

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.125 & 600 of 2013
and M.P.Nos.1,1 of 2013
and C.M.P.Nos.2680 & 2681 of 2017

S.Mohan

.. Petitioner in
CRP.No.125 of 2013

S.Appan

.. Petitioner in
CRP.No.600 of 2013

Vs.

1.G.Mahalakshmi
2.G.Radhakrishnan
3.R.Parvathi
4.G.Murugan

.. Respondents
in both CRPs.

PRAYER in C.R.P.(PD)No.125 of 2013: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the decree and judgment dated 29.03.2012 made in Ejectment Suit No.27 of 2007 on the file of the III Small Causes Court, Chennai.

PRAYER in C.R.P.(PD)No.600 of 2013: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 29.03.2012 made in Ejectment Suit No.28 of 2007 on the file of the III Small Causes Court, Chennai.

For Petitioner : Mr.P.Balamurugan
in CRP.No.600 of 2013

For petitioner : Mr.S.Arivazhagan
in CRP.No.125 of 2013

For R1 to R4 : Mr.G.Thiagarajan

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 29.03.2012 made in Ejectment Suit Nos.27 and 28 of 2007 on the file of the III Small Causes Court, Chennai.

2. The issues involved in both the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

3. The petitioners in both the Civil Revision Petitions are the defendants and respondents are the plaintiffs in Ejectment Suit Nos.27 and 28 of 2007 on the file of the III Small Causes Court, Chennai. The respondents filed the above suits for ejectment against the petitioners. According to the respondents, the suit properties with larger extent in Old door No.24/2, New door Nos.12/27, 14/28, 16/29, Grama first street, Nungambakkam, Chennai-600 034, admeasuring 1460 sq.ft. originally belonged to

their ancestor late.Karikan. First respondent's husband Ganapathi and his two brothers namely, Ponnann and Rajagopal inherited the larger extent after the death of their ancestors and partitioned among themselves. The suit hut bearing Door No.14/28, Grama first street, Nungambakkam, Chennai-600 034, were allotted to the share of the first respondent's husband Ganapathi and father of the respondents 2 and 3. Both the petitioners are close relatives of the respondents. Petitioners are sister's sons of first respondent's husband. They sought permission to occupy the suit hut from Ganapathi, husband of the first respondent and they were permitted to be in occupation for three years. The first respondent's husband Ganapathi died on 30.05.2002. The respondents demanded the petitioners to vacate the huts, due to that, difference of opinion and enmity arose between them. The petitioners threatened the respondents with rowdy elements. The respondents gave a complaint before the Inspector of Police, F-3, Police Station, Nungambakkam on 36.06.2007 against the petitioners. The petitioners took steps to renovate the thatched hut and put up pucca side walls. In the circumstances, the respondents filed the above suits.

4. The petitioners in both the Civil Revision Petitions filed written statements on 10.11.2008 in their respective suits and

submitted that the petitioners and said Ganapathi worked together in ICIM. The first respondent's husband Ganapathi is maternal uncle of the petitioners. The said Ganapathi promised that he will give possession of the suit huts to the petitioners, if they pay Rs.10,000/- each. Believing the words of the said Ganapathi, the petitioners gave Rs.10,000/- each. He also promised that he would get patta in the name of the petitioners. In the year 1979, the first respondent's husband Ganapathi insisted the petitioner in C.R.P.(PD)No.125 of 2013 to pay Rs.15,000/- and petitioner in C.R.P.No.600 of 2013 to pay Rs.5,000/- more to get electricity connection and patta in their names. The petitioners also paid that amounts to the said Ganapathi. He promised that he will transfer the ownership and get patta in their names. Electricity connection is in the name of the said Ganapathi. Due to the close relationship, they did not insist for electricity connection in their names. After the death of Ganapathi, the respondents filed suits for ejectment. The respondents have no locus standi to file the suits and prayed for dismissal of the suits.

5. Before the learned Judge, in both the suits, the second respondent was examined as P.W.1 and marked 13 documents as Exs.A1 to A13. The petitioners in both the Civil Revision Petitions

examined themselves as D.W.1 and other witnesses as D.W.2 to D.W.4 and marked 16 documents as Exs.B1 to B16.

6. The learned Judge, considering the pleadings, oral and documentary evidence, decreed both the suits and directed the petitioners to vacate and deliver vacant premises to the respondents within three months.

7. Against the said Judgment and decree dated 29.03.2012 made in Ejectment Suit Nos.27 and 28 of 2007, the petitioners filed the present two Civil Revision Petitions.

8. Heard the learned counsel for the petitioners as well as the respondents and perused all the materials available on record.

9. From the materials available on record, it is seen that the respondents have claimed ejectment of the petitioners. According to the respondents, they are the owners of the suit property having inherited from their ancestors. They permitted the petitioners to occupy the suit huts for three years. When they demanded the petitioners to deliver and hand over the vacant possession, they started quarrelling with the respondents. The petitioners have taken

a stand that Ganapathi, husband of the first respondent received money from them and promised to transfer the ownership in their names. The said Ganapathi is their maternal uncle. In view of the close relationship, they did not insist Ganapathi for transfer the ownership immediately. On the other hand, during trial, the petitioners have deposed that the suit property is a poramboke land and the respondents are not owners of the suit property and they are not entitled to evict the petitioners from the suit property.

10. From the judgment of the learned Judge, it is seen that the second respondent was examined as P.W.1 and marked 13 documents as Exs.A1 to A13. The learned Judge, considering these documents, had concluded that the respondents have become owner by inheritance. The petitioners have not produced any documents to show that they have paid amounts to Ganapathi, husband of the first respondent and father of the respondents 2 & 3 and the said Ganapathi promised to transfer the ownership and obtain patta in their names.

11. The learned Judge, has held that any transfer of immoveable property when value is more than Rs.100/- must be

registered. Having admitted that the said Ganapathi is the owner of the property and stated that the said Ganapathi received amounts on promising to transfer the ownership to the petitioners, it is not open to the petitioners to now contend that the suit property is only a poramboke land and the respondents are not owners of the suit property. The petitioners examined themselves as D.W.1 in their respective suits, examined D.W.2 to D.W.4 and marked 16 documents as Exs.B1 to B16. Both the oral and documentary evidence let in by the parties are only to prove their possession in the suit property. No document was produced to show either their ownership or property is a poramboke land.

12. The petitioners have taken a stand in their written statements that the suit is not maintainable under Section 41 of the Presidency Small Causes Court Act, 1882. The said contention is untenable. As per Section 41, an ejectment suit filed under Section 41 is maintainable, if the rack-rent of the property is not more than RS.5,000/-. The petitioner has not produced any document to show that rack-rent is more than Rs.5,000/-. The contention of the petitioner that respondents have not issued mandatory notice contemplated under Section 41 is untenable. The said Section contemplates that the tenancy or permission has to be determined

or withdrawn or when the tenancy or occupier refuses to deliver such property in compliance with the request made to him, the owner can initiate the proceedings to eject tenant or occupier. In the present case, the respondents have stated that they demanded the petitioners to deliver and vacate the property and deliver the vacant possession and they promised the respondents that they will vacate after one year, but without vacating, the petitioners threatened the respondents. In view of the said averments in the petitions, it is seen that the respondents have complied with the requirement of Section 41 of the Presidency Small Causes Court Act, 1882 withdrawing the permission given to the petitioners. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 29.03.2012.

13. For the above reasons, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

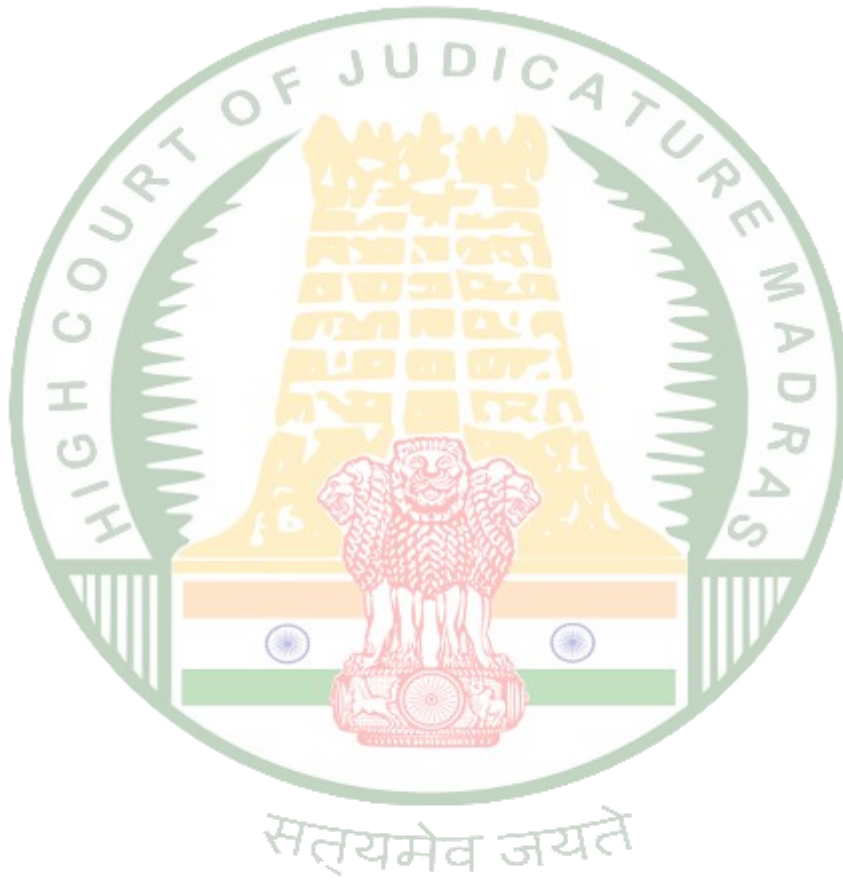
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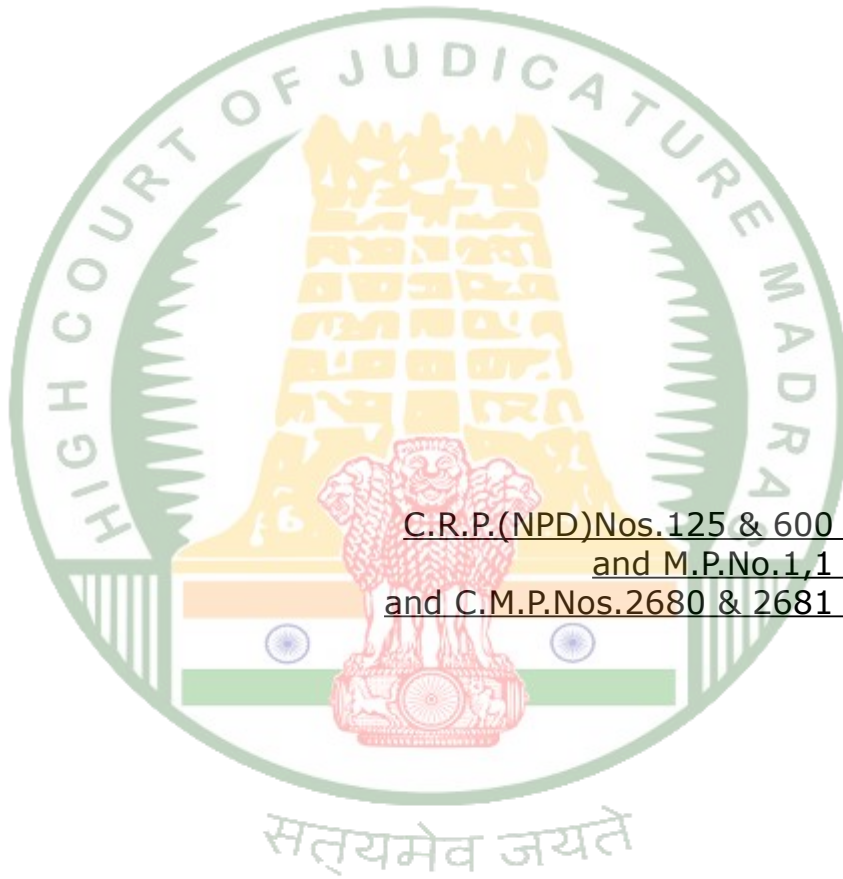
The III Small Causes Judge,
Chennai.



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V.M.VELUMANI, J.

dm/kj



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