

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 28.11.2018****CORAM****THE HONOURABLE MR. JUSTICE M.S. RAMESH****CRP.(NPD)No.4573 of 2015**

M.Gunasekaran

...Petitioner

V.

Jagadeesan

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., praying to set aside the judgment and decree dated 19.08.2015 passed in Ejt. S. No.9 of 2013 on the file of the learned III Judge, Small Causes Court, Chennai.

For Petitioner : Mr.P.M.Bakthavatsalam

ORDER

सत्यमेव जयते

The order under challenge, directs the petitioner/defendant to vacate and hand over the vacant possession of the 'B' schedule property within a period of two months. Though Section 41 of the Presidency Small Cause Courts Act, 1882 provides for an appeal against the order, the present civil revision has been filed, apparently,

by invoking Section 96 (4) of the CPC., which debars appeal against judgment from the Small Causes Court.

2.Heard Mr.P.M.Bakthavatsalam, learned counsel for the petitioner.

3.The case of the respondent/plaintiff is that the suit properties are self acquired properties of the respondent herein and that the petitioner herein, who is the defendant in the ejection suit was permitted to occupy the same as a licensee, till the revocation of the license. When the respondent herein had issued a notice to the petitioner calling upon him to quit and deliver vacant possession of the suit property, the same came to be returned with an endorsement as "refused". Hence the suit.

4.The respondent herein had filed six documents viz., Exs.A1 to A6 before the trial Court to substantiate that the property is his self acquired property and not a joint family property. Therein, he had taken a specific plea that the property was not a joint family property and that the relationship of licensor and licensee alone existed between the parties and as such, the suit filed under Section 41 of the

Presidency Small Cause Courts Act, 1882 was maintainable. Though the petitioner herein had examined himself as a witness, no documents were filed on his side.

5.The trial Court, by relying upon the title deeds in Exs.A1, A3 to A5 had come to the conclusion that the property was the self acquired property of the respondent/plaintiff and had disbelieved the plea of the petitioner herein that it was a joint family property. By relying upon Ex.A2 notice, the Court had also come to the conclusion that the respondent/plaintiff had sent a notice to the petitioner calling upon him to quit and deliver vacant possession and that the notice was deemed to have been served on the petitioner herein. By relying upon the judgment of the Hon'ble Apex Court, the trial Court had held that the relationship between the parties was that of a "gratuitous license" arrangement and therefore, the suit filed under Section 41 of the Presidency Small Cause Courts Act was held to be maintainable.

6.The learned counsel for the petitioner put forth his submissions mainly on two grounds:

i)That the suit itself was not maintainable under Section 41 of the Presidency Small Cause Courts Act, since the property involved

was a joint family property and that, there was no licensor and licensee relationship between the parties.

ii)The second ground raised is that a notice to quit and deliver is mandatory and that though he had specifically pleaded in the written statement that the respondent herein never gave any notice for quit and deliver vacant possession, there is no cause of action for filing the suit.

7.The learned counsel for the respondent, on the other hand submitted that, he had filed sufficient documents viz., Exs.A1, A3 to A6 evidencing that the properties are the self acquired properties of the respondent/plaintiff and the recitals in those documents evidences that the settlements were properly executed. He further relied upon the Judgment of the Hon'ble Apex Court reported in ***Civil Appeal Nos.6726-6727 of 2013 [Prabhudas Damodar Kotecha and others Vs. Manhabala Jeram Damodar and another]*** dated **13.08.2013** and another Judgment of the Bombay High Court reported in ***Suit No.465 of 2011 [Premises Vs. Colin M Rebello of Mumbai Indian]*** dated **15.10.2013** and submitted that gratuitous permission would amount to a license and as such, the suit filed under Section 41 of the Presidency Small Cause Courts Act was maintainable.

8.The learned counsel would also submit that the petitioner herein was duly served with a notice to quit and deliver vacant possession of the licenced premises and since he had evaded service, the trial Court had come to the conclusion that the service was duly completed and thereby, there was no infirmity in the judgment and decree passed by the trial Court.

9.I have given careful consideration to the submissions made by the learned counsel for the petitioner.

10.Insofar as the ground raised by the learned counsel that the suit itself was not maintainable under Section 41 of the Presidency Small Cause Courts Act is concerned, it is the case of the respondent herein that the suit property was his self acquired property. In support of the said pleading in the plaint, the respondent had also produced Ex.A1/Sale Deed, which evidences that the property was purchased by him through a registered document. Pursuant to the purchase, the plaintiff had his name incorporated in the revenue and municipal records also. It is his specific plea that he was also put in possession of the suit property. Apart from Ex.A1, the plaintiff had also produced

Exs.A3 to A7, which are the certified copies of conveyance relating to the property. The petitioner herein had not chosen to file any document evidencing that the suit property was a joint family property.

11.It is the case of the respondent that he had permitted the petitioner herein to occupy the suit scheduled premises as a licensee, till such time the license is revoked. The petitioner herein, being the blood brother of the respondent herein, had also been occupying the suit property. The plaintiff/respondent herein had let in oral and documentary evidence to show that the petitioner herein along with his father had sold the suit property through Ex.A1, which is a registered sale deed. While that being so, the burden to prove that the suit property was a joint family property would shift on the petitioner herein. As stated earlier, there was absolutely no documents filed, to substantiate this aspect. As such, the trial Court had relied upon Ex.A1 and Exs.A3 to A7 and had come to the conclusion that the suit property was the self acquired property of the respondent herein. I do not find any reason to interfere with such a well founded finding.

12. Since the respondent herein had issued a legal demand notice under Ex.A2, calling upon the petitioner herein to quit and deliver vacant possession, it can be construed that such a notice has been issued to comply with the provisions of Section 41 of the Presidency Small Cause Courts Act. The petitioner herein had refused to receive the demand notice. It is the settled proposition of law that when a notice is returned with an endorsement "refused", the same would amount to a proper service of notice. A mere statement that the petitioner did not receive any notice to quit and deliver possession would not suffice in view of Ex.A2, being filed before the trial Court. Since the respondent herein is deemed to have sent the notice under Ex.A2 to the petitioner herein and also, it necessarily follows that the petitioner herein was occupying the suit premises under a gratuitous license arrangement.

13. The Bombay High Court in a decision in ***John Francis Anthony Gonsalves of Mummbai Indian Christian, the Executor named in the last Will of John Frederick Gonsalves and Charles Willibroad Gonsalves of Mumbai Indian Christian, the Executor named in the last Will of John Frederick Gonsalves V. Colin M***

Rebello of Mumbai Indian Christian [Suit No.465 of 2011 dated 15.10.2013] had relied upon a Full Bench decision and had come to the conclusion that the defendant, who is permitted to use the premises without payment of a license fee, will have to be considered as a "gratuitous licensee". The relevant portion of the said judgment reads as follows:

"30. Accordingly, the Hon'ble Chief Justice constituted a Full Bench to decide the issue, which rendered its decision in the case of Prabhudas Damodar Kotecha & Anr. Vs. Manharbala Jerman Damodar, reported in 2007 (5) Bom. CR-1. The Full Bench formulated the following questions :

i) Whether the expression "Licensee" used in section 41(1) in Chapter VII of PSCC Act, not having been defined therein, would derive its meaning from the expression "licensee" as used in sub-section (4-A) of section 5 of the Rent Act and/or whether the expression "licensee" used in section 41(1) of PSCC Act is a term of wider import so as to mean and include a "gratuitous licensee" also ?

ii) Whether a suit by a "licensor" against a "gratuitous licensee" is tenable before the Presidency Small Cause Court under section 41 of PSCC Act?.

31. The Full Bench considered the relevant provisions. The Full Bench analyzed and language and scheme of [section 41](#) of the Act. The Full Bench disapproved the reliance placed by the division bench on the marginal notes to construe the section. The Full Bench came to the conclusion that marginal notes to the section cannot be referred to for the purpose of construing the meaning of section when the language of the section is plain and simple. The Full Bench held that the function of a marginal note is only as a brief indication of the contents of the section and if the language Borey 22/34 spb/ s465-11nms787J.sxw employed in the section is clear, a contrary interpretation need not be placed upon by relying upon the marginal note. The Full Bench held that sub-section (1) of [section 41](#) of the Small Cause Courts Act is clear. The disjunctive 'or' used in sub-section (1) indicates that Small Cause Court will have jurisdiction to entertain all suits and proceedings between 'licensee' and 'licensor'. The Full Bench has held that the legislation has not used any conjunctive in sub section (1) of [section 41](#), purposefully making its intention clear. The Full Bench categorically held that the provisions of [section 41\(1\)](#) does not specifically exclude 'gratuitous licensee'.

45. The need to avoid multiplicity of proceedings and that the litigation should come to an end at the earliest is more true in case of a dispute between family members. When a family member continues to reside in the premises in spite of the objection of others such dispute needs to be resolved at the earliest. Such family strife over the premises affect all, not only in respect of the property rights but emotionally as well, which may lead several undesirable consequences. Such family dis-harmony is not in the interest of the society. The purpose of giving a broader meaning to the term 'license' and to invest the Small Cause Court with exclusive jurisdiction so as to avoid multiplicity of proceedings applies with more force in case of family members. It is not possible to carve out the case of the defendant out of the definition of gratuitous licensee. If a defendant who is permitted to enter and use the premises fits the criterion to be called gratuitous licensee, then excluding jurisdiction of the Small Causes Court only on the ground that he was a member of the family, will defeat the legislative policy of investing wide jurisdiction to the Small Causes court in the matter of all licencees. The anxiety of the legislature is to avoid multiplicity of proceedings, does not warrant such micro classification, on the

contrary applies with more force in cases such as the present one.

46. In the result, I am of the opinion that in the present case where the defendant, who was permitted to use the premises will have to be considered as a 'gratuitous licensee' on the basis of the averments made in the plaint itself. Once this conclusion is reached, the Small Cause Court being the only court to try all such suits against gratuitous licensee, the civil court will not have jurisdiction. The preliminary issue which is framed will have to be answered in favour of the defendant. Accordingly, it is held that the defendant has proved that this court has no jurisdiction to try and dispose of the suit. In view of the decision on the preliminary issue, the notice of motion filed by the Plaintiffs cannot be taken up. Notice of Motion is accordingly rejected, as not maintainable."

14. In the present case, since the petitioner herein had failed to prove that the suit property was a joint family property and that there was no license arrangement between the parties, it can only be concluded that the suit filed under Section 41 of the Presidency Small Cause Courts Act was well maintainable.

15. Insofar as the second ground raised, that there was no cause of action in filing the suit since notice was not issued to the petitioner herein is concerned, the respondent had filed Ex.A2, legal demand notice before the trial Court to show that such a notice to quit and deliver vacant possession was sent and the same was refused by the petitioner herein. The oral evidence also supports this aspect of notice being sent. As such, the trial Court was justified in coming to the conclusion that Ex.A2/notice was served on the petitioner herein and consequently, it follows that the same gave rise to a cause of action for filing the present suit.

16. It is a well settled principle that the High Court, while exercising its revisional powers, would not normally reverse the finding of fact as recorded by the Courts below, unless such findings are recorded without any legal evidence or misleading of evidence or suffers from legal infirmity or is perverse. None of these exceptions for interference are available in the instant case and as such, the impugned findings does not require interference.

17.In the result, I do not find any infirmity in the judgment and decree passed by the trial Court in Ejectment Suit No.9 of 2013 dated 19.08.2015. Hence, the Civil Revision Petition stands dismissed. No costs.

28.11.2018

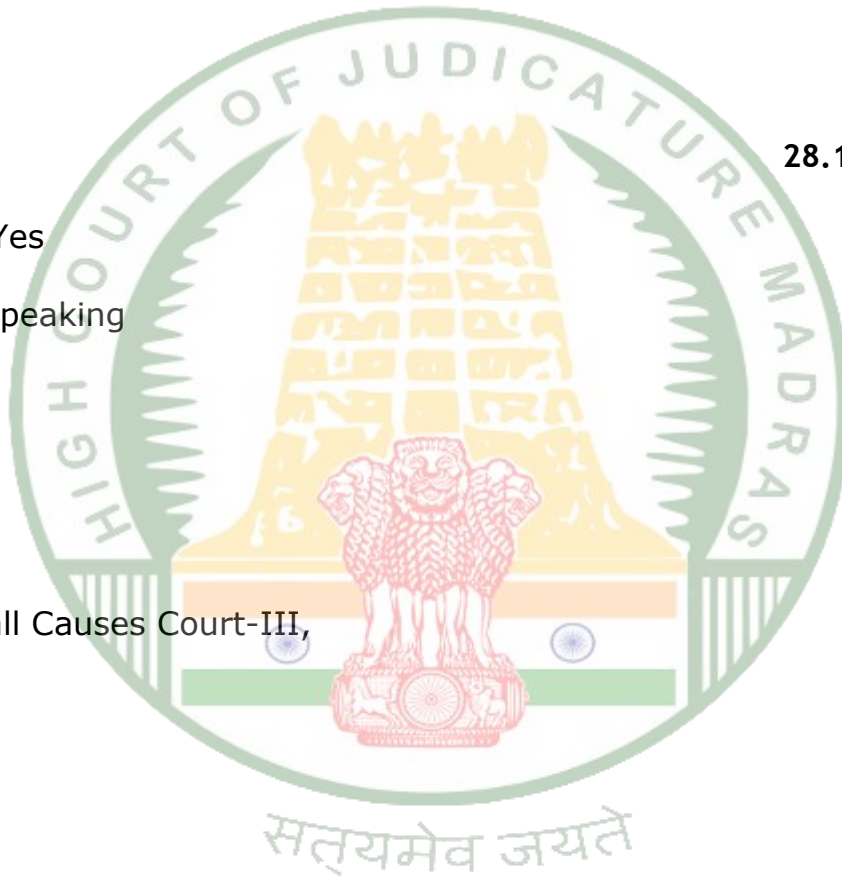
Index : Yes

Order :Speaking

DP/dh

To

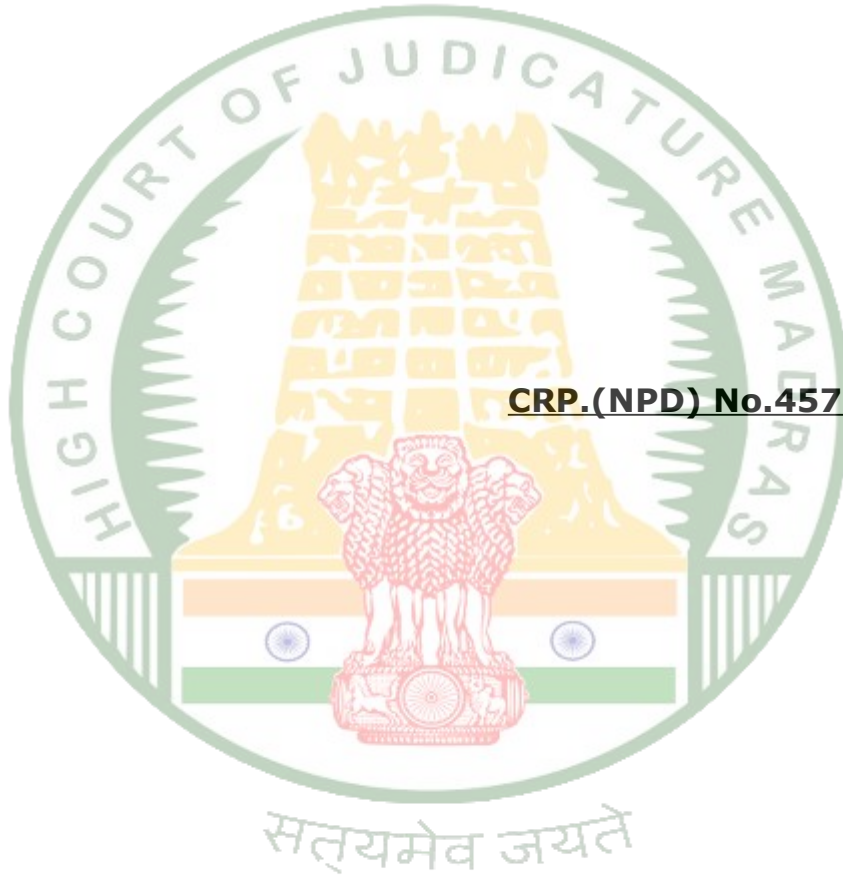
The Small Causes Court-III,
Chennai.



WEB COPY

M.S.RAMESH. J,

DP/dh



CRP.(NPD) No.4573 of 2015

WEB COPY

28.11.2018