petitioner herein/plaintiff filed the above referred suit for recovery of Rs.5,500/- towards arrears of rent from respondent herein/defendant and the defendant resisted the claim on the ground that he never took the house for rent and there was no liability to pay any rent. On plaintiff's side, P.W.1 was examined and no documents were marked and on behalf of defendant, D.Ws.1 to 4 were examined and Exs.B-1 to B-7 were marked. On a overall consideration of the oral and documentary evidence, the trial Court dismissed the suit holding that the plaintiff failed to prove his claim for recovery of rent. Aggrieved by the same, present Revision is preferred.

3. Heard Advocate for petitioner/plaintiff.

4. Advocate for petitioner/plaintiff submitted that the plaintiff filed S.C.No.10 of 2002 on the file of the Senior Civil Judge, Kovur prior to this case for the same relief of recovery of arrears of rent and that was decreed on 12.05.2004, but unfortunately, plaintiff could not produce the said document before the trial Court. He further submitted that the plaintiff filed O.S.No.60 of 1996 on the file of the Principal Junior Civil Judge, Kovur for declaration of title and recovery of possession in respect of the same property and the suit was decreed in favour of the plaintiff and defendant preferred appeal against the said decree vide A.S.No.11 of 2001 on the file of the Senior Civil Judge, Kovur and the same was dismissed and second appeal preferred by the defendant

vide S.A.No.760 of 2007 before this Court was also dismissed and those documents are now filed as an additional evidence to prove the claim of the plaintiff. He submitted that these documents are material and relevant and an opportunity may be given to the plaintiff by remitting back the case to the trial Court to resolve the disputes in accordance with law.

5. Respondent/defendant refused to receive the notice and therefore, the service is treated as deemed service.

6. Now the point that would arise for my consideration in this revision is:

“Whether the judgment, dated 28.02.2008, in S.C.No.17 of 2005 on the file of the Senior Civil Judge, Kovur, Nellore District is correct, legal and proper or not?”

7. **POINT:-** As seen from the impugned judgment, the trial Court mainly dismissed the claim of the plaintiff on the ground that he failed to produce the decree in earlier suit - S.C.No.10 of 2002, which was also filed for recovery of arrears of rent. When defendant specifically denied liability and relationship, it is incumbent on plaintiff to produce documents relating to earlier suit including decree passed in his favour to substantiate his claim towards arrears of rent. Further, as seen from the copy of the judgment in the above referred Second Appeal as additional evidence, it appears that the plaintiff has not claimed any mesne profits from the defendant and only recovery of possession was claimed. On a consideration of the evidence of D.Ws.1 to 4, which is supported and corroborated by documents – Exs.B-1 to B-7, the trial Court observed that there is no basis for the claim of the plaintiff for rent. Admittedly, even by the date of trial of the suit, the suit filed by plaintiff for recovery of possession was already decreed, in spite of that, plaintiff did not evince any interest to get the judgment and decree of that suit marked during trial. Therefore, now requesting this Court to permit the plaintiff to produce those documents as additional evidence,

in my view, cannot be entertained, particularly, when there are unexplained lapses on the part of revision petitioner for not producing the available evidence before the trial Court. On a scrutiny of the material on record, I am of the view that the trial Court has not committed any error and rightly appreciated the evidence on record and as the plaintiff failed to substantiate his claim for recovery of arrears of rent, trial Judge dismissed the same and I do not find any ground to interfere with the findings of the trial Court, which are convincing and supported by evidence.

8. For these reasons, I am of the view that the Revision is devoid of merits and liable to be dismissed.

9. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

10. Miscellaneous Petitions, if any, pending in this Civil Revision
Petition shall stand closed.

JUSTICE S.RAVI KUMAR

Date: 23.01.2015
AMD

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