

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

**C.R.P.(PD).No. 78 of 2019
and
C.M.P.No. 639 of 2019**

1. Sivaraman
2. Sivashanmugam ... Petitioners

-Vs-

1. Gilles Mariadossou
2. Sivalingam ... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India praying to against the Order and Decreetal Order passed in I.A.No. 574 of 2015 in O.S.No. 2252 of 2014, on the file of I Additional District Munsif, Puducherry, dated 11.07.2018.

For Petitioners : Mr.V.Raghavachari

ORDER

This Revision Petition has been filed against the fair and decreetal order passed in I.A.No. 574/2015 in O.S.No. 2252 of 2014 by the I Additional District Munsif, Puducherry by order dated 11.07.2018.

2. Before the Court below, the suit was filed by the first respondent herein for eviction of the defendants 2 & 3, who are the present Revision Petitioners herein. In the said suit, the defendants 2 & 3, who are the Revision Petitioners herein, had filed an application under Order VII Rule 11 (d) of CPC for rejection of plaint as barred under the provisions of the Pondicherry Buildings (Lease and Rent Control) Act, 1969. The said application was heard and was rejected by the Court below through the impugned order and against the said impugned order, the present Revision Petition has been filed.

3. Heard Mr.V.Raghavachari, learned counsel for the Revision Petitioners. There is no representation for the respondents, though notice have been served on them and their names have been printed in the cause list.

4. It is the case of the Revision Petitioners that they are partners of M/s.Kathiravan Furniture Sales Center and the suit property belongs to the 1st respondent/plaintiff and the revision petitioners are the tenants and the plaintiff leased out the suit property for commercial purpose and there has been tenancy from the year 2003 and accordingly, they are in

peaceful possession and enjoyment of the suit property and they are protected by the provisions of the Pondicherry Buildings (Lease and Rent Control) Act and therefore, if at all, there is any eviction, the respondents/landlord should have adopted due process of law under the above said provisions, but without adopting the same, they have tried to evict them in an unlawful manner and hence the Revision Petitioners/Tenants have filed a suit for bare injunction in O.S.No. 529 of 2014.

5. The present plaintiffs/respondents cannot file a suit for bare injunction to evict and handover the possession of the property, which is against the bar under Section 10 of the Act, since the Rent Controller is empowered to pass eviction order. Accordingly application under Order VII Rule 11(d), was filed to strike off the plaint.

6. Since the said application has been rejected without considering the issues, the Revision Petitioners/Defendants are constrained to file the present Revision Petition.

7. I have gone through the materials placed before this Court including the impugned order.

8. Before the Trial Court, neither the applicant nor the 1st respondent/plaintiff have adduced any evidence. As there has been no oral and documentary evidence on both sides, only oral arguments seems to have been advanced before the Trial Court.

9. Having considering the arguments, the trial Court has come to the conclusion that the question whether the Revision Petitioners/Defendants were the tenants, under the tenancy agreement, can be decided only after letting in evidence by the defendants.

10. The Learned Judge has also stated that the suit was filed by the 1st respondent/plaintiff on the ground that there has been a license which was given to the licensee i.e the Revision Petitioners/defendants by the plaintiff/1st respondent and the same has expired. Therefore, once the license is expired, the period is over, then the defendants/licensee have no right to continue to be in possession of the property. Therefore, in order to evict them, the suit has been laid and

there has been no relationship between the landlord and the tenant as of now.

11. Based on these aspects and the averments made in the affidavit filed in support of the petition, the learned Judge has rightly held in the impugned order dated 11.07.2018, only after the evidences let in by both sides, the present application for striking of the plaint can be considered, since the said issue cannot be decided without any evidence on the side of the Revision Petitioners.

12. The relevant portion of the order of the learned Judge, which is impugned herein reads as follows;

" It is clear that the suit is filed as if the 1st defendant is the licensee and there is no privity of contract between the plaintiff and the defendants No.2 & 3. This Court is of the considered opinion whether the petitioners herein are tenants as alleged by them or the 1st defendant is the licensee as alleged by the plaintiff can be decided only after full trial. It is not admitted case of the plaintiff that the petitioners/defendants No.2 & 3 are tenants. At this stage, it cannot be held that the petitioners are tenants only based on their allegations in the affidavit. For deciding application for rejection of plaint, the plaint averments and the documents filed along with the plaint alone are germane.

At this stage, the defence cannot be considered. Hence, this Court holds that the suit cannot be held as barred under the provisions of the Pondicherry Buildings (Lease and Rent Control) Act 1969 at this stage without trial of the suit, since it needs oral and documentary evidence on both sides. Therefore, this Court is not inclined to allow this application. The point is answered accordingly."

13. The said reasoning given by the learned Judge, in the considered opinion of this Court, is absolutely acceptable and sustainable. Admittedly, no evidence has been produced by the Revision Petitioners/defendants in the present Interlocutory Application before the Trial Court. Therefore, in the absence of any evidence, the case projected by the Revision Petitioners, as they are not licensees and there has been no relationship between the landlord and the tenant exists under the Act cannot be considered. Therefore, at present, the said application under Order VII Rule 11(d) of CPC filed by the Revision Petitioners/defendants cannot be decided in favour of the Revision Petitioners. Therefore, such a rejection has been made through the impugned order.

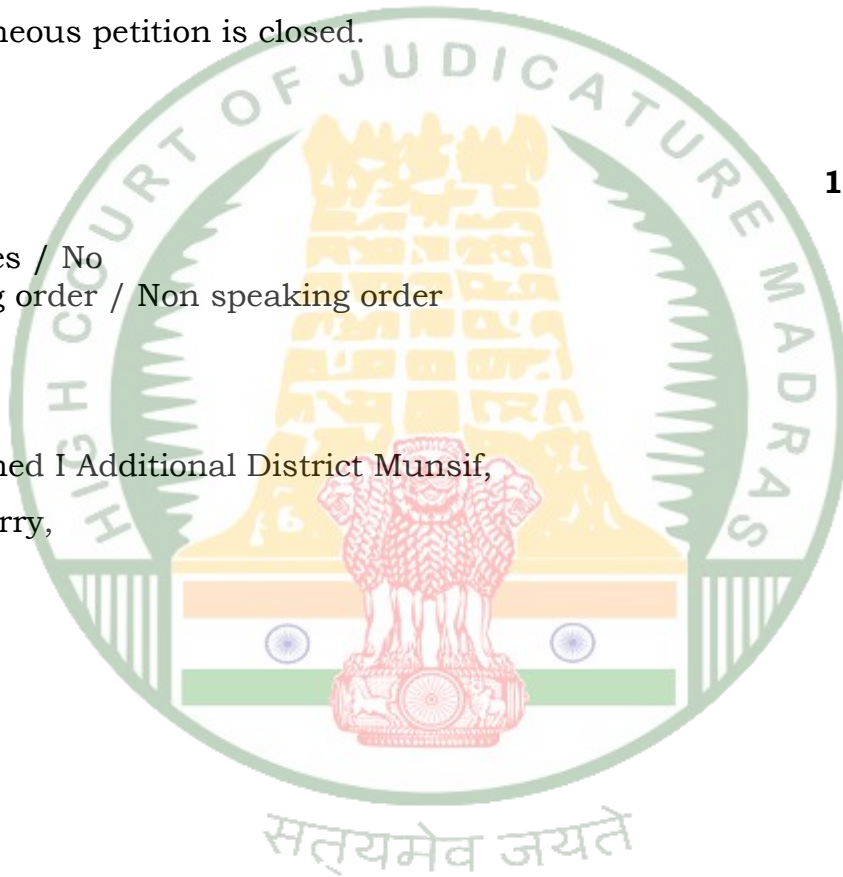
14. Accordingly, this Court feels that the revision petition deserves to be dismissed. Accordingly the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.11.2019

Index: Yes / No
Speaking order / Non speaking order
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To

The learned I Additional District Munsif,
Puducherry,



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R. SURESH KUMAR, J.

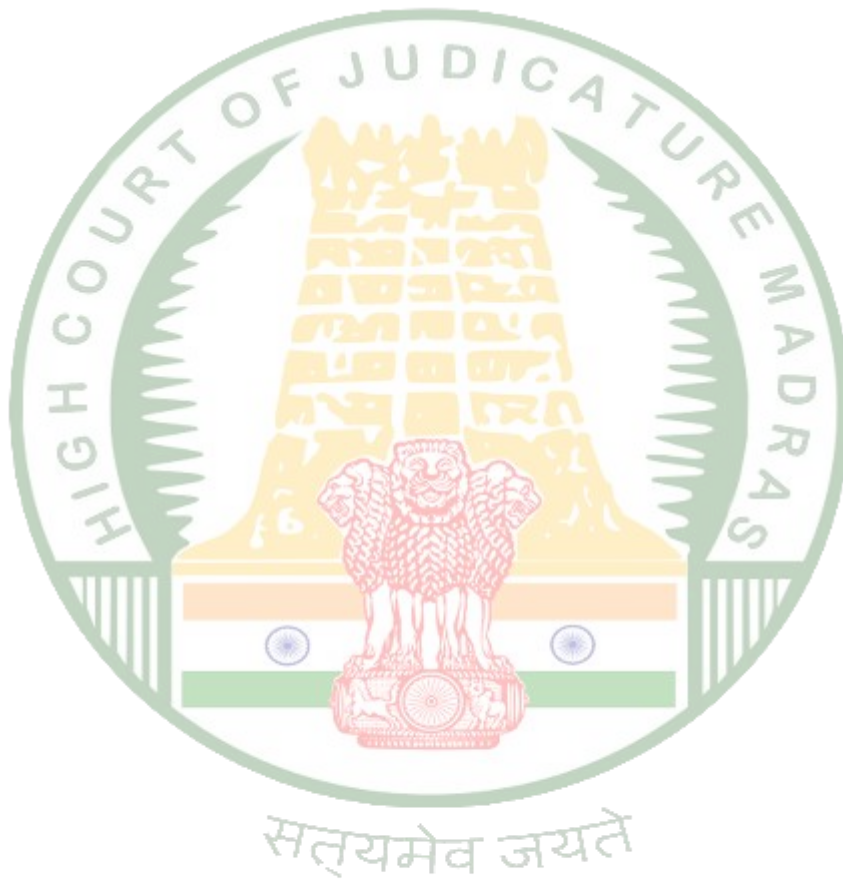
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