

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD)No.3196 of 2019 and
C.M.P.No.20802 of 2019

Deepak Chimanlal Shah
No.41, Montieth Road,
Egmore, Chennai 600 008. Petitioner/1st defendant
Vs.

1.P.Ella Krishna Rao Trust rep. by its Trustees
Mr.M.C.Swamy
S/o.late Muthubater
No.6/2, Sripuram 2nd lane,
Royapettah, Chennai - 600 014.

2.M/s.Union Commercial Industrial Company Ltd.,...Respondent/
Plaintiff

3.Nakoda Traders,

4.A.D.Shankar

5.V.S.Choodamani

6.B.Mothilal

7.R.Shyamsundar

8.Sasikumar Saighal

9.Hassan Fidusan

10.D.Eswaramoorthy

... Respondents/Defendants
[Respondents 2 to 10 are unnecessary parties
and therefore, they are given up in the CRP]

Prayer: Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 9.08.2019 in I.A.No.1 of 2019 in O.S.No.7246 of 2010 on the file of VI Additional City Civil Court at Chennai.

For Petitioner : Mr.A.Balasingh Ramanujam

ORDER

This revision petition has been filed against the fair and decretal order passed in I.A.No.1 of 2019 in O.S.No.7246 of 2010 dated 09.08.2019 by the VI Additional Judge, City Civil Court, Chennai.

2.Before the trial Court, the 1st respondent/Trust had filed the suit for recovery of possession and seek for damages from the revision petitioner, who is the 1st defendant in the suit.

3.The said suit was laid on the reason that, one P.Ella Krishna Rao, being a staunch devotee of Kalikambal Temple at Chennai, has created a Trust i.e., the plaintiff/Trust and since he is issue less, he entrusted the suit property towards the Trust and certain deeds also cast upon the Trust to be performed at Kalikambal Temple and for the said purpose the suit property can be utilised and after performing the said functions at Kalikambal Temple, the remaining amount can be utilised for the maintenance and development of the suit property.

4.While so, the Trust seems to have entered into an agreement with the revision petitioner i.e., the 1st defendant, according to which, he would construct a building in the suit property i.e., ground + first and he will pay the rent as agreed between the parties. As per the said agreement dated 18.12.1989, the 1st defendant took the property for construction, however, in violation of the agreement, he seems to have constructed ground + four floors and such construction was over by 1993. Thereafter, in the constructed building, the 1st defendant/revision petitioner let out the same for rent to various persons, who are the other respondents/defendants. According to the plaintiff, as of now, the 1st defendant/revision petitioner is collecting more than Rs.40,000/- as monthly rent from the defendants, who have been put up by the 1st defendant/revision petitioner in the building constructed in the suit property. However, it is the main grievance of the plaintiff/ Trust before the trial Court that, the 1st defendant/revision petitioner has not paid any rent, nor he has not set right the violation he has committed in constructing ground + four floors and also without the consent of the Trust, he has put in possession of the various tenants and after collecting the rent, he has not paid lease amount to the Trust.

5.Therefore, by letter dated 10.01.1996, the plaintiff/Trust had cancelled the agreement with the 1st defendant and sought for handover the possession and also to pay a sum of Rs.9,72,000/- towards damages from 01.02.1993 to

01.02.1996.

6.Since thereafter also, the 1st defendant/revision petitioner had not come forward either to handover the possession of the suit property i.e., building and also not come forward to pay the damages as well as the rental arrears, the plaintiff had filed the above suit with the aforesaid prayer before the Court below, which is pending.

7.It seems that, in that suit, the 1st defendant, by the orders of the trial Court, had deposited an admitted arrears of rent/lease amount and in order to withdraw the said amount to the extent of Rs.4,09,500/-, the plaintiff/Trust filed the present application in I.A.No.1 of 2019 and the said interlocutory application, after having been heard of both sides, was allowed by the trial Court, through the impugned order, dated 09.08.2019, as against which, the present revision has been filed.

8.I have heard Mr.A.Balasingh Ramanujam, learned counsel for the petitioner, who would submit that, the original author of the Trust is no more and as per the Trust Deed, the property shall devolve, after his demise, to Kalikambal Temple and the present Trustee, who filed the suit, is no more trustee therefore, the suit itself is not maintainable. Therefore, if the admitted arrear of rent, as directed by the trial Court, deposited before the Court below, is permitted to be withdrawn by the plaintiff/Trust, then, it will be highly difficult to recover the same from them at a later point of time and therefore, on that ground, the revision petitioner challenged the said order passed by the trial Court in this revision.

9.I have gone through the materials placed before this Court, including the averments made in the plaint as well as in the written statement filed in the suit and also the impugned order.

10.Prima facie, it is found that, a Trust was floated by the philanthropist viz., P.Ella Krishna Rao, vide Trust Deed dated 19.12.1963 as Document No.5090/1963 at the Sub Registrar Office, Chennai 600 001 and the suit property also has been entrusted to the Trust for conducting certain rituals at the Bhrammorsavam festival in the month of Vaigasi at Sri Kalikambal Temple at Chennai. Also, the property, i.e. the suit property shall be maintained by the Trust.

11. Subsequently, it seems that, agreement had been entered into between plaintiff/Trust and the 1st defendant, thereafter, in alleged violation of the agreement condition, one + four building was constructed in the suit property where several tenants had been put in possession by the 1st defendant and thereafter, though huge amount being collected as rent every month, it seems that, the Trust has not been paid any single pie by the 1st defendant. Therefore, the agreement itself between the Trust and the 1st defendant, as claimed, have been cancelled on 10.01.1996. Thereafter, legal notice seems to have been issued to the 1st defendant by the Trust for recovery of possession as well as the damages and only thereafter, the suit was filed for the aforesaid relief.

12. In the said circumstances, at one point of time, the admitted rent was directed to be deposited and the same was deposited by the 1st defendant and in order to meet out the expenses for the duty cast upon the Trust, as per the author of the Trust, the said fund was necessitated. Therefore, the present application seems to have been filed where the learned Judge, after having heard both sides, allowed to withdraw the said amount by the Trust.

13. In this context, now the 1st defendant/revision petitioner questioning the very Trust itself. Assuming that, for the argument sake, the question raised by the 1st defendant/revision petitioner about the existence and locus of the Trust is accepted, then, the 1st defendant himself cannot have any right over the suit property, as he admittedly entered only a Lease Holder, by way of agreement, to construct the building, as per the agreement dated 18.12.1989. Therefore, the very said argument advanced by the learned counsel for the revision petitioner is not only unworthy, but also is self destructive.

14. In that view of the matter, this Court feels that there is absolutely no infirmity in the order impugned whereby the Trust/ plaintiff has been permitted to withdraw the rental amount deposited by the 1st defendant i.e., the revision petitioner and hence, this Court feels that there is absolutely no ground to interfere with the said order in this revision.

15.In the result, this Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrarr

Sgl
To

The VI Additional City Civil Court,
Chennai.

+lcc to Mr.A.BalaSing Ramanujam Advocate sr82474

C.R.P.(PD) .No.3196 of 2019

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