

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.4695 of 2015

and

M.P.No.1 of 2015

Kalarani

... Petitioner

vs.

1.S.Santhakumar
2.S.Jayakumar

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the XVI Assistant Judge, City Civil Court, Chennai dated 28.07.2015 made in I.A.No.4108 of 2015 in O.S.No.1414 of 2015

For Petitioner : Mr.V.Subramani

For Respondents : Mr.K.S.Madhavan

ORDER

The plaintiff in the original suit O.S.No.1414/2015 pending on the file of the XVI Assistant Judge, City Civil Court, Chennai, is the petitioner herein. She has filed the suit against the respondents herein for a declaration that she is a lessee in respect of the land alone. Pending disposal of the suit, since the defendants were refusing to receive the ground rent, the petitioner chose to file an application I.A.No.4108 of 2015 seeking permission to deposit the rent into the court. The learned trial Judge even after numbering the said application,

chose to pass an order on 28.07.2015 directing the return of the petition for being presented before the Rent Controller in R.C.O.P.No.1669/2010. As against the said order, the present civil revision petition has been filed.

2. The respondents have been served with notice and they are represented by counsel. The submissions made by Mr.V.Subramani, learned counsel for the petitioner and by Mr.K.S.Madhavan, learned counsel for the respondents 1 and 2 are heard. The materials produced in the form of typed set of papers are also perused.

3. Upon such hearing and after such perusal, this court is of the considered view that the order of the learned trial Judge dated 28.07.2015 made in I.A.No.4108/2015 cannot be sustained. Of course, the reason assigned by the learned Trial Judge is that the Rent Control proceedings in RCOP No.1669/2010 for fixation of fair rent is pending before the Rent Controller and that hence the petitioner/plaintiff did have the only option of approaching the Rent Controller, with an application seeking permission to deposit the admitted ground rent. The said decision of the trial court has been made totally forgetting the fact that the court is seized of the suit and the suit is very much pending on the file of the trial court, in which alone, the petition seeking permission to deposit the admitted ground rent came to be filed. If at all the learned trial Judge is of the view that the suit in the Civil Court is not maintainable as barred by any statutory provision, it may lead to the rejection of the plaint. Without taking such a decision, the learned trial Judge cannot say that an interlocutory application in the suit will not lie in the Civil Court, in which the suit is pending and it should have been filed before the Rent Controller. The very approach made by the learned trial Judge is quite

erroneous and it is a fit case in which this court has to exercise its power of superintendence under Article 227 of the Constitution of India to correct the non-exercise of jurisdiction by the court below conferred on it.

In the result, the civil revision petition is allowed. The impugned order of the trial court dated 28.07.2015 made in I.A.No.4108/2015 in O.S.No.1414/2015 is set aside. The interlocutory application is remitted back to the trial court with a direction to give an opportunity to the respondents to file their counter and then decide it on merits. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

24.03.2016

Index : Yes/No
Internet : Yes
asr

To

The XVI Asssitant Judge, City Civil Court, Chennai

P.R.SHIVAKUMAR, J.

asr/-

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