

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON: 06.09.2017

ORDERS PRONOUNCED ON: 24.11.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (NPD) NO.2508 OF 2017
AND CMP NO.11839 OF 2017

P.R.Velu

... Petitioner

Vs.

S.P.Ramaiah Nadar (Died)

1.P.S.Kumaran

2.Prema

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order dated 10.07.2017 made in M.P.No.282 of 2009 in E.P.No.104 of 2008 in E.S.No.8 of 1992 on the file of the Registrar, Small Causes Court, Chennai.

For Petitioner : Mr.L.S.M.Hasan Fizal

For Respondents : Mr.K.V.Sundararajan

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This Civil Revision Petition is directed against the dismissal of the petition filed under Section 47 of the Civil Procedure Code.

2. The respondents / plaintiffs filed an ejectment suit against the petitioner / defendant in the year 1992. The petitioner / defendant has contested the suit by filing written statement. On 30.11.2004, the suit was decreed and ejectment was ordered. Thereafter, in the year 2008, the respondents / plaintiffs filed an execution petition for delivery of possession. Whereas the petitioner / defendant has filed an appeal against the judgment and decree passed in the ejectment suit, but failed to pursue the same and it was dismissed for default. In the meanwhile, the petitioner / defendant has also filed a petition under Section 9 A of the Tamil Nadu City Tenants Protection Act, which was dismissed for default on 01.08.1996 and the restoration petition filed in the year 1999 was also dismissed. After considering all the factual details, the Execution Court has dismissed the execution petition filed under Section 47 of the Civil Procedure Code. Against which, the petitioner / defendant preferred the above Civil Revision Petition.

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3. When the matter was taken up for hearing on 30.08.2017, an offer was made by the respondents / plaintiffs to pay a sum of Rs.1,00,000/- for the purpose of giving quietus to the issue, whereas, the

learned counsel for the petitioner / defendant would stake his claim at Rs.2,00,000/-. However, at a later point of time, the petitioner / defendant has refused to accept the offer and contested the case on merits. Therefore, this Court decided the issue on merits.

4. It is well settled that the Execution Court cannot go behind the decree. In the ejectment suit, a decree was passed directing the petitioner / defendant to vacate the premises and hand over vacant possession on receipt of Rs.1000/-. The decree passed in the year 2004 has become final and as on date, there is no appeal is pending. The Execution Court has considered all these points and has found that the jural relationship of landlord and tenant has clearly proved and decreed by the Court and since neither an appeal against the same is pending nor the judgment and decree is varied, dismissed the petition and ordered delivery of possession. The Execution Court has also found that it is incompetent to fix the value of the property.

5. The finding of the Execution Court is very much correct. If at all the petitioner is aggrieved over the decision of the Trial Court in the

ejectment suit, he should have file an appeal. Even if he is ready and willing to pay the value of the land by availing protection under Tamil Nadu City Tenants Protection Act, he could have taken proper steps. But on the other hand, the petitioner has failed to pursue the petition filed under Section 9 of the Tamil Nadu City Tenants Protection Act as well as the appeal against the order passed in the ejectment suit. Having failed in all these attempts, he cannot raise all these issues now under Section 47 as if it is an appeal. The petitioner was gainfully enjoying the property ever since 1992. Therefore, the claim of the petitioner that to vary the decree and judgment passed by the Trial Court is not sustainable. I do not find any merits in the petition and the petitioner is not entitled to raise the grounds of appeal and re-argue the matter.

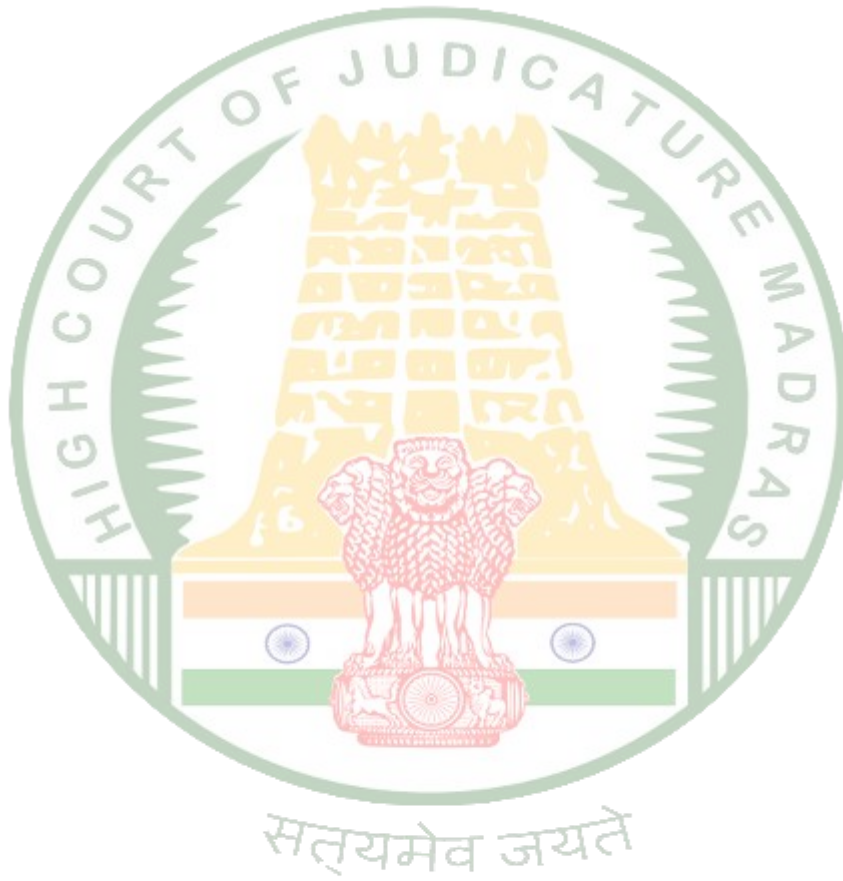
6. The Civil Revision Petition does not merit any consideration and accordingly, the same stands dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

24.11.2017

Index : Yes/No
Internet : Yes/No
TK

To

The Registrar
Court of Small Causes
Chennai.



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M.GOVINDARAJ, J.

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PRE-DELIVERY ORDER MADE IN
C.R.P (NPD) NO.2508 OF 2017

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24.11.2017