

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD)No.2882 of 2014

and

MP No.1 of 2014

K. Munusamy (Died)

2. Vanitha

3. Sivakumar

.... Petitioners

Petitioners 2 and 3 brought on record as Lrs of the deceased sole petitioner vide order dt. 8.7.2019 made in CMP No.14514 of 2019 in CRP No.2882 of 2014.

versus

Ameerunnissa Begum Sahiba

Endowment,

Rep. By its President.

.... Respondent

Civil Revision Petition filed under Section 115 of C.P.C. to set aside the order dated 18.07.2014 made in I.A. No.3997 of 2014 in O.S. No.3189 of 2011 on the file of First Assistant Judge, City Civil Court, Chennai and allow the above C.R.P.

For Petitioners

:Mr.R.Rajaramani

For Respondent

:Mr.Asif Ali

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 18.07.2014 passed by the First Assistant Judge, City Civil Court, Chennai in I.A. No.3997 of 2014 in O.S. No.3189 of 2011.

Brief facts leading to the filing of the instant Civil Revision Petition under Section 115 of the Civil Procedure Code.

The petitioner K.Munusamy was the original defendant in the suit O.S No.3189 of 2011 on the file of the First Assistant Judge, City Civil Court, Chennai. The suit was filed by the respondent to direct the defendant to quit, vacate and deliver vacant possession of the plot of land bearing No.13, Abdul Khader Street, Mount Road, Chennai – 600 002. after removing the superstructure standing thereon. A further direction was also sought to direct the defendant to pay arrears of rent for the period of July 2003 to September 2009 amounting to Rs.12,375/- and also to direct the defendant to pay damages for usage and occupation at Rs.1000/- from October 2009 to February 2011, totally amounting to Rs.17,000/-.

2. The suit summons was served on K.Munusamy, the original defendant and he entered appearance through a counsel before the Trial Court and he has also filed the written statement in the suit O.S. No.3189 of 2011. In the written statement, he has pleaded that he is not the tenant under the respondent, but he has admitted that the subject land is a poromobokey land. He has further stated that he has applied for grant of patta in his favour, in accordance with G.O. No.43

dated 29.01.2010. He has also stated that since the authorities did not issue patta in his favour, he was constrained to approach this Court by filing a Writ Petition seeking for a relief of Mandamus to direct the authorities to issue patta in his favour. He has also stated by order dated 15.04.2010, a direction was issued by this Court in the said writ petition to the Tahsildhar and the Collector to consider his representation. It is his case that because of pendency of the Civil Court proceedings, the authorities have not considered the representation made by the petitioner for grant of patta.

3. Even though the petitioner / defendant filed his written statement, when the case was posted for cross examination of respondent / plaintiff's side witness on 22.03.2013, due to the non appearance of the counsel or the respondent and due to the failure to cross examine the respondent / plaintiff side witness (PW1), the petitioner / defendant was set ex-parte and an ex-parte decree came to be passed in favour of the respondent on 22.03.2013. Thereafter, I.A. No.3997 of 2014 was filed by K.Munswamy, original defendant under Section 5 of the Limitation Act to condone the delay of 320 days in filing an application to set aside the ex-parte decree dated 22.03.2013 passed in O.S. No.3189 of 2011.

4. As seen from the affidavit filed in support of I.A. No.3997 of 2014, the reason given by the petitioner for the delay is that he was given assurance by his counsel that he will take care of the Court proceedings and he was also informed by his counsel that only on intimation, he need to come to the Court. He has also stated that he has been repeatedly contacting his counsel over phone and he was also given dates of the hearing and he was under the impression that the suit is still pending. But only on receipt of notice in the Execution Petition filed by the respondent, he came to know that an ex-parte decree has already been passed against him in the suit. According to him, immediately thereafter, he has filed the application to set aside the ex-parte decree along with the condone delay application.

5. A counter was also filed by the respondent in I.A. No.3997 of 2014, denying the allegations made by the petitioner in I.A. No.3997 of 2014. They have also stated that the petitioner has not approached the Court with clean hands, as the subject land absolutely belongs to the respondent Endowment and it is owned by them for more than 200 years. According to the respondent, no reasons whatsoever have been given by the petitioner for condoning the delay of 320 days in filing an application to set aside the ex-parte decree.

6. By order dated 18.07.2014, the learned First Assistant Judge, City Civil Court, Chennai, dismissed I.A. No.3997 of 2014 in O.S. No.3189 of 2011 on the ground that no sufficient reasons have been given by the petitioner for condoning the delay. Further, the Trial Court has observed that the suit was pending for cross examination of plaintiff witness from 09.10.2012 to 25.02.2013 and only with a malafide intention, the petitioner has not appeared before the Court. Aggrieved by the dismissal of I.A. No.3997 of 2014, the instant Civil Revision Petition has been filed under Section 115 of the Civil Procedure Code.

7. Heard Mr.R.Rajaraman, learned counsel for the petitioner and Mr.Asif Ali, learned counsel for the respondent.

8. This Court has perused the copy of the plaint, copy of the affidavit filed in support of I.A. No.3997 of 2014 filed by the petitioner as well as the impugned order.

9. Admittedly, even according to the affidavit filed in support of I.A. No.3997 of 2014, the petitioner does not have title over the subject property as he himself admits the subject property is only a

pormoboke land. However, his case is that he is not a tenant under the respondent-Endowment. As seen from the plaint, the respondent has filed the following documents along with plaint :

- a) Rent receipt, dated 03.04.2003, issued by the respondent in favour of the petitioner;
- b) Copy of the legal notice dated 01.09.2009,
- c) Proforma dated 08.09.1958 by Tamil Nadu Wakf Board,
- c) Scheme decree CS No.196 of 1913,
- d) Copy of sale deed 05.10.1968 and
- e) Copy of the letter dated 15.02.2010 issued by RTI to the respondent.

10. The respondent has stated in the plaint that the petitioner is a chronic and wilful defaulter in payment of rents for the period from July 2003 to September 2009 at Rs.165/- p.m. It is also submitted by the learned counsel for the respondent that from the inception of the tenancy, the petitioner is a defaulter.

11. In I.A. No.3997 of 2014, the petitioner has sought to condone the delay of 320 days in filing an application to set aside ex-parte decree. The Trial Court under the impugned order has observed that the suit was adjourned from 09.10.2012 to 25.02.2013 for the purpose of cross examination of respondent / plaintiff witness. As seen from the impugned order, sufficient opportunity was granted to the petitioner to defend his case by the Trial Court. The petitioner has

himself admitted that subject land is only Poromoboke land. No indulgence can be shown to him by this Court. The respondent has filed documents to show his title along with the plaint and the pleadings in the plaint confirm that the petitioner is the tenant under the respondent, who wilfully defaulted in payment of rent to the respondent.

12. For the foregoing reasons, this Court is of the considered view that there is no merit in the Civil Revision Petition. Accordingly the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.07.2019

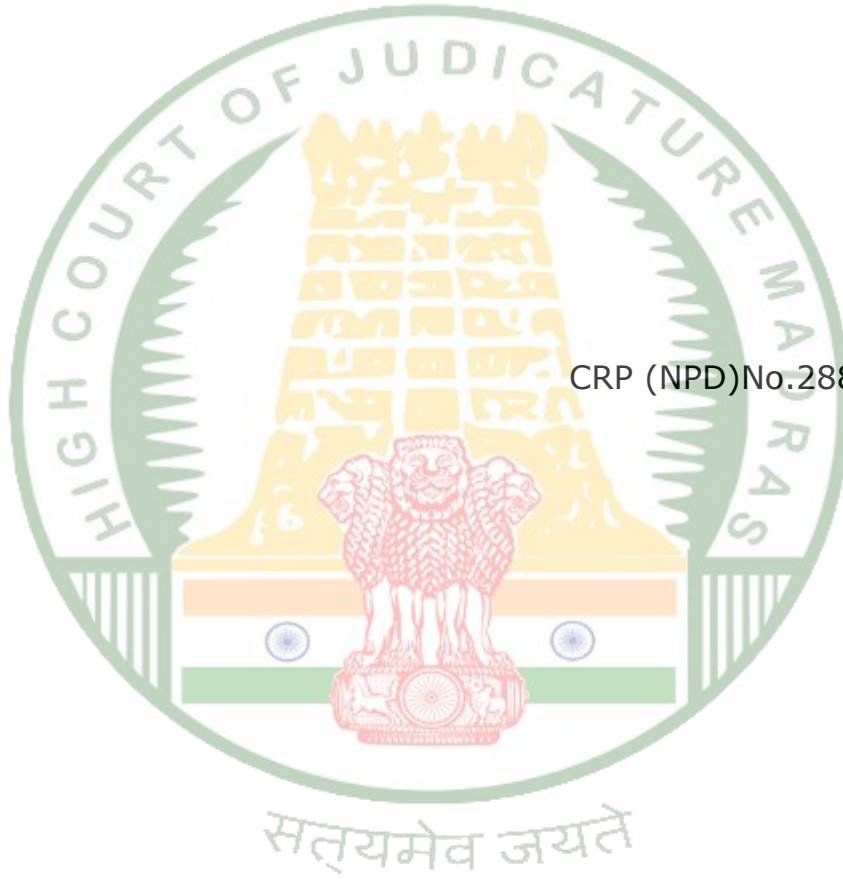
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To
The First Assistant Judge,
City Civil Court, Chennai.

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ABDUL QUDDHOSE, J.

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