

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2018

CORAM

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.774 of 2014
and M.P.Nos.1 & 2 of 2014

V.C.Gnanasekaran .. Petitioner

Vs.

S.Manugandhi @ Rajeswari .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off O.S.No.10 of 2014 from the file of the Subordinate Judge, Kanchipuram.

For Petitioner : Mr.A.K.Sriram

For Respondent : Mr.M.Sriram

ORDER

This Civil Revision Petition is filed to strike off O.S.No.10 of 2014 from the file of the Subordinate Judge, Kanchipuram.

2.The petitioner is defendant and respondent is the plaintiff in

O.S.No.10 of 2014 on the file of the Subordinate Judge, Kanchipuram. The respondent filed the said suit against the petitioner for permanent injunction restraining the petitioner from interfering with her peaceful possession and enjoyment of the suit property until she is evicted by due process or law. According to the respondent, her husband, A.M.Shanmugavelu is owner of the property and he was in possession and enjoyment of the same till his lifetime by obtaining the electricity service connection and paying all the statutory dues to the Government. He died on 25.01.2001 intestate leaving the respondent, his sons and daughters namely, S.Rathinavel, S.Jayavel, S.Yamuna Devi and S.Santhanalakshmi. The respondent and her children inherited the suit property by lease agreement dated 01.07.2011 with her eldest son S.Rathinavel. The respondent became a tenant under her son and she is in possession of the suit property by paying a sum of Rs.3000/- as monthly rent to her eldest son. Her eldest son, S.Rathinavel availed a loan from the State Bank of India, Ayyampettai branch by mortgaging the suit property and another property. The respondent, other son and daughters are not borrowers or guarantors for the amount borrowed by the eldest son, S.Rathinavel. The State Bank of India initiated SARFESI proceedings against her eldest son, S.Rathinavel for non-payment of the loan. The suit property was sold

by public auction. The petitioner was a successful bidder. On 09.01.2014, the petitioner with the help of rowdy elements, tried to evict the respondent forcefully from the suit property. The same was prevented by the respondent. The bank, after public auction can take only symbolic possession and respondent can be evicted only as per the provision of Tamilnadu (Lease and Rent Control) Act. Along with the suit, the petitioner also filed I.A.No.43 of 2014 for interim injunction and interim injunction was granted.

3.The petitioner filed the present Civil Revision Petition to strike off the plaint in O.S.No.10 of 2014 on the file of the Subordinate Court, Kanchipuram on the ground that when the bank has taken SARFESI proceedings under SARFESI Act, no civil suit is maintainable as per Section 34 of the SARFESI Act. The respondent in collusion with her son, filed collusive suit. The borrower through respondent, who is his mother is trying to achieve what he could not directly achieve. Both the respondent and the borrower are living in the same house. The documents filed by the respondent shows that she is the mother of the borrower, but she claims to be the tenant under the borrower and prayed for striking off the plaint.

4. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

5. The respondent filed suit for permanent injunction restraining the petitioner from evicting her except due process of law. The respondent has alleged that on 09.01.2014, the petitioner along with rowdy elements, tried to evict her forcefully by unlawful means. According to the respondent, the petitioner can evict her only by following the procedure contemplated under the Tamilnadu (Lease and Rent Control) Act. On the other hand, it is the contention of the petitioner that suit itself is not maintainable in view of Section 34 of SARFESI Act. The contention of the petitioner that present suit is not maintainable is untenable. The respondent is not challenging the auction of the bank taken under the SARFESI Act against the borrower. The contention of the respondent is that she can be evicted only by due process of law. The respondent has sought the relief of injunction that she can be evicted by due process of law. In view of the said relief this is not a fit case to exercise extraordinary discretionary power under Article 227 of the Constitution of India, especially in view of the

allegation of the respondent that petitioner is trying to evict her by illegal means. For the above reasons, the Civil Revision Petition is dismissed as devoid of merits. It is open to the petitioner to take through bank appropriate proceedings for eviction of the respondent as per law if he is entitled to do so.

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

25.01.2018

Index :: Yes/No
Speaking Order / Non-Speaking Order
gsa

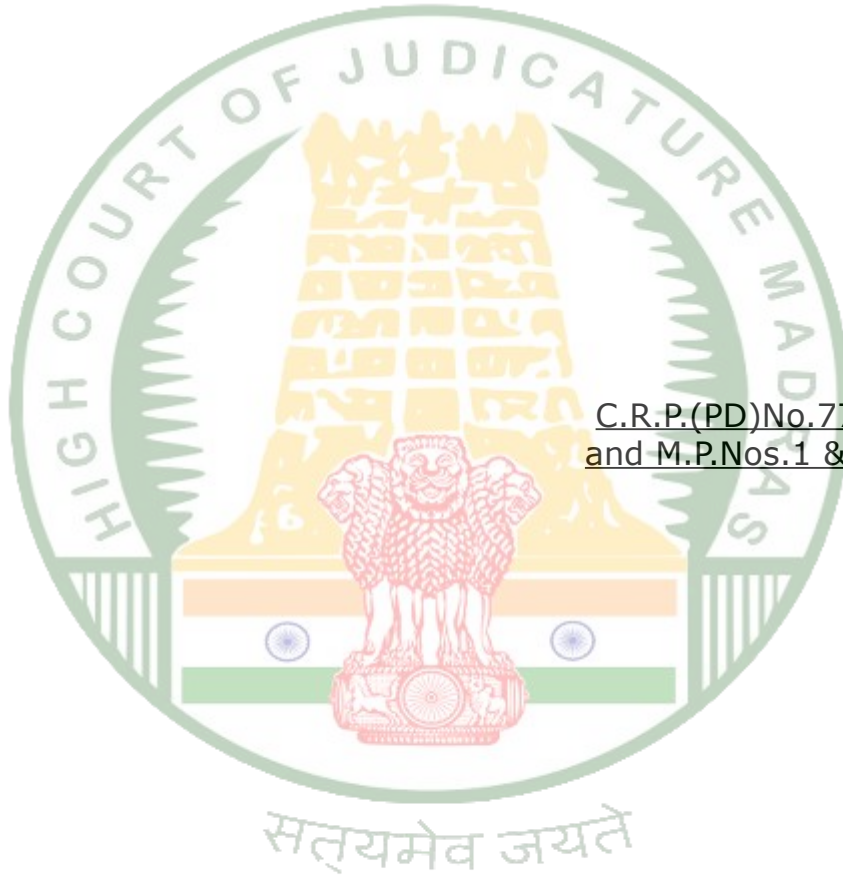
To

The Subordinate Judge,
Kanchipuram.



WEB COPY

V.M.VELUMANI,J.
gsa



C.R.P.(PD)No.774 of 2014
and M.P.Nos.1 & 2 of 2014

WEB COPY

25.01.2018