

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 2636 of 2017
and
C.M.P.No.12577 of 2017

V.M.Sankaran

.. Petitioner

Vs

Siva Kanchi Udasi Mutt @
Agadha Bada Udasin Bavaji Mutt
Rep. by its Madathipathi

Sri Mahan Basant Das Bavaji,
32-4/33, Nellukara Street,
Kancheepuram.

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 23.03.2015 made in I.A.No.86 of 2013 in O.S.No.1 of 2013 on the file of the Principal District Munsif Court, Kancheepuram.

For Petitioner : Mr. T. Sathiyamoorthy

For Respondent : No appearance

ORDER

This revision arises against the order and decretal order dated 23.03.2015 made in I.A.No.86 of 2013 in O.S.No.1 of 2013 by the Principal District Munsif Court, Kancheepuram.

2. The learned counsel for the petitioner submitted that the respondent's predecessor Madathipathi filed a suit in O.S. No.490 of 1975 before the District Munsif Court, Kancheepuram and the said suit was decreed. Subsequently, the judgment debtor Dr. K.Balasubramaniam filed A.S. No. 64/1983, claiming right under Section 9 of the Tamil Nadu City Tenants Protection Act. Pending the suit appeal, Dr. Balasubramaniam died, leaving behind his wife and two sons as legal heirs. The legal heirs were impleaded as parties in the appeal suit and thereafter a compromise was arrived, between the parties, wherein it was agreed to sell the subject property to the legal heirs of the deceased Balasubramaniam, at the market rate. Thereafter, they were in continuous possession and enjoyment of the said property. Pursuant to that, the petitioner is the subsequent purchaser of the subject property from the legal heirs of Dr. Balasubramaniam. Subsequently, E.P. No.

138 of 2000 was filed by the respondent for recovery of possession and the same is pending. The respondent filed a suit in O.S. No. 1 of 2013 for permanent injunction, along with an Interlocutory Application in I.A. No.2 of 2013 and obtained an order of interim injunction against the construction in the suit property.

3. Challenging the said order, the petitioner filed an appeal in C.M.A No.24/2014 and the same is pending consideration. In the meanwhile, the petitioner filed an application under Order 7 Rule 11 and Section 151 of CPC, in I.A. No. 86 of 2013, for rejection of the plaint, contending that the respondent/ plaintiff, having pleaded in the plaint that he has filed E.P. No.138 of 2000 before the Sub Court, Kancheepuram, has to work out his remedy in the execution proceedings. Therefore, the present suit is not maintainable under the provisions of Code of Civil Procedure. The trial court rejected the plaint vide order dated 23.03.2015 and hence the present revision petition has been filed. The learned counsel for the petitioner would submit that the petitioner has specifically contended before the trial court that the execution petition is pending and hence any issues relating to decree

shall be decided in the executing court itself and therefore filing the present suit is not maintainable.

4. The respondent has filed counter statement before the trial court stating that the present suit is filed by the respondent for permanent injunction. The said suit has to be decided only based on oral and documentary evidences. It is further stated that the suit property is a public property and the same has to safeguard.

5. The application of the petitioner/ defendant was considered by the trial court in detail. The contention of the petitioner/ defendant is that there is no cause of action to entertain the suit and there is abuse in process of law, by not filing valid documents before the Court. In the counter statement it has been stated by the respondent/ plaintiff that all these allegations are the disputed facts and the same shall be considered only at the time of trial. Whether any cause of action has arisen in the suit, are to be elicited only by oral evidence at the time of trial. The other contention of the petitioner is that the vital documents has not been disclosed by the respondent in the plaint. Therefore, non-

disclosure of the said documents has barred filing of the suit. The aforesaid contention of the petitioner has also been considered by the court below, to be decided at the time of trial. Therefore, the trial court has dismissed the said application. This Court also considers the said contention of the petitioner. In view of the aforesaid grounds, the suit itself is not maintainable under Order 7 Rule 11, which reads as follows :-

“ Order 7 Rule 11 of the Code of Civil Procedure reads as follows:-

11. Rejection of plaint -

The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action.*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law ;*

- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

6. In the present case on hand, there is non-disclosure of documents before the court below, is a disputed fact. The said fact has to be decided by the trial court, after considering the oral and documentary evidences. In the light of the decision of the Hon'ble Supreme Court, **Ramesh B. Desai And Others vs Bipin Vadilal Mehta And Others** reported in **2006 (5) SCC 638**, the same shall be decided at the time of trial. The other issues raised by the petitioner/ defendant also should be decided at the time of trial. Therefore, there is no error

or illegality in the order passed by the trial court. Hence, nothing warrants this Court to interfere with the order passed in the Interlocutory Application.

7. In view of the above facts and circumstances of the case and considering the above submissions, this Court declines to entertain the Civil Revision Petition and accordingly the Civil Revision Petition is dismissed. However, liberty is granted to the petitioner/ defendant to raise the preliminary issues, if so advised, before the trial court, as expeditiously as possible. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

11.10.2017

Index: Yes/ No

avr

To

The Principal District Munsif Court,
Kancheepuram.

WEB COPY

D. KRISHNAKUMAR J.,

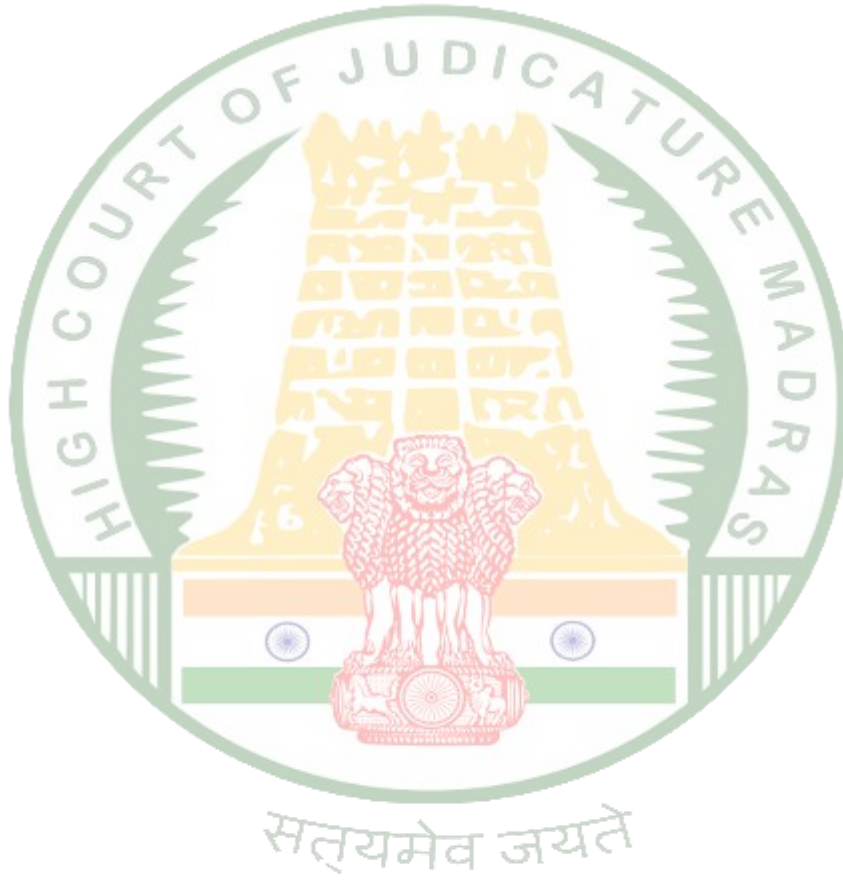
avr



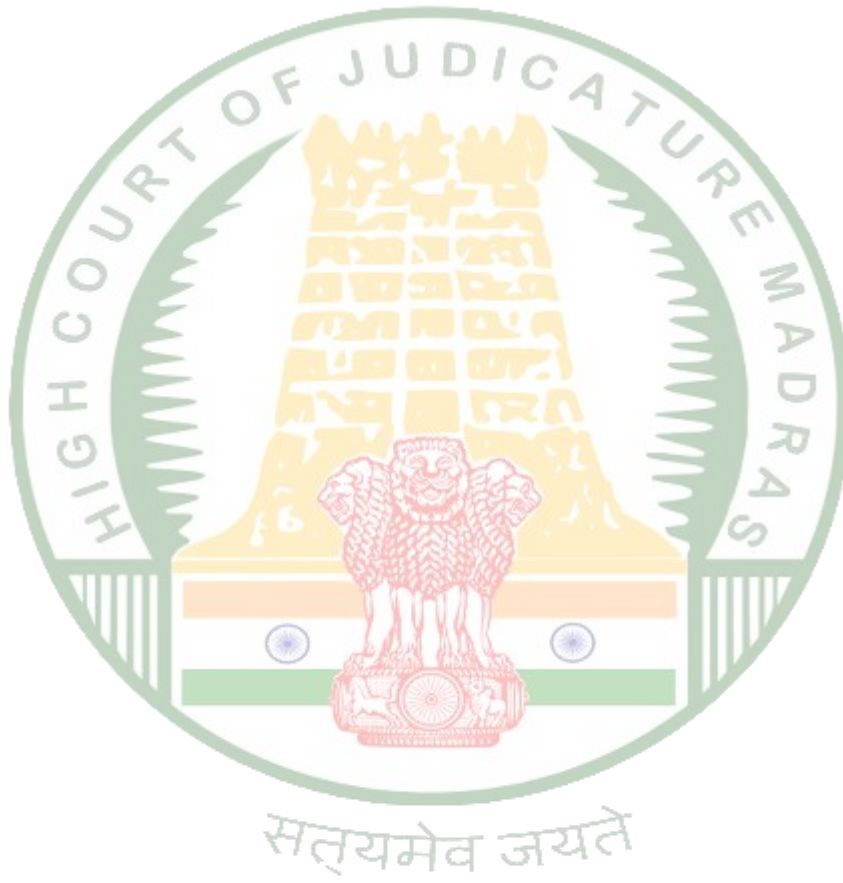
CRP (PD) No. 2636 of 2017
and
C.M.P.No.12577 of 2017

WEB COPY

11.10.2017



WEB COPY



WEB COPY