

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2018

CORAM : THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P.(PD).No.1383 of 2018
and C.M.P.No.7400 of 2018

Christopher Holden

... Petitioner

Vs

1. Mary Josephine

2. Mavis Chitra

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order of the learned Subordinate Judge of Ootacamund in I.A.No.604 of 2017 in O.S.No.454 of 2015 dated 28.02.2018.

For Petitioner

: Mr.J.Franklin

ORDER

1. The defendant is a revision petitioner herein and the plaintiffs are the respondents. The brief statement of the pleadings may be useful for appreciating the short question involved in this case, and they are:

Mr.Harold Stephen is the husband of the first respondent and father

of the second respondent. According to the plaintiffs, Mr. Harold Stephen, since dead, was in need of some funds and accordingly, he handed over the possession of the suit property to the defendant and obtained a loan of Rs.5,00,000/- and an agreement was entered into between the parties that said sum would be repaid within period of 5 years. The interest payable by Harold Stephen was to be adjusted against the rent payable by the defendant for the occupation of the house. This was subsequently reduced to writing, and it was done at the instance of the defendant, who when prepared the document as a lease agreement, retained the original and handed over the photocopy of the same to the plaintiffs. On the expiry of 5 years period mentioned, the legal representatives of Harold Stephen offered to repay the loan but the defendant would not agree to the same. Hence, they laid a suit for recovery of possession of the property.

2. The written statement in the suit was filed wherein the defendant disputed the contention of the plaintiff and it was alleged that the nature of the transaction alleged was one of the lease of a building, to which, the provisions of the Tamil Nadu Buildings (Lease & Rent) Control Act, 1960.

3. The trial of the case has commenced and the affidavit of chief

examination of the plaintiff has been filed. The plaintiff has to be cross-examined. At this juncture, the revision petitioner had filed I.A.No.604 of 2017 for rejecting the plaint under Order 7 Rule 11 CPC on the ground that the plaint on the face of it, does not disclose a cause of action. This was resisted by the respondents. Dismissing the said application, the trial court has held that what is involved in the suit is the character of the document styled and that it could be decided only during trial of the suit. This order is now under challenge.

4. The learned counsel for the revision petitioner/defendant would bring to the notice of the Court that a legal notice was issued by the respondents prior to the filing of the suit, wherein they had alleged that the defendant was a tenant. This notice is part of the plaint and necessarily has to be taken as part of the plaint as well. If so considered, then it is a case where the revision petitioner themselves have admitted that the nature of her relationship between the parties as landlord and tenant and this must be adequate enough to reject the plaint.

5. After carefully considering the submission of the learned counsel for the petitioner, this Court finds it difficult to accept the line of

contention put forward by the counsel. It is settled law that for rejecting the suit under Order 7 Rule 11, the Court ought to look into the pleadings and only if the pleadings as stated does not disclose a cause of action the Court may proceed to reject the suit. As to documents filed along with the plaint, though may be termed as part of the pleadings it is essentially evidentiary in character. Even otherwise, if there are two versions available in the pleading, still the Court cannot proceed and reject the plaint on that score. After all, alternative and inconsistency pleading are legally permitted and the parties to suit are only put to election during trial.

6. In conclusion, this Court finds that the order of the learned Subordinate Judge, Ootacamund, in I.A.No.604 of 2017 in O.S.No.454 of 2015 dated 28.02.2018 is in order and does not call for any interference at this stage. Accordingly, this Civil Revision Petition is dismissed and the trial court is directed to expedite the trial proceedings as per law. No costs. Consequently, connected miscellaneous petition is closed.

16.04.2018

Index:Yes/No
ssn

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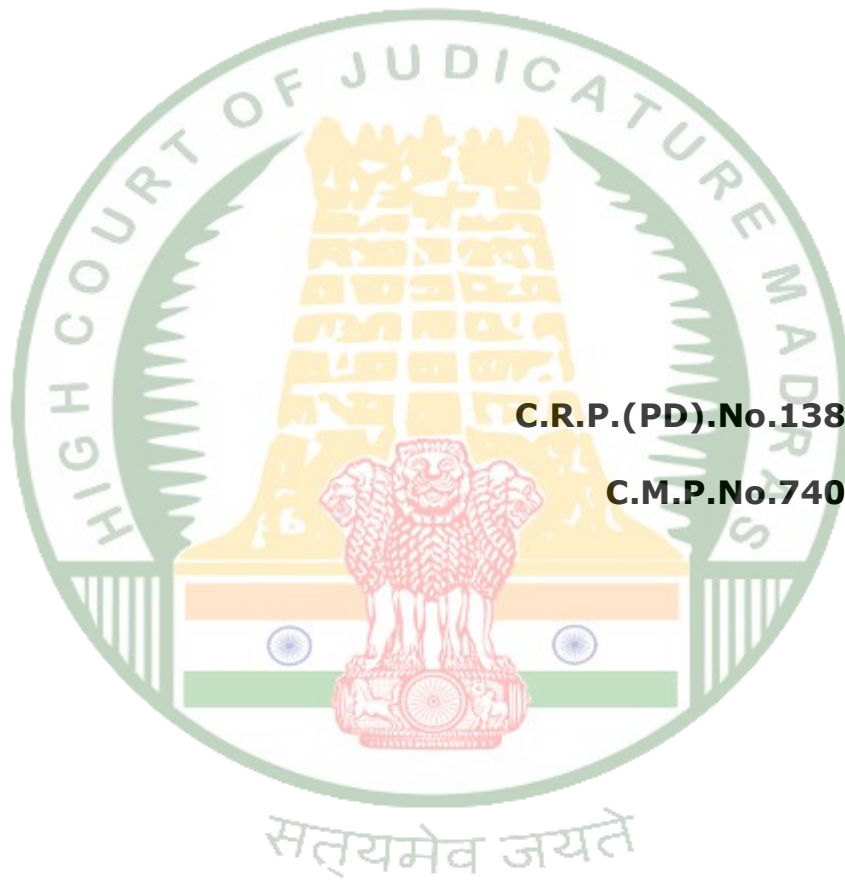
The Subordinate Judge,
Ootacamund.



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N.SESHASAYEE, J.,

ssn



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