



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (MD).Nos.205 and 206 of 2017 and
CMP (MD).No.917 of 2017 in CRP (MD).No.205 of 2017

Soosai Mariyayee

Rep. by her

Power holder Vasantha

: Petitioner in both CRPs/Defendant

Vs.

Johnson

: Respondent in both CRPs/Plaintiff

Prayer in CRP.205 of 2017 : This Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records in the order and decreetal order dated 24.09.2016 made in I.A.No. 404 of 2016 in O.S.No.469 of 1997 on the file of the Principal District Munsif, Nagercoil and set aside the same.

Prayer in CRP.206 of 2017 : This Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records in the order and decreetal order dated 21.11.2016 made in I.A.No. 654 of 2016 in O.S.No.469 of 1997 on the file of the Principal District Munsif, Nagercoil and set aside the same.

For Petitioner : Mr. C. Dhanaseelan
For respondent : Mr.M.P. Senthil

O R D E R

CRP(MD).No.205 of 2017 is filed to call for the records in the order and decreetal order dated 24.09.2016 made in I.A.No. 404 of 2016 in O.S.No.469 of 1997 on the file of the Principal District Munsif Court, Nagercoil and set aside the same.

CRP(MD).No.206 of 2017 is filed to call for the records in the order and decreetal order dated 21.11.2016 made in I.A.No. 654 of 2016 in O.S.No.469 of 1997 on the file of the Principal District Munsif Court, Nagercoil and set aside the same.

2. The petitioner is the defendant in the suit in O.S.No.469 of 1997 on the file of the Principal District Munsif Court, Nagercoil. The respondent, who is the plaintiff filed suit for recovery of possession and for mandatory injunction, directing the petitioner to



remove all the constructions and structures in the suit property and for other reliefs.

3. The petitioner filed CTOP.No.1 of 1998 under Section 9 of the Tamil Nadu City Tenants Protection Act. In both the suit and CTOP, joint trial was commenced. The respondent plaintiff was examined and his evidence was closed. The petitioner also let in evidence and she was examined in part. At that time, the petitioner filed I.A.No.487 of 2014 for a direction to decide CTOP.No.1 of 1998. The said interlocutory application was dismissed. Against that order, petitioner filed CRP(MD).No.1609 of 2014 before this Court and this Court, by order dated 02.09.2014, directed the trial Court to decide the CTOP at first. Subsequently, the said CTOP was dismissed, by order dated 28.06.2016. Against that order, the petitioner has filed CMA.No.6 of 2016, before the I Additional Sub Court at Nagercoil.

4. Now, the petitioner has filed present I.A.No.404 of 2016 to discard the oral evidence recorded in O.S.No.469 of 1997. The respondent filed counter and opposed the said application. The learned Judge considering the materials available on record, dismissed the application.

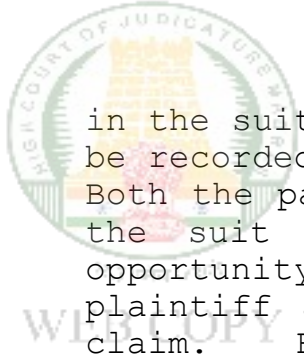
5. Against the said order of dismissal dated 24.09.2016, made in I.A.No.404 of 2016, the petitioner filed C.R.P.(MD)No. 205 of 2016.

6. The respondent filed I.A.No.654 of 2016 under Order 13 Rules 7 and 10 r/w. Section 151 of CPC, to replace the documents filed in CTOP.No.1 of 1998, as the same will be sent to the Appellate Court, for substituting the documents already filed earlier in the suit, which were originally marked as Exs.A1 to A16 in O.S.No.469 of 1997 and subsequently the same were marked as Exs.R1 to R16 in CTOP. According to the respondent, all the documents filed in the suit, which were marked and subsequently, which would be sent to the appellate Court. In the circumstances, the respondent filed I.A.No.654 of 2016, praying for substituting the documents already filed and marked in the suit in O.S.No.469 of 1997 and the said application was allowed.

7. Against the said order dated 21.11.2016, passed in I.A.No.654 of 2016, petitioner filed CRP(MD).No. 206 of 2017.

8. I have heard the learned counsels appearing on either side and perused the materials available on record.

9. As far as CRP(MD).No.205 of 2017 is concerned, evidence of the respondent was completed and petitioner's son was examined in chief and he was cross examined in full, when the joint trial was conducted. Subsequently, the CTOP was separately heard and decided. The contention of the counsel for the petitioner is that in view of the separate trial ordered by this Court, earlier evidence recorded



in the suit as well as in the CTOP must be set aside and evidence to be recorded afresh in the suit. The said contention has no merits. Both the parties have let in evidence to substantiate their case in the suit for recovery of possession. The Petitioner had an opportunity to cross examine the witness of the respondent / plaintiff as well as letting in his evidence to substantiate his claim. From the earlier order passed by this Court in CRP(MD). No.1609 of 2014, it is seen that this Court, in the earlier order in Civil Revision Petition, directed the trial court to dispose CTOP No.1 of 1998 at first. There is no direction ordering denova trial in the suit or to set aside evidence already recorded. The present Interlocutory Application is filed only to drag on the proceedings.

10. As far as CRP(MD).No.206 of 2017 is concerned, the respondent filed document in the suit in O.S.No.469 of 1997 and they were marked as Exs.A1 to A16 and subsequently, the said documents were marked as Exs.R1 to R16, in CTOP.No.1 of 1998. The petitioner filed an appeal in CMA.No.6 of 2016 against the said order of CTOP. The said documents already marked would be sent to the Appellate Court for consideration in the appeal. The respondent requires those documents to prove his case in the suit for ejectment.

11. In the circumstances, there is no illegality or irregularity in the order passed by the Court below warranting interference by this Court.

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

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif, Nagercoil.

+ 1 CC TO Mr.M.P.SENTHIL, ADVOCATE IN SR No. 5560
+ 2 CC TO Mr.C.DHANASEELAN, ADVOCATE IN SR No. 5373, 5374

TRP

TE/RR : 28/03/2017 : 3P/5C

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