



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.100 of 2017 (PD)

Sri Uthirathi Mutt,
Bengaluru, Karnataka State,
Rep. by its Local Agent V.Gopalan,
S/o.Venkatraman,
No.93, North Madavilagam Street,
Natchiyar Koil, Kumbakonam,
Thanjavur District.

.. Petitioner / Defendant

Vs.

Gunendran, S/o.Durai Udaiyar

.. Respondent / Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the suit proceeding in O.S.No.458 of 2013, pending on the file of the Principal District Munsif Court, Kumbakonam, Thanjavur District.

For Petitioner : Mr.M.Mohamed Sherbudeen

ORDER

This Civil Revision Petition has been filed to strike off the suit proceeding in O.S.No.458 of 2013, pending on the file of the Principal District Munsif Court, Kumbakonam, Thanjavur District.

2. The petitioner is the defendant and the respondent is the plaintiff in the suit in O.S.No.458 of 2013 on the file of the Principal District Munsif Court, Kumbakonam, Thanjavur District. The respondent filed the suit for injunction restraining the petitioner herein from interfering with his peaceful possession and enjoyment of the suit property. The petitioner filed written statement on 27.02.2014 and contested the suit.

3. Now, the petitioner filed the present Civil Revision Petition under Article 227 of the Constitution of India to strike off the plaint in O.S.No.458 of 2013, pending on the file of the Principal District Munsif Court, Kumbakonam, Thanjavur District.

4. According to the petitioner, the suit is barred by principles of *res judicata*. The petitioner is the owner of the suit property. The suit property was leased out to one Swaminathan and Ayyappan by the petitioner. The said Swaminathan took the suit property on lease for doing his tailoring business



on a monthly rent of Rs.4/- and he was doing tailoring business in the suit property for more than 15 years. From April 1996, he has not paid the rent, in spite of repeated demands. Hence, the petitioner filed O.S.No.63 of 1999 before the District Munsif Court, Valangaiman, Thanjavur District, for delivery of vacant possession of the suit property, recovery of arrears of rent and also for future profits. By the judgment and decree dated 19.01.2004, the said suit was dismissed. Against the said judgment and decree dated 19.01.2004, the petitioner has filed A.S.No.61 of 2005 before the Principal Subordinate Court, Kumbakonam, and by the judgment and decree, dated 19.07.2007, the said appeal was partly allowed. Against the said judgment and decree of the first appellate Court, dated 19.07.2007, the said S.Swaminathan and Ayyappan/the defendants therein have filed S.A.(MD)No.53 of 2009 before this Court. The said Second Appeal was dismissed by this Court, vide judgment and decree, dated 17.04.2009, confirming the judgment and decree, dated 19.07.2007, passed in A.S.No.61 of 2005, by the learned Subordinate Judge, Kumbakonam. Therefore, the petitioner filed E.P.No.176 of 2009 and took possession of the suit property from the said Swaminathan and Ayyappan. The said Swaminathan and Ayyappan set up the present respondent to harass the petitioner and filed the present suit. The petitioner filed written statement narrating all the facts, which were not considered by the Trial Court.

5. The contention of the learned counsel for the petitioner is that the suit filed by the respondent is barred by principles of *res judicata* on the ground that the petitioner's tenants viz., Swaminathan and Ayyappan having suffered a decree against them and after the petitioner taking possession of the suit property in E.P.No.176 of 2009, set up the present respondent to file the present suit. It is not the case of the petitioner that Swaminathan and Ayyappan filed suit and they are the plaintiffs in the present suit. In view of the same, there is no merits in the contention of the learned counsel for the petitioner.

6. From the facts of the present case, the contention of the learned counsel for the petitioner that the suit is not maintainable on the principles of *res judicata* can be considered only after trial.

7. In the result, the Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CSII)

/True Copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



To

The Principal District Munsif,
Kumbakonam,
Thanjavur District.

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COPY TO:

THE SECTION OFFICER, V.R.SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

+1cc to Mr.M.MOHAMED SHARBUDEEN Advocate Sr.No. 2966

JAM/31.01.2017/PM-PN/SAR 3/ 3P-4C

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