

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2425 of 2013
& M.P.No.1 of 2013

K.F.Manavalan

.. Petitioner

Vs.

M/s.Archdiocese of Madras Mylapore Society,
represented by its Property-in-charge,
Rev.Fr.D.F.Don Basco, having his office
at Archbishop's House: No.40 (Old No.21),
Santhome High Road, Chennai - 600 004.

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the
Constitution of India, against the fair and decretal order dated
30.04.2013 made in I.A.No.564 of 2013 in O.S.No.2169 of 2012 on
the file of the learned III Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.Bijesh Thomas

For Respondent : No Appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 30.04.2013 made in I.A.No.564 of 2013 in O.S.No.2169 of 2012 on the file of the learned III Assistant Judge, City Civil Court, Chennai.

2. The petitioner is the defendant and respondent is the plaintiff in O.S.No.2169 of 2012 on the file of the III Assistant Judge, City Civil Court, Chennai. The respondent filed the above suit for eviction directing the petitioner to vacate and handover the vacant possession and to pay the damages for the use and occupation of the demised premises, at the rate of Rs.500/- per day from 01.02.2012, till the date of handing over of the property. The petitioner filed I.A.No.564 of 2013 under Order VII Rule 11(d) of C.P.C., for rejection of plaint.

3. According to the petitioner, as per Section 20 of the Tamil Nadu Societies Registration Act, 1975, the suit has not been filed by legally or validly constituted society and the person who filed the suit on behalf of the respondent has not stated that he has been validly or legally authorised to represent the respondent. The

petitioner also stated that the respondent has not paid the correct Court fee and the suit is barred by law.

4. The respondent filed counter affidavit and denied various averments made by the petitioner. The respondent stated that the petitioner has filed two suits in O.S.No.1268 of 2011 on the file of the II Assistant City Civil Court, Chennai and O.S.No.8654 of 2012 on the file of the III Assistant City Civil Court, Chennai. In the said suit, the petitioner has admitted that the respondent is a society and the Arch Diocese of Madras, Mylapore, which owns commercial building called 'Catholic Centre' and Fr.Joseph Victor is an appointee of the respondent. The respondent is represented by the present in-charge of the properties of the respondent. The respondent is not a juristic person and is entitled to file the suit for eviction. The petitioner has filed the application for rejection of plaint under Order VII Rule 11 of C.P.C., based on the untenable, baseless and frivolous grounds and thereby abusing the process of law.

5. The learned Judge, considering all the averments made in the plaint, affidavit, counter affidavit and materials available on record, by order dated 30.04.2013, dismissed the application

holding that purely on technicality, the petitioner cannot seek indulgence of the Court especially in a suit for ejection.

6. Against the said order of dismissal dated 30.04.2013 made in I.A.No.564 of 2013, the present Civil Revision Petition is filed by the petitioner/defendant.

7. Heard the learned counsel for the petitioner and perused the materials available on record. Though the respondent entered appearance through advocate, there is no representation on behalf of the respondent either in person or through counsel.

8. The learned counsel appearing for the petitioner reiterated the averments in the affidavit filed in support of the application and the grounds raised in the Civil Revision Petition and made submissions on the same line. The learned counsel appearing for the petitioner in support of his contention relied on the following judgment reported in **2012 (4) CTC 308 (The Church of Christ Charitable Trust & Educational Charitable Society Vs. Ponniammam Educational Trust, represented by its Chairperson/Managing Trustee);**

"12. In the case on hand, the plaintiff-respondent to get a decree for Specific Performance has to prove that there is a subsisting agreement in his favour and the Second Defendant has the necessary authority under the Power of Attorney. Order 7, Rule 14 mandates that the Plaintiff has to produce the documents on which the cause of action is based, therefore, he has to produce the Power of Attorney when the Plaint is presented by him and if he is not in possession of the same, he has to state as to in whose possession it is. In the case on hand, only the agreement between the plaintiff and the Second Defendant has been filed along with the Plaint under Order 7, Rule 14(1). As rightly pointed out by the learned Senior Counsel for the Appellant, if he is not in possession of the Power of Attorney, it being a registered document, he should have filed a registration copy of the same. There is no such explanation even for not filing the registration copy of the Power of Attorney. Under Order 7, Rule 14(2) instead of explaining in whose custody the Power of Attorney is, the Plaintiff has simply stated 'Nil'. It clearly shows non-compliance of Order 7, Rule 14(2)."

9. It is well settled that a plaint can be rejected when it does not disclose any cause of action or on the face of it is barred by law. It is also well settled that in the application for rejection of plaint, only the averments made in the plaint and documents relied on by the plaintiff filed along with the plaint alone are necessary to decide the issue. The respondent in the plaint has stated that it is a registered society and the person who filed the suit representing the respondent's society has stated that he is the person in-charge of the properties of the society.

10. The petitioner has raised various contentions disputing the claim of the respondent as a society. The petitioner has also raised various contentions with regard to the management of the society and has contended that the society is mismanaged and funds are mis-used. These contentions are not relevant to be considered in the application for rejection of plaint. The respondent has stated that it is a society and the person who filed suit for representing the respondent has stated that he is the person in-charge of the property of the society. The contention of the petitioner that the respondent appears to have not paid correct Court fee is without any basis. The judgment relied on by the learned counsel for the

petitioner does not advance petitioner's case for rejection of plaint. In view of the above facts, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 30.04.2013.

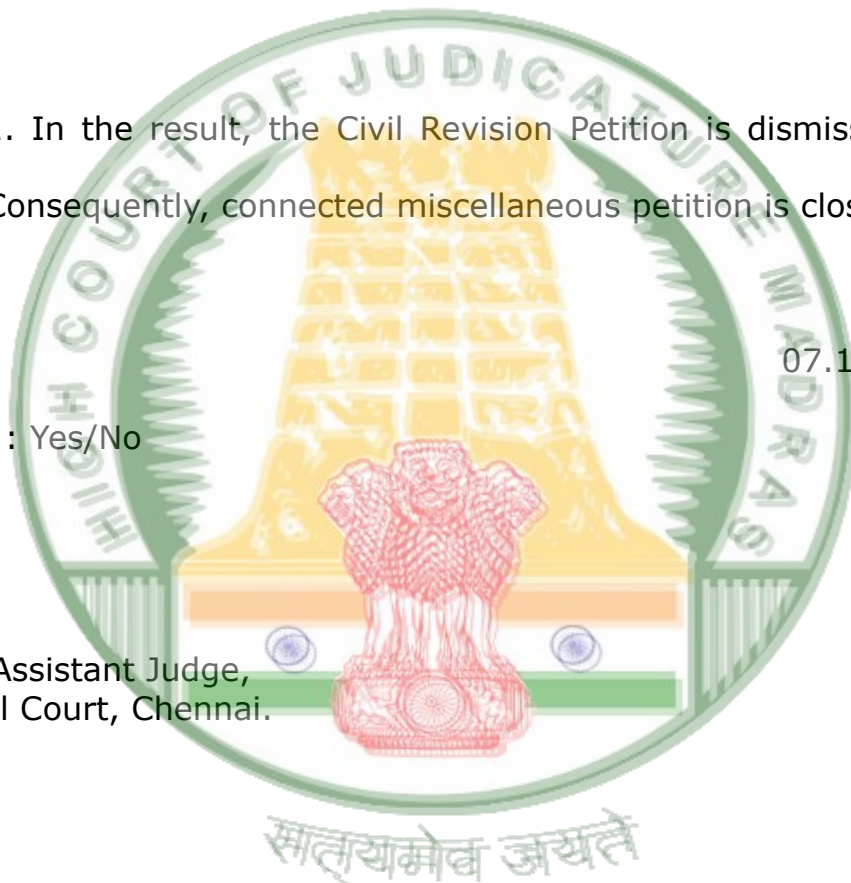
11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
dm/kj

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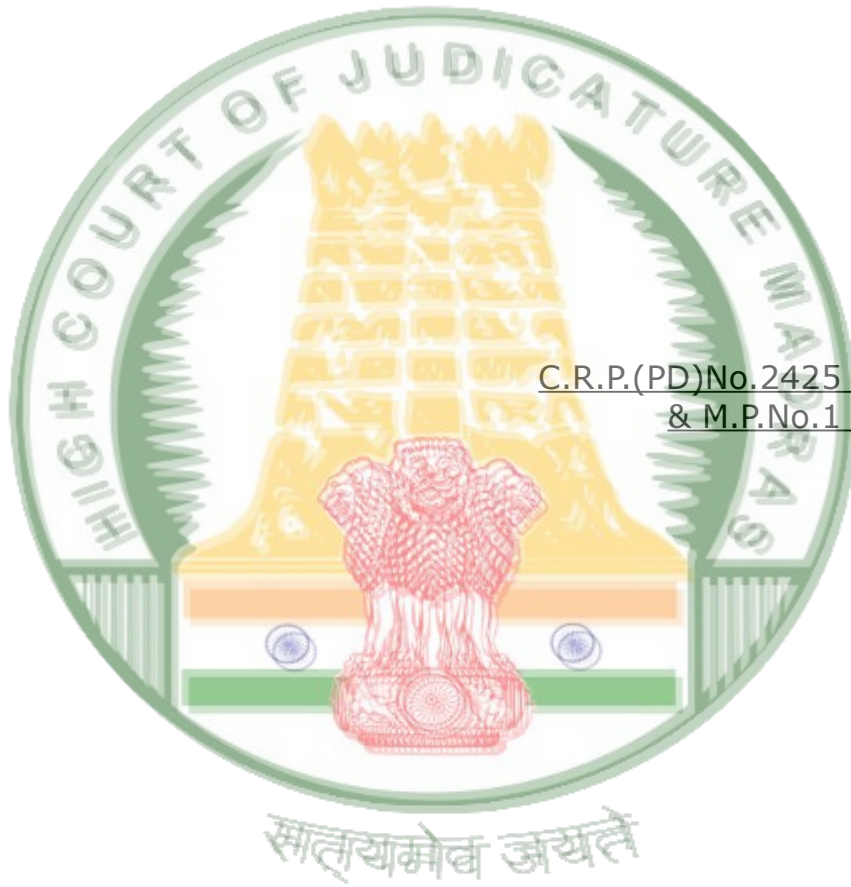
The III Assistant Judge,
City Civil Court, Chennai.



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V.M.VELUMANI, J.

dm/kj



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