

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.11.2020

Delivered on: 27.11.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRP.(PD).No.4439 of 2015

and

MP.No.1 of 2015

Sri Kasivisvanathaswamy Devasthanam,
Rep.by its Hereditary Trustee
A.Viswanathan
No.77, Krishnapa Naicken Street,
Kondithope, Chennai 600 079.

...Petitioner

Vs.

C.Neelavathi

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.06.2015 made in I.A.No.17829 of 2014 in O.S.No.6298 of 2013 on the file of the IV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.M.L.Sripathi

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed by the respondent/defendant against the order passed by the IV Assistant Judge, City Civil Court, Chennai, in I.A.No.17829 of 2014 in O.S.No.6298 of 2013 dated 18.06.2015.

2. The respondent herein had filed an application in I.A.No.17829 of 2014 in O.S.No.6298 of 2013 on the file of the IV Assistant Judge, City Civil Court, Chennai, under Order 6 Rule 7 of CPC, seeking leave of the Court to amend the plaint as mentioned in the said petition. The learned IV Assistant Judge, City Civil Court, Chennai, by the order dated 18.06.2015 had allowed the said application. Feeling aggrieved, the respondent/defendant has filed the present Civil Revision Petition.

3. When this matter came up for hearing on 09.10.2020, the learned counsel for the petitioner has submitted that he is ready for arguments but, the learned counsel for the respondent has not connected through Video Conferencing. Hence, the matter was adjourned to

04.11.2020. On 04.11.2020 also the learned counsel for the petitioner has submitted that he is ready for arguments but, the learned counsel for the respondent not appeared. Hence, the matter was adjourned and posted on 20.11.2020 under the caption “for orders.” On 20.11.2020 also, there was no representation for the respondent and hence, after hearing the arguments of the learned counsel for the petitioner and perusing the materials filed along with this petition, the order is being passed in this Civil Revision Petition.

4. Mr.M.Sripathi, the learned counsel for the petitioner has submitted that the petitioner herein is a Devasthanam and the same is administered by its Hereditary Trustees. He further submitted that the petitioner Devasthanam is the absolute owner of the suit land and the same was leased out to the plaintiff. He further submitted that the plaintiff put up a super structure and residing there. He further submitted that since the respondent/plaintiff committed wilfull default in paying the rent, the petitioner had terminated the tenancy by issuing a notice and thereafter, the respondent/plaintiff had filed a suit in O.S.No.6298 of 2013 on the file of

the IV Assistant Judge, City Civil Court, Chennai, for the relief of permanent injunction restraining the petitioner herein/defendant, its men, agents, servants, etc., from anyway interfering with her peaceful possession and enjoyment of the suit property.

5. He further submitted that in the plaint, the respondent has categorically admitted that her mother Meenakshi Ammal entered into the suit property as a tenant under the defendant, but, when the matter was posted for cross examination of PW1, the respondent had filed an application in I.A.No.17829 of 2014 under Order 6 Rule 17 of CPC, seeking leave of the Court to amend the plaint as mentioned in the said petition. He further submitted that in the proposed amendment, she has stated that her mother entered into the suit property in the year 1950 and she has been enjoying the suit property as the owner in which, the petitioner/defendant is not having any rights. He further submitted that the proposed amendment is totally inconsistent with the averments originally made in the plaint and hence, the said amendment cannot be allowed.

6. He further submitted that as per the proviso to Order 6 Rule 17 of CPC, after commencement of the trial, amendment of pleadings cannot be allowed but, in this case, the plaintiff has filed the proof affidavit (chief examination) as PW1 and when the matter was posted for cross examination, she has filed I.A.No.17829 of 2014 seeking leave of the Court for amending the plaint. He further submitted that the trial Court without considering the aforesaid facts had erroneously allowed the said application and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the trial Court in I.A.No.17829 of 2014 and dismiss the said application.

7. A perusal of the typed set of papers filed by the petitioner shows that the respondent herein had filed a suit in O.S.No.6298 of 2013 on the file of the IV Assistant Judge, City Civil Court, Chennai, for the relief of permanent injunction restraining the petitioner/defendant from interfering with her peaceful possession and enjoyment of the suit property.

8. In para No.3 of the plaint, the respondent/plaintiff has averred as follows:-

“3. The plaintiff submits that the defendant Kasivisvanathasamy Devasthanam is the owner and the plaintiff is the tenant in respect of the property bearing No.57/4, Vadamalai Maistry Street, George Town, Chennai – 600 079, morefully described in the schedule hereunder...”

9. From the aforesaid pleadings, it is clear that the respondent/plaintiff has categorically admitted that the petitioner/defendant Devasthanam is the owner and she is the tenant in respect of the suit property.

10. In the proposed amendment she has stated that she is the owner of the suit property and that the defendant Devasthanam is in no way connected with the said property.

11. At this juncture, it would be relevant to refer to Section 116 of the Indian Evidence Act, 1872, which reads thus:-

“116. Estoppel of tenant; and of licensee of person in possession.- *No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”*

12. A bare reading of the aforesaid provision of law would show that no tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny the landlord's title to such immovable property. Therefore, the respondent/plaintiff cannot deny the title of the petitioner/landlord. Further, the proposed amendment is totally inconsistent with the averments

originally made in the plaint. In the plaint, she has admitted that the defendant is the owner and she is only a tenant of the suit property but, in the proposed amendment, she has denied the title of the defendant and she set up a title over the suit property and the same is not permissible under the law.

13. It is also to be pointed out that admittedly, in the suit trial has commenced and the respondent/plaintiff has examined herself as PW1 by filing the proof affidavit and also marked two documents as Exs.A1 and A2 and when the suit was posted for cross examination of PW1 she has filed the application seeking leave of the Court to amend the plaint.

14. At this juncture, it would be relevant to refer to Order 6 Rule 17 of CPC, which reads thus:

“17. Amendment of pleadings:- *The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could have raised the matter before the commencement of trial.”

15. A bare reading of the proviso to Rule 17 of Order 6 of CPC would clearly show that no application for amendment shall be entertained after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the proposed amendment before the commencement of trial. In the affidavit filed in support of the application in I.A.No.17829 of 2014, the respondent/plaintiff has not stated any reason, as to why, the proposed amendment has not been sought before the commencement of trial and therefore, on this ground also, the impugned order is not sustainable.

16. In the result, this Civil Revision Petition is allowed. The order passed by the IV Assistant Judge, City Civil Court, Chennai, in

I.A.No.17829 of 2014 in O.S.No.6298 of 2013 dated 18.06.2015 is set aside. I.A.No.17829 of 2014 on the file of the IV Assistant Judge, City Civil Court, Chennai is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

27.11.2020

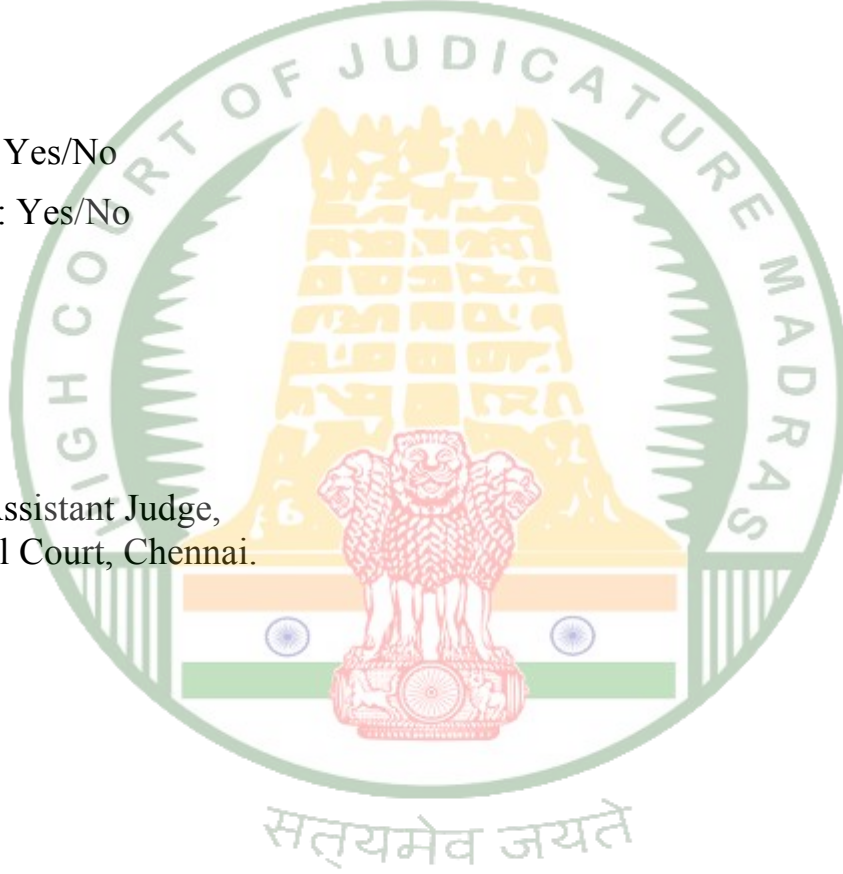
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To

The IV Assistant Judge,
City Civil Court, Chennai.



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P.RAJAMANICKAM.J.,

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Pre-Delivery Order in
CRP.PD.No.4439 of 2015
and
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