

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2018

CORAM :

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

C.R.P.(PD).No.5131 of 2011

and

M.P.No.1 of 2011

Kerala Jewellers

... Petitioner

Vs

V.Narayanan

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the Judgment and Decree dated 29.10.2011 passed in I.A.No.8062 of 2010 in O.S.No.870 of 2008, on the file of the XVI Assistant City Civil Court, Chennai.

For Petitioner : Mr.P.B.Balaji

For Respondent : Mr.M.Lalbagadur

ORDER

The 7th Defendant in O.S.No.870 of 2008 on the file of the XVI Assistant Judge, City Civil Court, Chennai, has come forward with this revision petition under Article 227 of the Constitution of India.

2. The respondent in this case has filed the suit in O.S.No.870 of 2008 for (a) a decree for permanent injunction against the defendants 1 to 3 not to interfere with his possession; and (b) a decree for eviction against defendants 4 to 7 and others who claims interest over the suit property.

2.1. The suit was valued at Rs. 1000/- under Section 27(A) of the Tamil Nadu Court Fee and Suit Valuation Act whereas the relief (B) was valued at Rs.12,000/- being the assessed annual rental and paid court fee at Rs.900/- under Section 43 of the Tamil Nadu Court Fee and Suit Valuation Act.

3. The defendants have filed their written statement. While so, the 7th defendant had filed I.A.No.8062 of 2010 to reject the plaint under Order VII Rule 11 C.P.C., on the ground that the Court fee has been grossly under-valued. The respondent has filed his counter. However, this petition came to be dismissed by the trial court on 06.02.2011 wherein, it has relied on an Order of this Court in W.P.No.22453 of 2010.

4. Heard Mr.P.B.Balaji, learned counsel for the petitioner and Mr.M.Lalbagadur, learned counsel for the respondent.

5. The learned counsel for the petitioner submitted that the Court below has not addressed the issue raised by the petitioner vis-a-vis the valuation of the 2nd prayer seeking eviction of the revision petitioner from the suit property. As to the order in W.P.No.22453 of 2010 which the trial court has relied on is concerned, the 1st petitioner is not a party to the proceeding and even the prayer in the order is directed essentially against the Corporation not to allot the constructed premises to the hawkers pending the proceedings in R.C.O.P.No.2216 of 2009 and the present suit in O.S.No.870 of 2008. This Order has little to concern with the alleged under valuation of the suit and on this issue, impugned order is a non-speaking order.

6. Per contra, it is argued by the learned counsel for the respondent, that the revision petitioner claims right only as a tenant and hence, the Court fee is properly paid under Section 43(2) of the Tamil Nadu Court Fee and Suit Valuation Act. He also says that the petitioner had hurriedly filed this petition only to stall the trial that was scheduled to

commence.

7. A perusal of the impugned order indicates that while disposing I.A.No.8062 of 2010, the lower court has not pointedly addressed the issue. A perusal of the copy of the order in W.P.No.22453 of 2010, which is made available by the counsel for the petitioner in the typed set of papers, also reflects that the issue involved in that proceeding has little in common with the one raised by the revision petitioner. He also argued that the trial of the suit was completed and the suit itself is posted for final arguments.

8. Taking into consideration the present stage of the proceedings, this Court considers it is just and appropriate that the issue raised by the 7th defendant in I.A.No.8062 of 2010 be taken up as an issue in the suit itself, and the Court below is directed to decide the same without any loss of further time. सत्यमेव जयते

9. With the above direction, this civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

03.04.2018

Index:Yes/No

ssn

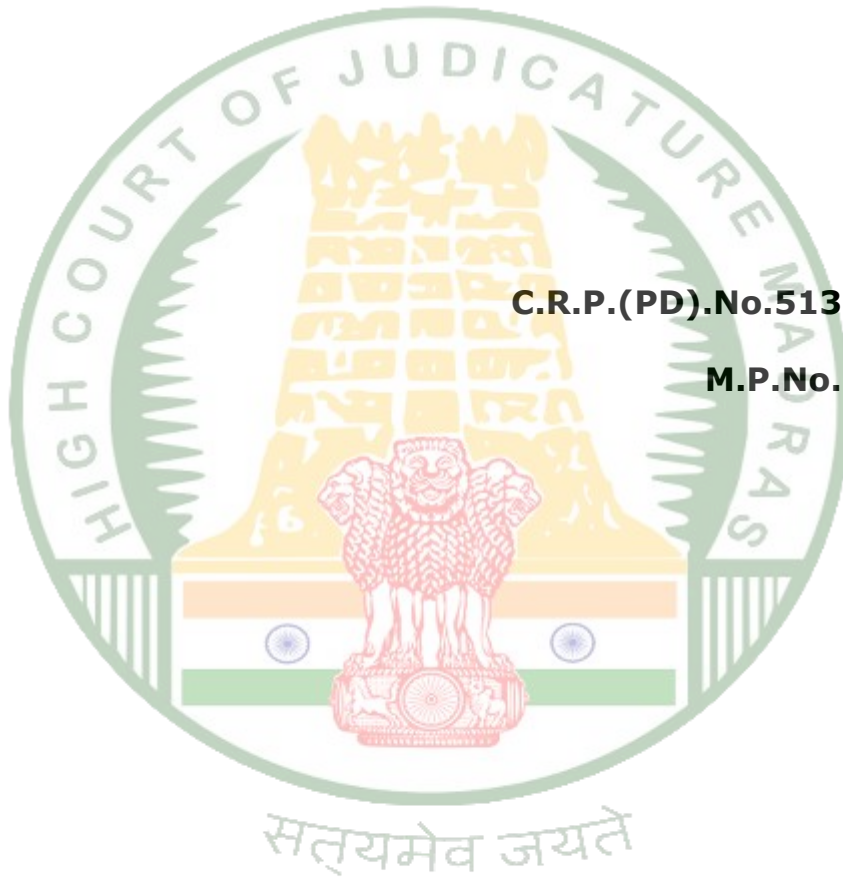
To:

The XVI Assistant Judge,
City Civil Court,
Chennai.



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N.SESHASAYEE, J.,
ssn



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