

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PD 824 of 2020

and

C.M.P. 4375 of 2020

Arumugam

... Petitioner

Versus

Saravanakumar

... Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order passed in I.A. 1 of 2019 in O.S. 202 of 2018 dated 12.11.2019 passed by the learned Subordinate Judge, Sathyamangalam.

For Petitioner : Mr.S.Parthasarathy

ORDER

This Civil Revision Petition has been filed against the order dismissing the petitioner's application filed under Order 7 Rule 11 of C.P.C.

2. The petitioner is a defendant in the suit. The respondent herein filed a suit for declaration and also for recovery of possession. Pending suit, the petitioner has filed an application under Order 7 Rule 11 of C.P.C. to reject the plaint on the ground that, the petitioner is a tenant, and there is jural relationship of landlord and tenant, which was not disputed by the plaintiff. In the above circumstances, the respondent ought to have filed a petition for eviction under the Tamil Nadu Buildings (Lease and Rent Control) Act (hereinafter called as 'Act'), and he cannot maintain a suit before the civil court. That application came to be dismissed by the court below, since the suit property is not coming within the municipal limit, the plaintiff can only maintain a petition under the said Act, and he cannot maintain a suit.

3. I have considered the submissions made by learned counsel appearing for petitioner and perused the records carefully.

4. Even though the suit has been filed for declaration and for recovery of possession, it is an admitted fact that the petitioner is a tenant. Since the suit has been filed on the ground that, the property is not situated within the municipal limit, the petition under the said Act cannot be filed, hence, the suit has been filed. The court below came to a conclusion that, the suit property is situated at Thoppampalayam Village, which does not come within the jurisdiction of Sathyamangalam Municipality, and the suit is not maintainable and dismissed the application.

5. Mr.S.Parthasarathy, learned counsel appearing for petitioner would submit that, the property lies within the Sathyamangalam Municipal area, which was not properly considered by the court below. It is a settled law that, in the application filed under Order 7 Rule 11 of C.P.C., the averments made in the plaint alone are germane, and the contention of the defendants cannot be taken into consideration. Whether the property comes under the Sathyamangalam Municipality or not is a matter for evidence. If at all, the petitioner is having valid materials to show that, the property is situated within the Sathyamangalam Municipality, it is always open to him to

establish the same at the time of trial and it cannot be decided at this stage. The Trial Court, considering the same, has rightly dismissed the application. I find no illegality or irregularity in the order passed by the court below, and I find no merit in this Civil Revision Petition. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

26.02.2020

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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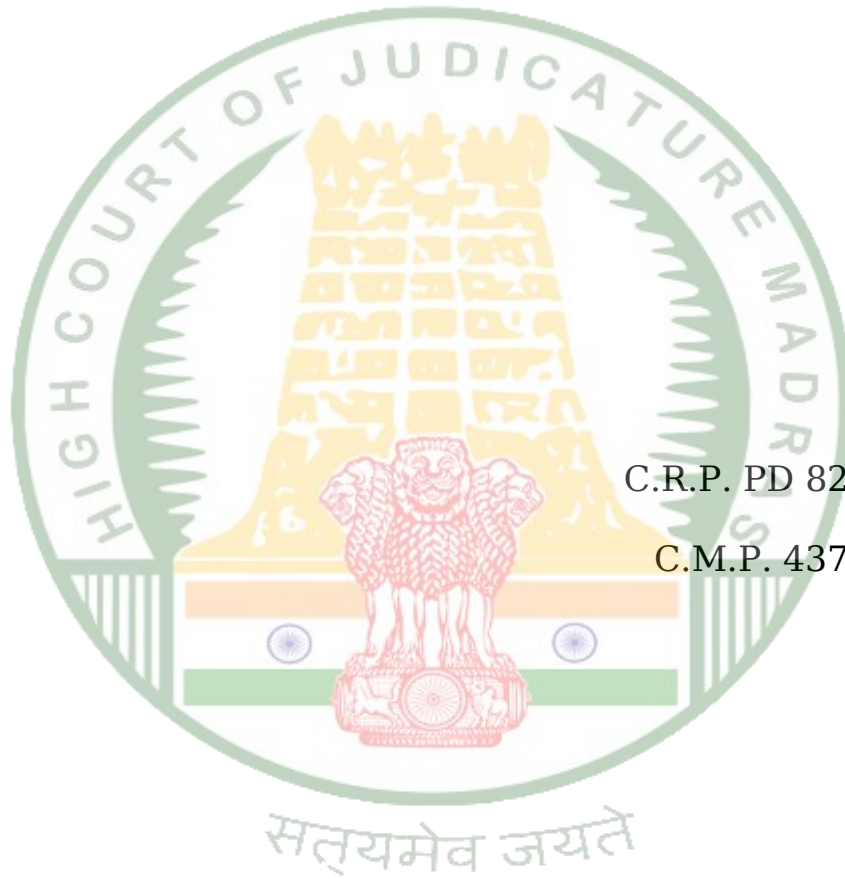
Sub-Judge,
Sathyamangalam.



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V.BHARATHIDASAN,J.

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