

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PD 4306 of 2015
and
M.P. 1 of 2015

K.Thulasidoss ... Petitioner

Versus

Arulmigu Ekambareswarar
Thirukoil,
rep. by its Executive Officer,
having its office in temple premises
at Aminjikarai,
Chennai-600 029. ... Respondent

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the judgment and decree dated 31.08.2015 made in I.A. 12253 of 2015 in O.S. 7351 of 2008, on the file of XIV Asst. City Civil Court, Chennai.

For Petitioner : Mr.A.Jenasenan
For Respondent : Mr.M.Maharaja,
Special Govt. Pleader
(H.R. & C.E.)

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 respondent temple filed a suit for possession on the ground that, the respondent is a tenant under the temple and there was arrears of rent. Despite notice, the petitioner has not paid the rent. Hence, the respondent has filed a suit for ejectment. 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 suit has been filed by an Executive Officer without proper authorisation of Commissioner, H.R. & C.E Department, and not maintainable. That apart, under Sec.45 of H.R. & C.E. Act, Executive Officer cannot be appointed, unless a specific rule has been framed governing the duties and functions of Executive Officer. Hence, the suit itself is not maintainable, and there is no cause of action arise for filing a suit. The Trial Court has dismissed the application on the ground that, for rejecting the plaint, the averments in the plaint is only germane, and the stand taken in the written statement cannot be

considered. Challenging the said order, the present Civil Revision Petition has been filed.

3. Mr. A.Jenasenan, learned counsel appearing for petitioner would contend that, the very appointment of Executive Officer itself is not valid in the eye of law, without a specific rule has been framed governing the appointment of an Executive Officer. That apart, without a valid authorisation given by the Commissioner, H.R. & C.E. Department, the Executive Officer cannot file the suit. In support of his contentions, the learned counsel has relied upon the judgment of Supreme Court of India reported ***in 2014 (5) SCC 75 (Dr.Subramanian Swamy Vs. State of Tamil Nadu and others)***, wherein the Supreme Court has held that the Executive Officer can exercise his power only after a specific rule has been framed. The leaned counsel also relied upon the judgment of this Court reported in ***2014 (2) TNLJ 423 (Civil) (A/m. Vaithianathaswamy Devasthanam, Vs. The Government of Tamil Nadu and others)***, wherein it has been held that, so far, no rule has been framed prescribing duties and functions of Executive Officer.

4. I have considered rival submissions made by learned counsel appearing for petitioner as well as learned Special Government Pleader appearing for respondent and perused the records carefully.

5. According to the learned counsel appearing for petitioner that, in absence of any specific rule relating to appointment and duties of Executive Officer, he cannot maintain the suit, and the very suit itself is not maintainable. The above contentions of learned counsel appearing for respondent cannot be countenanced at this stage. It is now settled that, for rejecting the plaint, the averments made in the plaint alone is germane, and the contentions made in the written statement cannot be considered. At this stage, Court has to consider whether any cause of action arose for filing the suit, if a meaningful reading of the plaint prima facie disclose the cause of action, then the plaint cannot be rejected. Whether the Executive Officer has power to file a suit, and whether any authorisation has been obtained from the concerned Commissioner, H.R. & C.E. Department, all these issues can be decided only in the trial. At this stage, the court has to presume that that the averments

made in the plaint are true. Unless the petitioner establish that the suit is barred under any law, the plaint cannot be rejected at the threshold. After considering the materials, the Trial Court has rightly dismissed the application, therefore, there is no illegality or irregularity in the order passed by the Trial Court, and I find no merit in this Civil Revision Petition. Accordingly, this Civil Revision Petition stands dismissed.

6. However, it is always open to the petitioner to raise all the issues during the course of trial. Further, considering the fact that the suit is pending from the year 2008, the Trial Court is directed to proceed with the trial, and dispose the suit within a period of six months from the date of receipt of the copy of this order. No costs. Consequently, the connected Miscellaneous Petition in M.P. 1 of 2015 is closed.

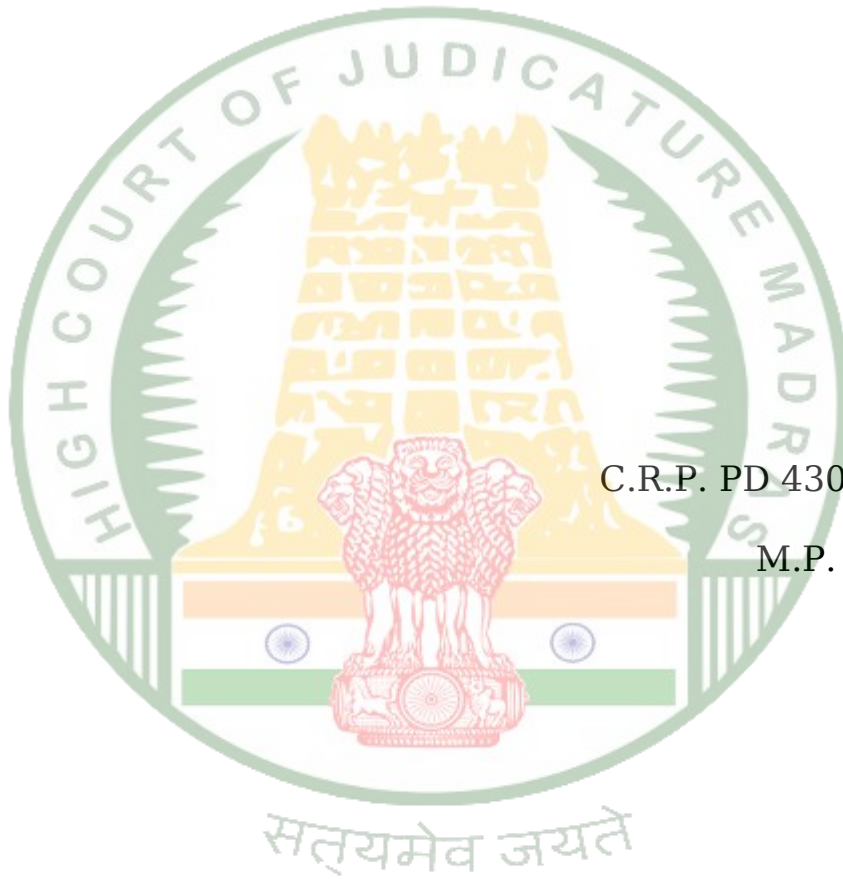
03.01.2020

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

To
XIV Asst. City Civil Court,
Chennai.

V.BHARATHIDASAN,J.

rpp



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