

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2079 of 2011
and M.P.No.1 of 2011

Judgment reserved on 19.09.2017	Judgment delivered on 11.10.2017
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1.Tmt.Poongavanam (deceased)

2.I.Hemanth Kumar

3.I.Jayakumar

4.I.Selvakumar

5.S.Manohari

6.R.Shanthakumari

7.I.Udayakumar

[Petitioners 2 to 7 brought on records
as LR's of the deceased sole petitioner
vide order of Court dt.01.12.2016
made in CMP Nos.12149 to 12151
of 2016 in CRP No.2079 of 2011]

... Petitioners

Vs.

Mr.D.Arumuga Achari

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of CPC against the judgment and decree dated 02.09.2010 in Ejectment Suit No.61 of 2007 on the file of III Judge, Small Causes Court, Chennai.

For Petitioners : Mr.P.Sunil for
Mr.T.Viswanatha Rao

For Respondent : Mr.R.Sathiyamurthy

ORDER

This Civil Revision Petition has been filed against the judgment and decree dated 02.09.2010 in Ejectment Suit No.61 of 2007 on the file of III Judge, Small Causes Court, Chennai.

2. The first petitioner Poongavanam since deceased is the respondent and the respondent is the plaintiff in Ejectment Suit No.61 of 2007 on the file of III Judge, Small Causes Court, Chennai. The respondent filed the said suit for ejectment of the first petitioner deceased Poongavanam and for payment of Rs.1,000/- per month as land rent from November 2006. According to the respondent, the suit property originally belonged to his father Duraisamy Achari. After this death, the plaintiff, his brothers and sisters inherited the property as per registered Partition Document

No.948/1949 dated 12.11.1949, the suit property was allotted to the respondent, his two elder brothers D.Natesa Achari and D.Thiagaraja Achari. D.Thiagaraja Achari was unmarried and left the family long before and for 22 years he has not returned home. D.Natesa Achari died five years prior to filing of the suit and his legal heirs are residing separately in different parts of Chennai. After the death of Natesa Achari, the respondent is maintaining the suit property. The first petitioner and her husband requested the respondent to permit them to stay in the suit property till the renovation of their property which is situated adjacent to the suit property. As per the permission given by the respondent, the first petitioner, deceased Poongavanam and her husband started residing in the suit property. The respondent, due to his work left Chennai and was working in Andhra Pradesh. The first petitioner deceased Poongavanam and her husband promised to handover the property to the respondent as and when he returns to Chennai from Andhra Pradesh. However, after his return, when the respondent came to Chennai and requested the first petitioner Poongavanam to handover the suit property, she refused to vacate and handover the possession of the suit property. A panchayat was held during November 2006. The deceased first petitioner Poongavanam did not pay any rent from November 2006 and the respondent issued a

notice on 21.05.2007 to the first petitioner calling upon her to vacate and deliver the vacant possession of the suit property. The said notice was notice with postal endorsement "information delivered". In the said circumstances, the respondent filed the above ejectment suit.

3. The first petitioner deceased Poongavanam filed written statement and contended that the suit is hit by principles of resjudicata in view of earlier suit in O.S.No.801 of 1971 and A.S.No.320 of 1998 against O.S.No.1049 of 1984. Further, O.S.No.801 of 1971 was filed for partition by D.Thiagarajan, D.Natesan and D.Arumugham and the respondent. A preliminary decree was passed by order dated 20.12.21971 in I.A.No.13779 of 1981 declaring D.Thiagarajan has 1/3rd share in the said property. The said Thiagarajan filed I.A.No.22709 of 1976 to pass a final decree in terms of the said preliminary decree and to appoint an Advocate Commissioner to sell the suit property. The first petitioner deceased Poongavanam purchased the suit property for Rs.1,30,000/- in the public auction held on 13.11.1982 and sale was confirmed in her favour on 29.06.1983. Subsequently, by the deed of sale dated 14.07.2006, the first petitioner deceased Poongavanam sold the property to Vani and 3 others vide registered

Doc.No.2049 of 2006 before Sub Registrar, Royapuram and handed over the possession to them. There is no landlord / tenant relationship between the respondent and the first petitioner and therefore prayed for dismissal of the suit.

4. Before the learned Judge, the respondent examined himself as PW1 and marked four documents viz. Exs.A1 to A4. The first petitioner deceased Poongavanam was examined as RW1 and marked two documents viz. Exs.B1 & B2. The learned Judge, considering the oral and documentary evidence and arguments, decreed the suit as prayed for.

5. Against the said judgment and decree dated 02.09.2010 made in Ejectment Suit No.61 of 2007, the present Civil Revision Petition is filed.

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6. The learned counsel for the petitioner submitted that -

(i) The respondent failed to fulfill the conditions required under Section 41 of the Presidency Small Causes Court Act 1882.

(ii) The Court below failed to see that no evidence was produced to establish annual value does not exceed Rs.2,000/- and the suit is not maintainable before the court below.

(iii) The learned Judge failed to properly appreciate the scope of Ejectment Suit filed under Section 41 of the Presidency Small Causes Court Act.

(iv) The first petitioner is not a tenant or permissive occupant of the respondent. No evidence has been produced to show that permission was given to the first petitioner and her husband and the tenancy was determined or withdrawn. In view of the averments, the first petitioner and her husband was allowed to occupy the suit property for renovation and repair and continued to occupy the suit property. On this averments, the suit under Section 41 of the Presidency Small Causes Court Act is not maintainable.

(v) The first petitioner purchased the suit property in the court auction held on 13.11.1982 and the sale in favour of the first petitioner was confirmed on 29.06.1983. The court below failed to appreciate the fact that the first petitioner, by deed of sale dated

14.07.2006 bearing Doc.No.2049 of 2006 sold the property to third party, i.e. Vani & 3 others and the registered sale deed is recorded in the Encumbrance Certificate.

(vi) The respondent failed to implead the purchasers who are necessary parties to the suit.

7. The learned counsel for the petitioners relied on the judgments reported in -

(A) **2010 (3) LW 803 (P.R.Anuradha v. V.Padmavathy)** and submitted that the respondent failed to prove that annual value of the property at rackrent is less than Rs.2,000/- and therefore suit under Section 41 of the Presidency Small Causes Court Act is not maintainable.

"47. On a careful consideration of respective contentions, eventhough [Section 18](#) of The Presidency Small Cause Courts Act, 1882 envisages the jurisdiction of the small cause court to try all suits of a civil nature subject to the exception in [Section 19](#), when the amount or value of the subject matter does not exceed twenty thousand rupees and notwithstanding the fact in the present case on hand, the Respondent/Plaintiff has valued the plaint for the purpose of Court Fee and jurisdiction at Rs.6,300/-. Inasmuch as the Ejectment suit filed by the Respondent/Plaintiff is

under [Section 41](#) of the Presidency Small Cause Courts Act, 1882 and bearing in mind of a very essential fact that [Section 41](#) has only substituted the words two thousand rupees with that of the words rupees five thousand by virtue of [Section 26](#) of 1995 and in reality since the said [Section 41](#) of the Act has not been amended like that of [Section 18](#) of the Presidency Small Cause Courts Act, 1882 with reference to the value of the subject matter Viz., rupees twenty thousand this Court comes to an inevitable conclusion that the suit filed by the Respondent/Plaintiff on 15.11.2002 is perse not maintainable before the trial Court Viz., III Small Causes Court, Chennai. In that view of the matter, this Court without going into the merits of the case between the parties, allows the Civil Revision Petition to prevent an aberration of justice. Since this Court has held that the Ejectment suit filed by the Respondent/Plaintiff is not maintainable before the trial Court namely, III Small Causes Court, Chennai, the findings so rendered by the Court in regard to the issues No.1 to 6 framed by it in the suit are set aside by this Court to promote substantial cause of justice. The judgement of the trial Court in Ejectment suit No.36 of 2002 dated 16.03.2005 is set aside by this Court holding that the suit is not maintainable before the trial Court namely, III Small Causes Court. "

(B) **AIR 1994 KERALA 164 (B.Valsala v. Sundaram Nadar Bhaskaran)** and submitted that the respondent is not the absolute owner of the suit property and without joining other co-owners, the suit is not maintainable.

"12. A tenant continuing in possession after the determination of his tenancy, without the assent of the landlord being thus only in the position of a trespasser, necessarily the rule relating to suits against trespassers by a co-owner must apply that is a co-owner can in his own right sue for recovery of possession from such a person without arraying the other co-owners as parties to the suit.

This is also established by a catena of decisions like *Maganlal Dulabhadas*, AIR 1927 Bom 192, including *Beharilal v. Wasundarabai*, AIR 1956 MB 35 and *Ramnarain v. Kishorelal*, AIR 1964 Rajasthan 79, where the law has been discussed in detail. It was this principle that was applied by this Court in *Kora Nair v. Ramadasa Kammath*, 1957 KLT 627. In that case, the suit was filed by one of many co-owners for recovery of possession from the tenant after the tenancy was terminated by issue of notice to quit under *Section 106*. The learned Judge noted that the position of the lessee subsequent to the expiry of the period fixed in the lease was akin to that of a trespasser and held that

recovery of possession from such a person was an act of management of the properties for the benefit of the other co-owner and therefore the suit against the quondam tenant was maintainable at the instance of one co-owner.

13. But the question still arises as to whether the plaintiff in this case can recover possession from the defendants. An exception to the rule above mentioned has been made where the suing co-owner claims exclusive title to the property in derogation or denial of the rights of the other co-owners. In such an event, the co-owner whose rights are denied or against whose interest the plaintiff is suing is a necessary party to the suit, and his absence will be fatal to the suit itself. The decision of the Madras High Court namely [Thimmayya v. Siddappa](#), AIR 1925 Mad 63 is in point on this question. The principle was reiterated By K. S. Hegde, J. in the Mysore High Court in [Shivangouda v. Gangawa](#), AIR 1967 Mys. 143, already referred to. The entire matter was discussed by the Karnataka High Court in [Rajabibi v. Ameerli](#), AIR 1974 Karnataka page 115 where Malimath, J. as he then was, held that if a co-sharer instituted a suit in ejectment against a trespasser, repudiating the claim of the other co-sharers and claiming exclusive title in himself, such

a suit will not be maintainable in the absence of the other co-sharers."

(C) **1971 (2) MLJ 22 (Palaniappa Chettiar (died) and others v. Babu Sahib and others)** and contended that the question of jurisdiction cannot be thrown out in the revision on the ground that it was not raised by the petitioners in the earlier stage.

"9. The learned Counsel for the respondents then contended that this Court sitting in revision under Section 115, Civil Procedure Code, should not exercise its discretion in favour of the petitioners who had not taken the question of jurisdiction in their counter statement before the Rent Controller but have chosen to raise it during the course of the arguments before the appellate and revisional authorities. But being a question of

jurisdiction, it is not possible for me to shut out that question merely on the ground that it was not raised by the petitioners at the earliest stage in their pleadings. In this case admittedly the original lease was of a vacant site and though there were buildings put up by the tenant on the site on the date of the eviction petition, the provisions of the Madras Buildings (Lease and Rent Control) Act,

cannot be applied in relation there to and this question has been conclusively decided by the Supreme Court in *Salay Md. Sait v. J. M. S. Charity* overruling the view taken by this Court in *Palaniappa Chettiar v. Vairavan Chettiar* (1963 1 MLJ 130) The petitioners' objection that the Rent Controller had no jurisdiction to entertain the eviction petition has therefore to be upheld and the civil revision petition allowed. "

(D) **2015 (3) LW (*Selvasubramanian v. Subburathinam*)**

and submitted that based on the pleadings only court can appreciate issue with regard to the dispute and when there is no dispute with regard to a fact that other party need not pray the same.

"16. In any Civil Suit, the parties are expected to place their pleas by way of their respective pleadings. From the pleadings only, the Court is required to identify the dispute. After having identified the dispute, the Court is required to frame appropriate issues. In other words, the issues would reflect the disputes. There upon the parties are called upon to let in evidence either in proof of the issues or in disproof of the same. But, in this case, absolutely, there was no dispute regarding the Will. Therefore, in my considered view, there was no occasion or necessity for the

defendant to prove the Will. "

(E) **AIR 1966 SCC 275 (Union of India v. Watkins Mayor and Co.,)** and submitted that failure on the part of the first petitioner to send any reply does not amount to accepting the claim of the respondent in notice.

"7. We do not think there is any warrant for this submission. Merely because the plaintiff had claimed storage charges at the rate of Rs. 4 per ton per month and there was silence on the part of the defendant, it cannot be deemed that there was acquiescence on the part of the defendant and that there was an implied undertaking on its part to pay godown rent at that rate. We have already discussed the question of reasonable compensation to the plaintiff for storage of the iron sheets and for reasons already given, we hold that the finding of the High Court on this issue is correct."

(F) **AIR 1966 SCC 605 (Ambika prasad Thakur and others v. Ram Ekbal Rai (dead) by his legal representatives and others etc.)**

"13. The admission was made under somewhat suspicious circumstances at the end of the trial of the case when the arguments had begun. Though this petition was filed, the written

statement of the Maharaja was never formally amended. In the circumstances, this admission has weak evidentiary value. In this suit, the plaintiffs do not claim tenancy right either by express grant or by adverse possession. Title cannot pass by mere admission. The plaintiffs now claim title under cl. (1) of s. 4 of Regulation XI of 1825. The evidence on the record does not establish this claim. "

(G) 2007 (5) MLJ 100 (G.Devadasan v. A.Sundarapandy (died) and 9 others);

"17. The contention before this Court that Ex.A.3 was brought about at the instance of P.W.1 and P.W.2 fraudulently, even while Savari Muthu Nadar, the executant of Ex.A.3 was insane, is purely a question of fact and it is pertinent to note that even in the substantial question of law suggested by the appellants in the grounds of appeal, there is no reference to it at all and this Court also correctly has not formulated any substantial questions of law touching upon that point, inasmuch as no substantial question of law was found emerged out of the grounds of appeal. Incidentally, I would also observe that Ex.A.3 is a registered document of the year 1979 and apparently the presumption contemplated under section 114 (e) of the [Indian Evidence Act](#) would be attracted."

(H) **2004 (4) LW 537 (G.Srinivasa pillai v. G.Meganathan)** and contended that there is no dispute with regard to ownership of the property and whether the defendant is a tenant or lessee and whether the tenancy or lease is determined or not, the Small Causes Court has no jurisdiction under Section 41 of the Act to decide the said issues.

"13. .. The learned trial Judge has observed, that he has no jurisdiction to decide, whether the defendant has prescribed title to the suit property by adverse possession or not. This right claimed by the defendant is, over the immovable property, since the site belongs to temple. The defendant claims that he is the owner of the superstructure, whereas the plaintiff claims that he is the owner of the superstructure, thereby showing that there is bonafide dispute between the parties, regarding the title to the suit property viz., the immovable property. The position being so, as contemplated under [Section 19](#) of the Act, the Small Cause Court shall have no jurisdiction, in a suit for recovery of immovable property, where it involves determination of the rights of the parties. Without considering the scope of [Section 19](#) of the Act as well as without giving a finding in the suit, how it

comes within the ambit of [Section 41](#), the learned trial Judge has ordered eviction, which is against the provisions of law and in this view, I am of the considered opinion, the ejection order is liable to be set aside. If the plaintiff is advised, he has to work out his remedy, before proper forum, by filing a proper suit and he is not entitled to invoke [Section 41](#) of the Act. "

8. Per contra, the learned counsel appearing for the respondent submitted that the first petitioner deceased Poongavanam has admitted that she is a tenant under the respondent and that the respondent is the owner of the property. The first petitioner has pleaded that present suit is hit by principles of resjudicata in view of the earlier suit and First Appeal. Even though the first petitioner has mentioned various suits, she has not produced any document to substantiate her claim. Unless the first petitioner produces the plaint in the earlier suits, it cannot be decided whether the suit is hit by principles of resjudicata or not. The first petitioner has not produced any document with regard to court auction and she is the successful bidder for Rs.1,30,000/- and she had deposited the entire sale consideration. The first petitioner

has stated that she know about the suit notice and has not cared to get a copy of the said notice and send a reply. The first petitioner has stated that she had sold the suit property after purchasing the same in court auction and had handed over the suit property to the subsequent purchasers. The first petitioner as DW1 has deposed that she is residing in the suit property. The address given by the first petitioner in the present Civil Revision Petition is also the said suit property. Similarly, the petitioners 2 to 7 who were brought on record as legal heirs of the first petitioner deceased Poongavanam have also given their address as the suit property only. One co-owner can maintain a suit for eviction so long as other co-owner did not dispute the right of the said co-owner to initiate eviction proceedings. The learned counsel for the respondent relied on the following judgments in support of his contentions.

(i) **AIR 1978 MAD 395 (K.Ramanujam chettiar v. Arunachaleswarar Devasthanam and another)** and submitted that rent is a term of contract and business of agreement between parties to pay market rent and actual rent paid has to be taken as rackrent payable for the property. The actual rent paid to be taken as basis to arrive at the value of jurisdiction to maintain the suit as contemplated under Section 41 of the Presidency Small Causes

Court Act.

"9. "This will indicate that the annual value at rack-rent is to be based on 'rent' even if the rent is controlled by legislature and not on licence fees. The rack-rent has to be 'rent' first before it becomes rack-rent. It can only mean gross rent and not net rent. In this particular case, the gross rent payable in respect of the premises by the petitioners as tenants to their own landlord who is the owner of the premises, is Rs. 2256 per annum, and this is the annual value of the premises at a rack-rent. The amount of Rs. 3120 per annum paid by the respondents to the petitioners as licence fees is neither rent nor rack-rent and cannot be the annual value at a rack-rent. In my opinion, the Bombay Small Cause Court had jurisdiction to entertain, try and determine the petitioner's application under Section 41 of the Presidency Small Cause Courts Act, in respect of the premises and it has failed to exercise jurisdiction vested in it." "

(ii) **1962 LS MAD 172 (Siddhi Budhi Vinayakar sree**

sundareswarar devasthanam represented by K.Sambanda

Mudaliar) and contended that the first petitioner has not prayed

for stay of the order of eviction as per Section 47 of the Act and has

not filed any suit within reasonable time in any event, within time

limit contemplated under Limitation Act.

"4. ... An order was passed directing him to deliver vacant possession by 1st August 1950. On that date the respondent applied to the Court under [Section 47](#) of the same enactment in M. P. No. 6183 of 1950 for stay of further proceedings, undertaking to institute a suit to establish his right to continue in possession of the property. The provisions of that section being mandatory and the conditions therein being satisfied, the Court passed an order staying proceedings on the application for eviction until the suit to be filed by the respondent was disposed of [Section 47](#) of the Presidency Small Cause Courts Act prior to its amendment by Madras Act 16 of 1956, did not impose any time limit for the suit to be filed. Presumably such a suit questioning the order passed by the Court of Small Causes under [Section 13](#) (sic. [Section 43](#) ?) will have to be filed within the period specified in the [Limitation Act](#). Nor was there any sanction against a tenant who taking advantage of the order, failed to institute the suit contemplated by that section. There can be little doubt that in case a tenant fails to institute the suit within a reasonable time it would be competent for the Court to vacate the order for stay, under its inherent powers.

.. ..

6. The respondent on 10th November 1952 filed the suit out of which the present appeal arises

for relief specified in Section 47 of the Presidency Small Cause Courts Act. He claimed in that suit that the lease as well as the construction of the superstructure on the property, were prior to the year 1921, and that he being entitled to the benefits of the Madras City Tenants Protection Act, the order for eviction passed by the Court of Small Causes contrary thereto was invalid. He also applied for an interim injunction during the pendency of the suit against the appellant from enforcing the order for eviction. That application, however, proved fruitless. The appellant thereupon applied to the Court of Small Causes and obtained an order for delivery of the land after removing the superstructure. That delivery was effected on 6th February 1953. This was during the pendency of the suit instituted by the respondent. Attempts on his part to obtain re-delivery did not meet with any success. "

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9. Heard the learned counsel for the petitioners as well as respondent, perused the materials available on record.

10. Both the learned counsel for the petitioners as well as respondent extensively referred to the pleadings, documents and

relevant portions in the judgments referred above.

Points for consideration :

1. Whether the respondent or the first petitioner is the owner of the suit property ?
2. Whether the first petitioner is the tenant under the respondent and the first petitioner was residing in the suit property when the suit was filed ?

Point Nos.1 & 2 :

11. From the materials on record, it is seen that the respondent has claimed to be the owner of the suit property and traced his title by registered Partition Document No.948/1949 dated 12.11.1949. The first petitioner has not denied that the respondent is the owner of the suit property. The respondent claims that the first petitioner and her husband were resident of adjacent property and they were permitted to reside in the suit property till renovation and repair work was done in their house. This averment was not disputed by the first petitioner. The respondent has stated that when the first petitioner refused to vacate and handover the vacant possession of the suit property, panchayat was held and the first petitioner agreed to pay Rs.1,000/- as rent to the respondent. This

averment was also not disputed by the first petitioner. The specific case of the first petitioner is that in the partition suit filed by the brothers of the first petitioner, an Advocate Commissioner was appointed in the final decree proceedings and he was directed to sell the suit property by public auction. According to the first petitioner, the public auction was held on 13.11.1982 and sale was confirmed in her favour on 29.06.1983. She has not produced any document to substantiate her claim. According to the first petitioner, she sold the property to one Vani & 3 others by deed of sale dated 14.07.2006 and handed over the possession to them. The first petitioner produced certified copies of the sale deed as Ex.B1 and Encumbrance certificate as Ex.B2. Having failed to prove that she became the owner of the suit property by purchasing the same in the public auction held as per the direction of the court, the first petitioner or petitioners 2 to 7 are not entitled to rely on Ex.B1, sale deed. Further, the first petitioner had stated that she had handover possession of the suit property to subsequent purchasers but she has admitted in her evidence that she is still residing in the suit property. The contention of the learned counsel for the respondent that petitioners have given their address in the CRP which is that of the same suit property and therefore the sale deed and contention of the petitioners that they handed over the possession to the

subsequent purchasers has no merits, has considerable force. As far as jurisdiction of court below is concerned, the petitioners herein have not produced any contra evidence to show that the value of the suit property is more than Rs.2,000/- and the suit filed under Section 41 of the Presidency Small Causes Court Act is not maintainable. Further, the petitioners have not filed any application under Section 47 of the Act for stay of the eviction order and not filed any suit as contemplated under Section 47 of the Act. In view of the above facts, I hold that there is no irregularity or illegality in the judgment of the lower court ordering eviction of the first petitioner which is binding on the petitioners 2 to 7 who are the legal heirs of the first petitioner deceased Poongavanam.

12. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No

To

The III Judge,
Small Causes Court,
Chennai.

V.M.VELUMANI, J.

rgr



Pre-delivery Order in
C.R.P.(NPD)No.2079 of 2011
and M.P.No.1 of 2011

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