

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

C.R.P(PD)No.1886 of 2016

and

C.M.P.No.9877 of 2016

The Director,
Kalashetra Foundation
Kalakshetra Road,
Thiruvanmiyur,
Chennai-600 041.

..Petitioner

-Vs-

1. M. Lakshmi
2. S.Sivasankaran
3. S.Bhuvaneswari
4. The Tahsildar,
Mylapore-Triplicane Taluk,
Chennai-28

..Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, praying against the order and decree dated 19.02.2016 passed by the XV Assistant City Civil Judge, Chennai in I.A.No.15581 of 2015 in O.S.No.5950 of 2013.

For Petitioner : Mr.Menon

For Respondents : Mrs.R.Anbarasi

for Mr.N.A.Kareem For R1 to R3

ORDER

The order under challenge in the present revision is rejection of the petitioner's application filed under Order XII Rule 6 of C.P.C., seeking for dismissal of the suit.

2. It is the case of the petitioner herein/first defendant that the plaintiffs had admitted in their plaint as well as in the oral evidences of P.W.1 and P.W.2 that they are not in a possession of the property and as such they should not be put to the ordeal of facing the trial.

3. In view of such an admission that the plaintiffs are not in possession of the property and when the plaint averments as well as the oral evidences of P.W.1 and P.W.2 goes to show that the defendants are in possession of the property, the prayer for injunction cannot be granted and therefore, the suit requires to be dismissed.

4. To Substantiate this aspect, the learned counsel for the petitioner relied upon various judgments of the Hon'ble Apex Court as well as this Court.

5. The learned counsel for the respondents on the other hand would

submit that a mere truncated portion of the evidence may not entitle the petitioner herein to invoke Order XII Rule 6 of C.P.C.

6. According to the learned counsel for the petitioner, the suit property is a vast area and the extent of occupation referred to in the plaint has not been determined. If at all, the petitioner is of the view that they are in occupation of the property, it is always open to establish the same during the course of trial and arguments. By reiterating the reasons given by the trial Court rejecting the petitioner's application, the learned counsel sought for dismissal of the suit.

7. Order XII Rule 6 of C.P.C provides for passing of the judgment on admissions made either in the pleadings or otherwise, at any stage of the suit.

8. "The term admissions" referred to under Order XII Rule 6 of CPC would necessarily admissions which are unambiguous, categorical and assertive, so as to reveal that, the relief sought for in the suit cannot be granted in view of such admissions or the relief has to be granted in view of such admissions made by the party concerned.

9. In the instant case, the relief sought for are two fold. The

plaintiffs have sought for negative injunction restraining the defendants from using the suit property. The second relief sought for is a mandatory injunction for demolishing the stone wall structure at the entrance of the suit property allegedly put up by the first defendant. When the petitioner seeks for dismissal of the suit itself, it is impediment that he has to establish before the trial Court about the unambiguous and categorical admissions so as to disentitle the plaintiffs from getting any relief before the trial Court.

10. A bare reading of the averments in the plaint would show that the plaintiffs are alleged to have a right over the suit properties and that they have stated that the respondents are encroaching upon the suit property and in view of the same has sought for a negative injunction. Likewise, on the basis of their allegations of right over the property, they have sought for a mandatory injunction to have the wall removed. The oral evidences of the P.W.1 and P.W.2, when read as a whole, does not disclose an admission viz-a-viz, the relief of mandatory injunction is concerned. As such, it cannot be said that the suit requires to be dismissed based on these statements in the pleadings, as well as the oral evidences of P.W.1 and P.W.2.

11. The decisions relied upon by the learned counsel for the petitioner reported in

1. **2010 4 SCC 753 (Karam Kapahi Vs. Lal Chand Public Charitable Trust)**

2. **AIR 1974 Mp 75 (Shikharchand & Others Vs. M/s.Bari Bai & Others)**

3. **2000 7 SCC 120 (Uttam Singh Duggal & Co. Ltd Vs. United Bank of India and others and**

Judgment S.A.No.537 of 2006 dated 17.12.2014 (Chinnammal Vs. Valliammal) passed by Hon'ble Mr.Justice R.Mahadevan (Madras High Court) to substantiate the proposition that the plaint is liable to be rejected based on the pleadings, is not a proposition which is in dispute. As a matter of fact, whenever an application is filed under Order XII Rule 6 of CPC based on certain categorical admission in the pleadings, the trial Court is required to act on certain applications and pass a judgment, at any stage of the proceedings. But what is required is as to whether the present admissions are sufficient enough to be construed as a submission to the decree which requires a judgment to be passed immediately.

12. In my view, these admissions require further deliberations during the course of trial. As such, I do not find any infirmity in the findings of the trial Court in rejecting the petitioner's application under Order XII Rule 6 of CPC.

13. It is made clear that all the observations made in this order are only for the purpose of answering the various grounds raised by the parties and that the trial Court shall not cite them as precedent or rely on any of the findings made herein and that the Court shall endeavour to dispose of the suit proceedings entirely on the pleadings and other evidences on record, on its own merits.

14. With the above observations, the Civil Revision Petition stands disposed of. Since the suit has been initiated in the year 2013 and the trial had also commenced, the trial Court shall endeavor to dispose of the suit as expeditiously as possible, in any event, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

30.01.2019

Index: Yes/No

Internet: Yes/No

rli/dh

To

WEB COPY

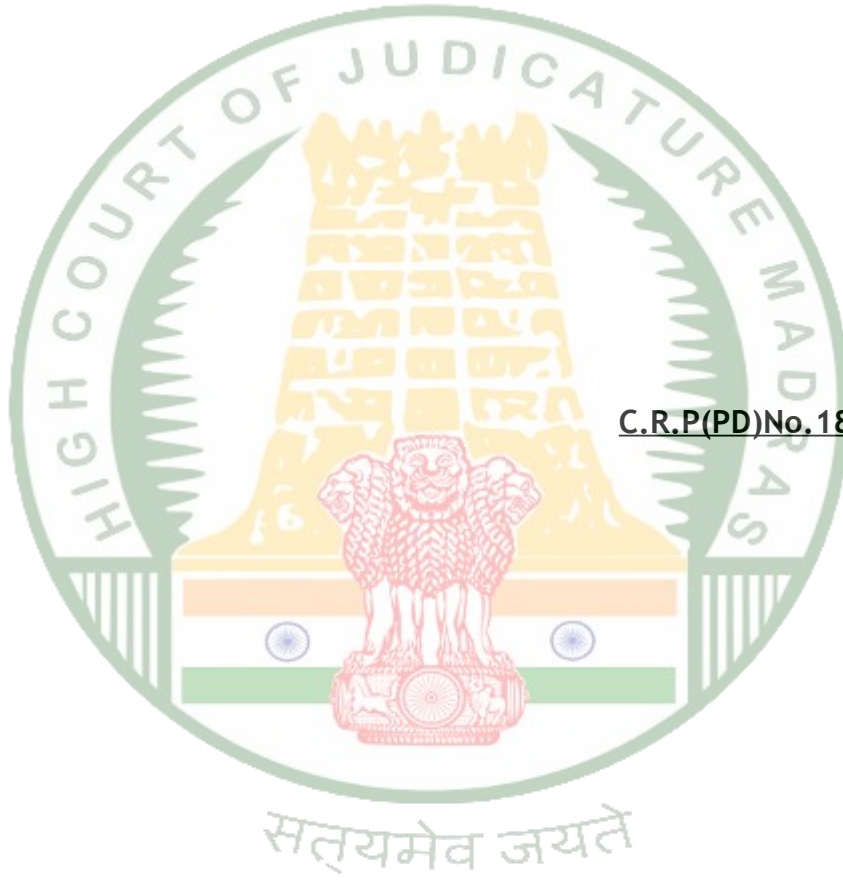
The XV Assistant City Civil Court



WEB COPY

M.S.RAMESH,J.

rli



C.R.P(PD)No.1886 of 2016

WEB COPY

30.01.2019