



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2019

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P(PD) (MD)No.1004 of 2013

P.Muthu : Petitioner/Petitioner/Defendant

.. Vs ..

1.A.K.Kaja Kamaludeen (Died) : Respondent/Respondent/Plaintiff

2.Asma

3.Haafil

4.Abdulkareem

5.Ayisha Siddique : Respondents

(Respondents 2 to 5 are brought on record as LRs of the deceased sole respondent vide order dated 08.12.2014 made in M.P.(MD)No.1 of 2014 in C.R.P.(MD)No.1004 of 2014)

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 15.12.2012 passed in I.A.No.680 of 2012 in O.S.No.982 of 2012 on the file of the First Additional District Munsif Court, Thiruchirappalli and allow the present Civil Revision Petition.

For Petitioner : Mr.M.Saravanan

For Respondents : Ms.Srimathy

2 to 5

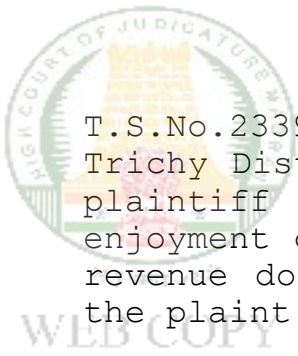
R1 died.

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### **ORDER**

This Civil Revision Petition is directed against the order passed by the learned First Additional District Munsif, Trichy, in I.A.No.680 of 2012 in O.S.No.982 of 2012.

2.The respondent in this Civil Revision Petition, as plaintiff, filed a suit in O.S.No.982 of 2012 for permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. It is the case of the respondent that his father, Mr.Abdul Khadar was allotted the suit property and that after the death of his father, he is entitled to inherit the property and looking after the affairs of the suit property. Though the plaintiff admits that his father left behind not only the plaintiff but also other sons, he states that he is entitled to file the suit on behalf of the other co-sharers. The suit property is described as a land in T.S.No.9/15A (Old



T.S.No.2339/2) in Ward No.8, Varaganeri Village, Trichy Taluk, Trichy District. It is the specific case of the plaintiff that the plaintiff and his family members are in absolute possession and enjoyment of the suit property. The plaintiff is also produced the revenue documents like patta, chitta and adangal, etc., along with the plaint.

3. During the pendency of the suit, the revision petitioner, without even filing a written statement, filed a petition in I.A.No.680 of 2012 under Order VII, Rule 11 C.P.C. to reject the plaint on the ground that the Civil Court has no jurisdiction as the revision petitioner is in possession as a cultivating tenant. It is his further case that the respondent has no right or cause of action for filing the present suit. Relying upon a judgment in a previous suit filed by one Pari and another against the revision petitioner and another wherein the suit for injunction was dismissed, the petitioner contended that the said judgment is binding on the plaintiff in the present suit. It is also stated by the revision petitioner that as per the provisions of the Tamil Nadu Cultivating Tenants Protection Act, the respondent is not entitled to file the suit. Though the revision petitioner has not mentioned any provisions of the Cultivating Tenants Protection Act, it is to be noted that the objection was based on assumption. It is not under the provision of the Tamil Nadu Cultivating Tenants Protection Act but under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 such a bar is created. Hence, the application filed by the revision petitioner was by quoting a different statute. The trial Court after holding that the revision petitioner has not established his possession as a cultivating tenant, dismissed the petition. The trial Court also recorded a specific finding that the petitioner has not produced any record to show that he is enjoying and cultivating the land at least for a period of 20 years prior to the filing of the suit as the respondent has produced documents to prove his possession.

4. The trial Court has given categorical finding that no evidence was let in by the revision petitioner to prove his case and the documents produced by the petitioner and the respondent were considered. Having regard to the scope of Order VII, Rule 11 CPC, this Court has no hesitation to hold that the petition filed by the revision petitioner under Order VII, Rule 11 CPC is unsustainable especially in a case where the respondent has filed the suit for bare injunction alleging that he is in possession of the property along with other members of his family. Though the revision petitioner who is a defendant in the suit has made claim that he is a cultivating tenant entitled to the protection under Tamil Nadu Cultivating Tenants Protection Act, it is admitted that he has not approached the Record Officer under Act 10/1969 to show that he has been recognised as a cultivating tenant. The issue involved is about the possession and enjoyment of the plaintiff as on the date of suit. It cannot be said that the question whether the plaintiff is in possession falls within the exclusive jurisdiction of the



authority under Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 merely because the defendant sets up a plea that he is a cultivating tenant. This has been held so by a Full bench of this Court.

5. It is well settled that the petition under Order VII, Rule 11 CPC has to be decided only on the basis of the averments in the plaint and not on the claim or statement/plea raised by the defendant in the written statement. In such circumstances, this Court find no error or infirmity in the order passed by the lower Court dismissing the application filed by the revision petitioner under Order VII, Rule 11 CPC. The learned Counsel for the petitioner pointed out that the findings of the lower Court in the application filed under Order VII, Rule 11 C.P.C. may influence the trial Court. The findings of the lower Court though based on the documents produced by the parties, this Court is able to see that the parties have not let in oral evidence or examine themselves as witness. Issues have not been framed. Hence, the observation made by the lower Court in I.A.No.680 of 2012 shall not influence the lower Court when the suit itself is decided on merits. Having regard to the limited scope of the suit and the fact that the suit has been filed in 2012, this Court is inclined to direct the lower Court to dispose of the suit in O.S.No.982 of 2012 within a period of six months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-III)

/ True Copy /

Sub Assistant Registrar(CS0

To

The First Additional District Munsif Court,  
Thiruchirappalli.

+1 CC to M/s.S.M.S.JOHNNY BASHA, Advocate  
( SR-48333[F] dated 20/02/2019 )

+1 CC to M/s.R.SUBRAMANIAN, Advocate  
( SR-48361[F] dated 20/02/2019 )

C.R.P (PD) (MD) No.1004 of 2013  
19.02.2019

srm

ES/DS/25.04.2019/3P/4C