

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.4702 of 2014 and
M.P.No.1 of 2014

R.Suresh Kumar

Petitioner

Vs

1. M.Jayalakshmi
2. M.Saravanan
3. M.Vinitha
4. M.Malini

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 18.11.2014 passed in I.A.No.121 of 2014 in O.S.No.61 of 2008, on the file of Principal District Court, Vellore.

For Petitioner : Mr.A.Babu

ORDER

The Civil Revision Petition has been preferred against the order dated 18.11.2014 passed in I.A.No.121 of 2014 in O.S.No.61 of 2008, by the learned Principal District Judge, Vellore.

2. The petitioner herein is the plaintiff in OS No.61 of 2008 on the file of Principal District Court, Vellore. Before the said Court, the petitioner herein has filed the above referred suit and seeks the relief of specific performance, directing the defendants to execute the sale deed in favour of the plaintiff in specific enforcement of sale agreement dated 06.12.2006, after receiving the balance sale consideration of Rs.9,95,000/-. During the course of trial proceedings, the respondent / defendant entered into appearance and filed their respective written statements and additional written statements. When the suit is posted for examination of defence side evidence, the petitioner herein had filed an application in IA No.121 of 2014, under Order 6 Rule 17, to amend the plaint. Through the said petition, the petitioner herein wanted to incorporate the prayer of direction directing the respondents to deliver the possession of the suit property to the petitioner.

3. In the affidavit filed by the petitioner in support of the petition, he has stated that in the said suit filed by him, the respondent remained exparte and therefore the exparte decree was passed on 02.09.2009. After the said exparte, the petitioner has filed an Execution Petition No.23 of 2010 for execution of sale deed. After knowing the details of execution only, the respondent/defendant has filed an application to set aside the exparte decree. Simultaneously, on 15.06.2010, the defendants forcefully evicted the petitioner from the suit

property and the same was not informed to the petitioner's counsel immediately. Hence, incorporating the prayer of recovery of possession is necessary to decide the suit filed by the petitioner.

4. Resisting the claim made by the petitioner, the respondent herein has filed a counter affidavit before the trial court. In the counter affidavit filed by the respondent, they denied the allegations levelled against them. They have clearly mentioned in the counter affidavit as during the time of giving evidence as PW 1, the petitioner has stated that the possession of the suit property is with the defendants from the year of 2007. On the other hand, the petitioner has filed the suit by saying that at the time of sale agreement executed on 06.12.2006, the possession of the suit property was handed over to the plaintiff. So, the inconsistency taken by the petitioner may be the sufficient reason for dismissing the application filed by the petitioner.

5. After an elaborate enquiry, the learned Principal District Judge, Vellore, had dismissed the application filed by the petitioner on 18.11.2014. Aggrieved over the same, the petitioner is before this Court with the present Civil Revision Petition.

6. Today, when the petition is came up for hearing, there is no representation on the side of the respondents. Hence, the arguments advanced by the petitioner's counsel alone heard.

7. The learned counsel appearing on behalf of the petitioner would contend that in the plaint averment, the plaintiff has clearly avered that on the date of sale agreement, the possession of the suit property was handed over to the plaintiff. Further, he would contend in the affidavit filed by the petitioner that only on 15.06.2010, the defendants/respondents have forcefully evicted the petitioner and trespassed into the suit property. Hence, the petitioner is entitled to incorporate the relief of recovery of possession.

8. Now, on going through the impugned order passed by the learned Principal District Judge, Vellore, it has been observed that the petitioner in his evidence has clearly stated about the possession of the suit property was with the defendants from the year of 2007. Further, the learned judge observed that the pleadings set out by the plaintiff in the plaint will reveal the fact the petitioner was in the possession of the Suit property from the year of 2000. Only on considering the inconsistency between the above two versions, the learned judge has dismissed the petition filed by the petitioner by observing that the petition was not at all having any merits.

9. Now, on considering the arguments advanced by the counsel appearing for the petitioner, he himself admitted that forcible eviction was happened only in the year of 2010. During the said period, the IA pertains to this Civil Revision Petition is not in existence. In this occasion, the petitioner has filed an application pertains to this Civil Revision Petition in the year of 2014 only. Moreover, he has not stated any reasons for the delay in filing the application.

10. Secondly, it is true in the pleadings set out by the petitioner in the plaint, he has specifically stated that at the time when the sale agreement was entered between the petitioner and the respondents, the possession of the suit property was handed over to him. Further, during the time of giving evidence as PW 1, he has stated that from the year of 2007 onwards, the petition mentioned property was leased out to Orphanage home, for which, the respondents are collecting the rents. The said evidence is clear and established the fact that the defendants are in the possession of the suit property from the year 2007 to till date. Hence, the said circumstances created a doubt, whether the plaintiff was forcibly evicted from the suit property or not.

11. On culling out the entire circumstances reveal the fact that the petitioner has not approached this Court with the bonafide reasons. Therefore, there is no infirmity found in the order passed by the trial Court.

12. In the light of the above discussions, I am of the opinion that the petition filed by the petitioner deserves to be dismissed. Accordingly, this Civil Revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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15.10.2019

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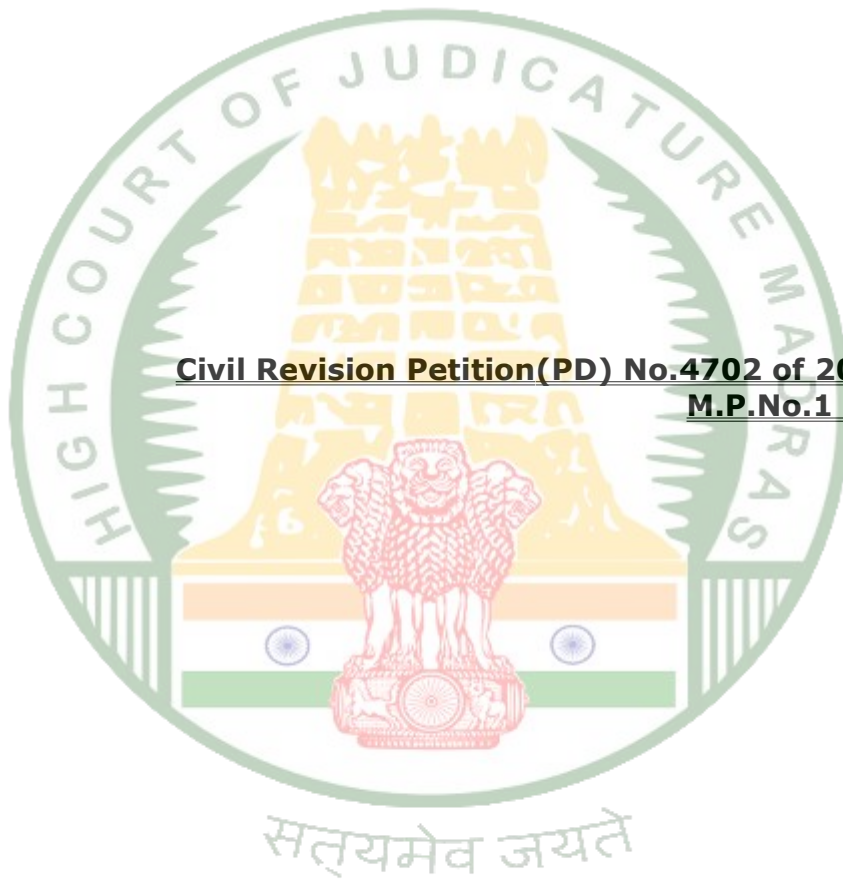
The Principal District Court, Vellore.

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R.PONGIAPPAN, J.,

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