

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 1290 of 2018

and C.M.P.No. 6672 of 2018

D.Krishnamma

...Petitioner/Defendant

Vs.

Vijaykumar

...Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the learned XII - Assistant City Civil Court in I.A.No. 11992 of 2017 in O.S.No. 4016 of 2011 datd 11.01.2018.

For Petitioner : Mr.B.Mahendra Naidu

For Respondents : K.Jamuna

O R D E R

The defendant in O.S.No. 4016 of 2011 whose application, filed Order 7 Rule 11 of C.P.C., was dismissed by the Trial Court has come up with this revision.

2. The plaintiff sought for permanent injunction restraining the defendant, her men, agents or any one acting on her behalf from in any manner, leasing, letting parting with possession or granting any license to third parties in the schedule mentioned property till the finality is reached in rent control proceedings in RCOP.No. 261 of 2010.

3. The above relief has been sought for on the ground that there was some illegality in the proceedings in RCOP.No. 261 of 2010. It is also seen from the plaint that various other proceedings are pending between the parties.

4. The defendant resisted the suit contending that the possession was taken by her through Court in execution of the order of the eviction in R.C.O.P.No. 261 of 2010. Therefore, according to her, there is no illegality that happened in the proceedings in R.C.O.P.No. 261 of 2010 or in the execution proceedings in E.P.No. 525 of 2010. The suit came to be filed in 2011, the written statement was filed by the defendant in November 2011 itself. After examination of P.W.1, sometime in 2017, the plaintiff came up with the instant application on 29.08.2017 seeking rejection of the plaint under Order 7 Rule 11.

5. The learned Trial Judge concluded that the claim of the plaintiff that there was no cause of action for the suit cannot be countenanced. He also faulted the defendant for having waited till completion of the evidence of the plaintiff to file an application under Order 7 Rule 11. On the said conclusion, the learned Trial Judge dismissed the application.

6. I have heard Mr.B.Mahendra Naidu, learned counsel for the petitioner and Mrs.K.Jamuna, learned counsel for the respondent.

7. The learned counsel for the petitioner would vehemently contend that the prayer sought for in the suit itself cannot be granted as possession has been taken from the tenant by following the due process of law. Therefore, according to him, the suit itself is not maintainable.

8. Contending contra, Mrs.K.Jamuna, learned counsel for the respondent would submit that the possession was taken in derogation of the rules relating to execution. According to her, the very act of taking possession was an illegal act and she had also sought for redelivery before the learned Rent Controller. If the petitioner landlord is allowed to create third party rights pending the application for redelivery, the tenant will be greatly prejudiced. Therefore, she has got cause of action for the suit. Hence, the suit cannot be rejected at this stage. I have considered the rival submissions.

9. Rightly or wrongly, the tenant has claimed that possession was not obtained properly and there was breach of the rules regarding execution in the action of landlord in taking delivery. The applicant / tenant is before the appropriate Court namely, the Rent Controller seeking redelivery of possession. Be that as it may, all that the tenant now seeks is a decree of permanent injunction restraining the landlord from creating third party interest in the property, we cannot conclude that such a suit is not maintainable at the threshold without evidence being let in. It is also seen that the suit is at part heard stage. Therefore, I do not find any reason to interfere with the order of the Trial Court in dismissing the application. Hence this civil revision petition is dismissed, confirming the order of the Trial Court. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Asst. Registrar

/True Copy//

Sub Asst. Registrar

kkn

To:

The XII - Assistant City Civil Court, Chennai.

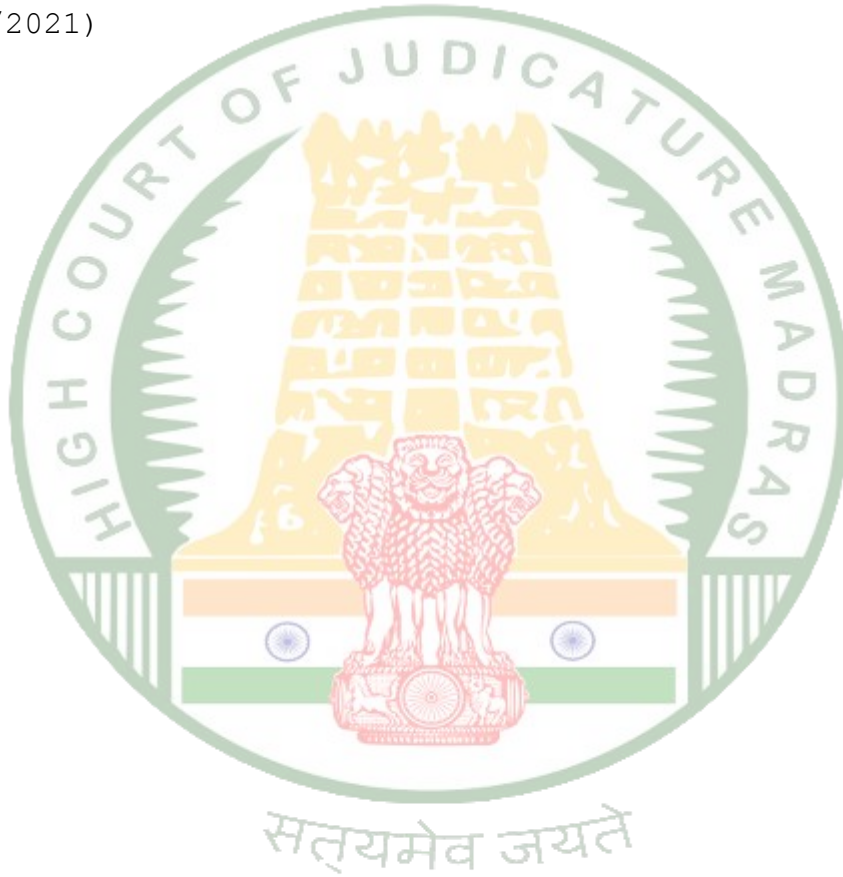
+1 C.C.to MR.B.Mahendra Naidu, ADVOCATE, SR.NO.37324

+1 C.C.to M/S.K.Jamuna, ADVOCATE, SR.NO.37484

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VC (22/01/2021)



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