

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(PD) No.2776 of 2014 &
M.P.No.1 of 2014

G.Kuppusamy

... Petitioner

Vs.

1.E.Kanagammal (deceased)

2.E.J.Saroja

3.E.J.Prema

4.E.J.Gopalakrishnan

5.E.J.Purushothaman

... Respondents

(R2 to R5 brought on record as LRS
of the deceased sole respondent
viz., E.Kanagammal vide court
order dt.18.06.2019 made in
M.P.Nos.2, 3 and 4 of 2014 in CRP
(PD). No.2776 of 2014.

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 21.03.2014 made in I.A.No.9819 of 2013 in O.S.No.6380 of 2012 passed by the IV Assistant City Civil Court at Chennai.

For Petitioner

...

Mr.G.Ilangovan

For Respondents 2 to 5

...

Mr.N.Dhanasekaran

ORDER

The instant civil revision petition has been filed challenging the order dated 21.03.2014 passed by the IVth Assistant City Civil Judge, Chennai in I.A.No.9819 of 2013 in O.S.No.6380 of 2012.

Brief facts leading to the filing of the instant revision:

2. The petitioner is the defendant in the suit O.S.No.6380 of 2012 pending on the file of the learned IVth Assistant City Civil Judge, Chennai. The suit was filed by the first respondent for a direction to direct the petitioner/defendant to quit and deliver vacant possession of the suit schedule property to the first respondent/plaintiff. The first respondent/plaintiff has also sought for a direction to direct the petitioner/defendant to pay a sum of Rs.20,770/- as damages for the use and occupation of the suit schedule property for the months from January 2010 to July 2012 and has also sought for costs for said suit. After the receipt of the suit summons in O.S.No.6380 of 2012, the petitioner who is the defendant in the suit filed I.A.No.9819 of 2013 in O.S.No.6380 of 2012 seeking rejection of plaint under Order VII Rule 11 CPC on the ground that the suit is barred by law, since the first

respondent/plaintiff has not complied with the statutory requirements as prescribed under Section 11 of the Chennai City Tenants Protection Act, 1921.

3. As seen from the affidavit filed in support of I.A.No.9819 of 2013, the case of the petitioner/defendant is that the first respondent/plaintiff has filed the suit without issuing proper notice as contemplated under Section 11 of the above referred Act. A pre suit notice dated 10.04.2012 issued by the respondent/plaintiff was not intimated to the Commissioner of Corporation, Chennai and the said notice did not give any offer regarding the payment of compensation to the petitioner/defendant for the superstructure existing over the land which was put up by him. Further it is the case of the petitioner that the suit has been filed prematurely without waiting for the mandatory statutory period of three months as contemplated under Section 11 of the above referred Act.

4. A counter affidavit was also filed by the first respondent/plaintiff in I.A.No.9819 of 2013 wherein she has denied the allegation that the suit has been improperly framed and it is hit by

Section 11 of Chennai City Tenants Protection Act. According to the first respondent/plaintiff, the pre suit notice dated 10.04.2012 issued to the petitioner/defendant is a valid one in accordance with Section 11 of the above referred Act, 1921. It is also further stated that the suit has been properly valued and hence, the suit is maintainable and the application filed by the petitioner/defendant under Order VII Rule 11 CPC is not maintainable and is devoid of merits.

5. By order dated 21.03.2014, the Trial Court dismissed I.A.No.9819 of 2013 filed by the petitioner/defendant under Order VII Rule 11 CPC on the ground that the application filed under Section 11 of Chennai City Tenants Protection Act can be decided only after a full fledged trial. Aggrieved by the order dated 21.03.2014 passed in I.A.No.9819 of 2013, the instant civil revision petition has been filed under Article 227 of the Constitution of India.

Submissions of the learned counsels:

6. Heard Mr.G.Ilangovan, learned counsel for the petitioner and Mr.N.Dhanasekaran, learned counsel for the respondents 2 to 5.

7. The learned counsel for the petitioner drew the attention of this Court to Section 11 of Chennai City Tenants Protection Act and submitted that first respondent/plaintiff has not complied with the mandatory requirements as contemplated under the said Section. He submitted that pre-suit notice dated 10.04.2012 which was allegedly signed by the first respondent/plaintiff, has not satisfied the requirements as contemplated under Section 11 of Chennai City Tenants Protection Act, 1921 as the said notice has not been sent to the Commissioner of Corporation, Chennai and further, has not disclosed anything about the offer of compensation payable to the petitioner/defendant. It is also his case that the suit has been filed prematurely, since the first respondent/plaintiff has instituted the suit even before the expiry of three months period from the date of notice issued under Section 11 of the above referred Act. The learned counsel for the petitioner also relied upon the following authorities:

(a) ***S.A.Ramachandran vs. S.Neelavathy*** reported in **1997 (11) MLJ 92**

(b) ***Gulam Mohamood v. Ammani Ammal*** reported in **1960 (2) MLJ 351**

8. Per contra learned counsel for the respondents 2 to 5 would submit that the suit was filed only on 9th August 2012 whereas the pre-suit notice was sent on 10.04.2012 and hence, the suit has been filed only after the expiry of three months period from the date of issuance of the notice under Section 11 of Chennai City Tenants Protection Act, 1921. The learned counsel for the respondents 2 to 5 further contended that the issue raised by the petitioner is a matter for trial as the courts will have to only look into the pleadings made in the plaint whenever an application under Order VII Rule 11 CPC is heard. He drew the attention of this Court to the pleadings made in the plaint and submitted that the first respondent/plaintiff has categorically pleaded that the notice dated 10.04.2012 which was sent by the respondent/plaintiff to the petitioner/defendant, was duly acknowledged by the petitioner/defendant and further no reply was sent by the petitioner/defendant. Therefore, according to him, the statutory notice was validly sent.

Discussion:

9. This Court has perused the plaint filed in support of O.S.No.6380 of 2012. Admittedly, as seen from the plaint, the suit was

filed by the first respondent/plaintiff on 09.08.2012. This fact has also not been disputed by the learned counsel for the petitioner, after the verification of the court records from the trial court. Therefore, the arguments of the learned counsel for the petitioner that the suit has been filed prematurely without waiting for the statutory period of three months after issuance of notice under Section 11 of the Chennai City Tenants Protection Act, 1921 has to be rejected.

10. The first respondent/plaintiff in paragraph 4 of the plaint has averred that she issued legal notice on 10.04.2012 under registered post with acknowledgment due. As she has terminated the tenancy ending with 31.05.2012, called upon the petitioner to quit and deliver the vacant possession of the land. Further she has pleaded that the petitioner/defendant received the pre-suit notice on 11.04.2012 but neither did he reply to the suit notice nor did he comply with the same. It is the contention of the petitioner/defendant that the notice dated 10.04.2012 has not been complied with the statutory requirements as contemplated under Section 11 of the Chennai City Tenants Protection Act, 1921, which requires, the landlord to send a copy of the notice to

the Commissioner of Corporation, Chennai as well as to intimate the tenant about the offer of compensation payable for the superstructure put up by the tenant over the land.

11. As the petitioner/defendant has not disputed the receipt of pre-suit notice dated 10.04.2012, whether the said notice satisfies the requirements contemplated under Section 11 of the Chennai City Tenants Protection Act, 1921 and the defects, if any, in the said notice is curable or not is a matter for trial. Under Order VII Rule 11 CPC, the Court will have to look into only the plaint averments. Unless and until, the plaint averments prima facie do not disclose any cause of action or barred by law, then only Order VII Rule 11 CPC application can be entertained by the Court. Admittedly, the pre-suit notice has been issued on 10.04.2012 by the respondent/plaintiff and the suit was also filed only after three months from the date of the said notice.

12. Section 11 of the Chennai City Tenants Protection Act, 1921 reads as follows:

“11. Notice before institution of suits or applications against tenants. - No suit in ejectment or

applications under section 41 of the Presidency Small Cause Courts Act, 1882 (Central Act XV of 1882) shall be instituted or presented against a tenant until the expiration of three months next after notice in writing has been given to him requiring him to surrender possession of the land and building, and offering to pay compensation for the building and trees, if any, and stating the amount thereof.”

13. The first respondent/plaintiff has categorically pleaded in the plaint that the pre-suit notice has been sent on 10.04.2012. Whether the said notice satisfies the requirements of Section 11 of the Chennai City Tenants Protection Act, 1921 or not is a matter for trial and even in the impugned order passed in I.A.No.9819 of 2013, a copy of the notice was not marked as exhibit on either side. Therefore, this Court cannot also examine the said notice dated 10.04.2012 in this revision, as this Court will have to see only the plaint averments for the purpose of deciding the application filed under Order VII Rule 11 CPC.

14. The judgments relied upon by the learned counsel for the petitioner viz., (a) **S.A.Ramachandran vs. S.Neelavathy** reported in

1997 (11) MLJ 92 (b) *Gulam Mohamood vs. Ammani Ammal* reported in **1960 (2) MLJ 351** are not applicable for the facts of the instant case, as those Judgements were passed on merits and did not deal with Order VII Rule 11 CPC.

15. This Court has also perused the impugned order. The Trial Court has rightly rejected the application on the ground that since questions of fact and law are involved, the suit can be decided only after a full fledged trial.

Conclusion:

16. In the result, there is no merit in this revision. Accordingly, the civil revision petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

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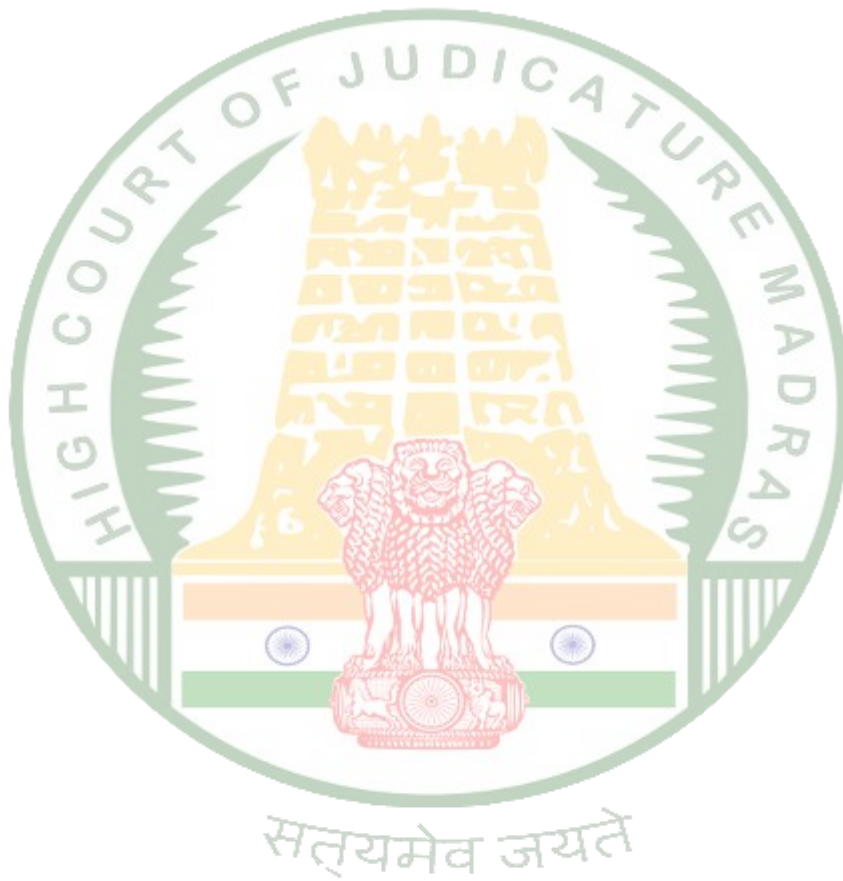
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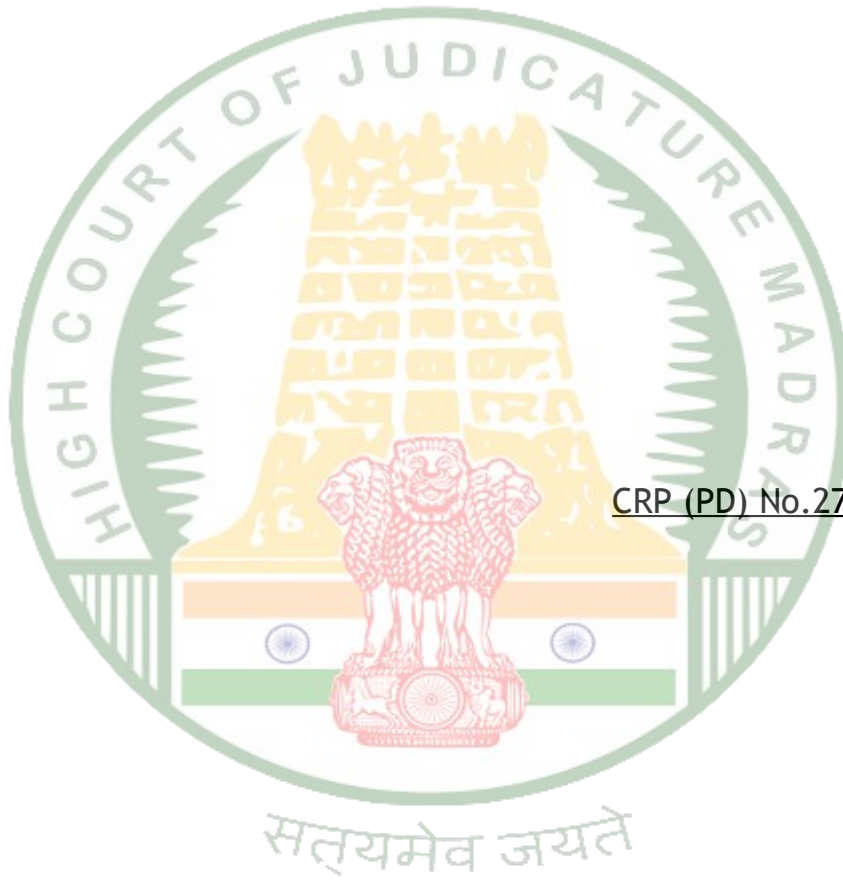
The IV Assistant City Civil Court at Chennai.



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ABDUL QUDDHOSE. J,

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