

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (NPD).No.4165 of 2013

Yelchur Venkata Kotiah Charities
under the Management of
Sri Kanyaka Parameswari Devasthanam & Charities,
rep. By its Committee of Management,
Consisting of its Dharmakartha & President,
1.Sri Collah Venkata Chandrasekhar
its Trustees viz.,
2.Sri. Pabbisetty Sreeramulu
3.Sri P.J.P.N.Gupta
4.Dr.Thavva Vedagiriswara Rao
5.Dr.G.V.Chalapathi
6.Dr.C.A.P.Pattabiramen
7.Sri Mannar Udayakumar
rep. Herein by its Secretary,
Mr.K.Ravindranath,
No.1, Audiappa Naicken Street,
Chennai 600 001.



... Petitioners

Vs

Mr.P.Ravindhiran
Proprietor M/s.P.R.Jewellery,
Carrying on business at No.102,
Usman Road, T.Nagar,

Chennai 600 017.

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.07.2013 made in I.A.No.5236 of 2013 in O.S.No.7752 of 2012 on the file of the VI Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr. Ashok Menon

For Respondent : Mr.R.Madhanagopaal

ORDER

This Civil Revision Petition is filed to set aside the fair and final order dated 18.07.2013 made in I.A.No.5236 of 2013 in O.S.No.7752 of 2012 on the file of the VI Assistant Judge, City Civil Court, Chennai.

2. The petitioner is the plaintiff in O.S.No.7752 of 2012 on the file of the VI Assistant Judge, City Civil Court, Chennai. He filed the said suit for recovery of possession and for a direction to pay Rs.15,000/- per month as damages for wrongful use of the portion occupied by the

respondents. The respondents filed written statement on 27.02.2003 and contended that the suit is hit by principles of resjudicata and filed I.A.No.5236 of 2013 under Order XIV Rule 2 of C.P.C. to decide the said issue as preliminary issue. The learned Judge accepted the said contention and considering the judgment dated 28.06.2012 made in A.S.No.261 of 2011 on the file of III Assistant City Civil Court, Chennai, filed by the respondent, held that suit is barred by principles of resjudicata and decided the issue against the petitioner.

3. Against the said order dated 18.07.2013, allowing I.A.No.5236 of 2013 in O.S.No.7752 of 2012, the petitioner has come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioner contended that the petitioner is Charitable Institution and provisions of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as

'the Act') is not applicable to the petitioner. The learned Judge erroneously held that as per Section 34 of the Act, only when the respondent fails to pay the lease amount, he can be evicted. The petitioner has filed Second Appeal in S.A.No.983 of 2014 against the said judgment dated 28.06.2012, passed in A.S.No.261 of 2011 and the Second Appeal is pending before this Court. Unless the Second Appeal is disposed of and finally decided, the question of resjudicata will not arise. The learned Judge failed to consider that no suit was filed based on the earlier notice dated 28.12.2007 which was held as null and void in the suit proceedings for mandatory injunction filed by the respondent and the said finding in a suit for mandatory injunction is without jurisdiction. The learned Judge failed to see that the finding in First Appeal with regard to invalidity of the earlier notice will not operate as resjudicata in respect of subsequent notice issued under Section 106 of the Transfer of Property Act for the ejectment suit filed in O.S.No.7752 of 2012. The learned Judge failed to consider that as per Sub-Section 3 of Section 34 (B) of the Act, the trustee

is entitled to terminate the pendency and file a suit for recovery of possession from the lessee and prayed for dismissing the I.A. and allowing the Civil Revision Petition.

5. Per contra, the learned counsel appearing for the respondent contended that earlier when the petitioner issued notice dated 28.12.2007 terminating the lease and called upon the respondent to pay a sum of Rs.15,000/- per month as damages for wrongful use and occupation, the respondent filed O.S.No.3721 of 2010 for mandatory injunction, directing the petitioner to receive the rent of Rs.5,515/- commencing from September 2009 or in the alternative to direct the mode of payment of rent to the credit of petitioner. The said suit was dismissed. The First Appeal in A.S.No.261 of 2011 filed by the respondent was allowed, holding that the petitioner has not followed the procedure for fixation of fair rent as per the provisions of the Act and only when the respondent fails to pay the monthly rent, the petitioner can initiate proceedings as per Section 24 (B)

of the Act. The said judgment is not set aside and the same is still in force. In view of the same, the present suit filed by the petitioner is hit by principles of resjudicata. The learned Judge considering the judgment passed in First Appeal, allowed the petition. filed by the respondent, holding that the present suit is barred by principles of resjudicata. There is no error in the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

6. Heard the learned counsel appearing for the petitioner as well as the respondent and perused the materials available on record.

7. From the materials on record, it is seen that the petitioner is owner of the suit property and has leased out the same to the respondent for a monthly rent payable of Rs.5,515/-. The petitioner contending that the suit shop will fetch Rs.15,000/- per month in view of the location of the shop, terminated the lease and issued notice dated 28.12.2007

terminating the lease and called upon the respondent to pay Rs.15,000/- per month. On receipt of the said notice, the respondent filed suit in O.S.No.3721 of 2010 for mandatory injunction, directing the petitioner to receive the rent of Rs.5,515/-. From the materials on record, it is seen that the suit filed by the respondent was dismissed. But the First Appellate Court allowed the appeal A.S.No.261 of 2011 and held that the petitioner has to receive the rent of Rs.5,515/- per month, till the fixation of the rent as per the provisions of Hindu Religious and Charitable Endowments Act, 1959. The contention of the learned counsel appearing for the petitioner is that provisions of the Hindu Religious and Charitable Endowments Act, 1959 is not applicable to the petitioner as the petitioner is a Charitable Institution and the Second Appeal filed by the petitioner against the judgment in A.S.No.261 of 2011 is pending before this Court.

8. As rightly pointed out by the learned counsel appearing for the respondent, the judgment in A.S.No.261 of 2011 is not stayed by this

Court. The judgment in A.S.No.261 of 2011 is still in force. In view of the above, unless the judgment dated 28.06.2012 made in A.S.No.261 of 2011 is set aside, the petitioner is bound by the said judgment and provisions of the Act is applicable to the petitioner. In view of the above fact, the order of the learned Judge holding that the present suit is barred by the principles of resjudicata is proper and valid. The learned Judge has given cogent and valid reason to the said finding. In view of the judgment in First Appeal, the contention of the learned counsel appearing for the petitioner that present notice is issued under Section 106 of the Transfer of Property Act and therefore, the suit is not hit by the principles of resjudicata is without merits.

9. For the above reason, the Civil Revision Petition is dismissed. No costs.

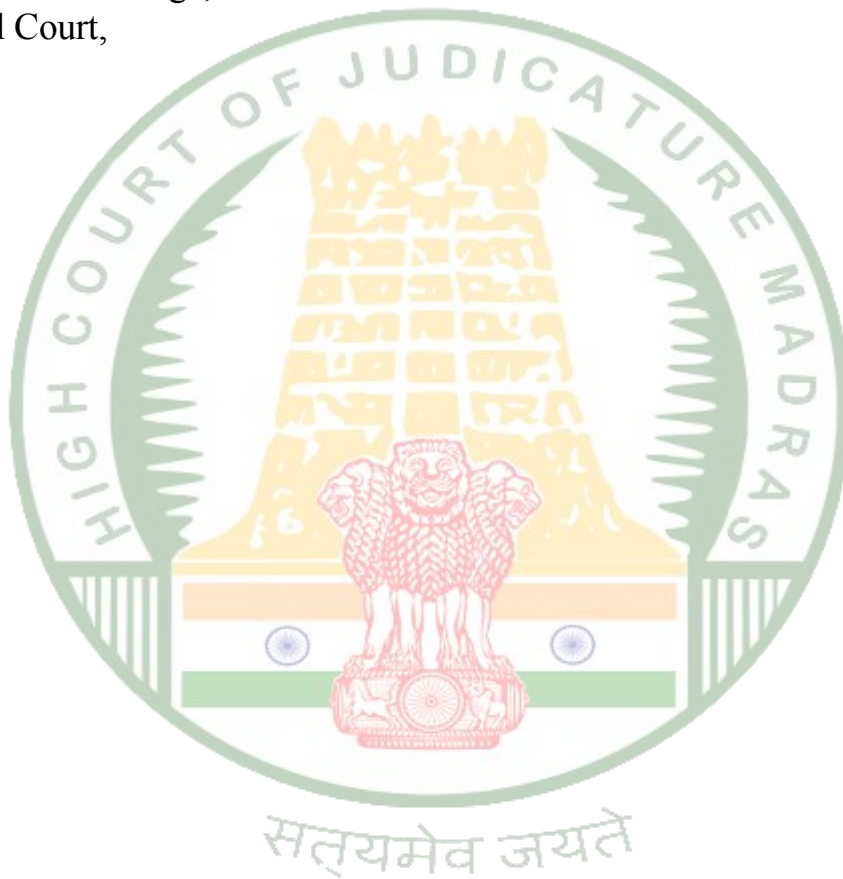
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To

The VI Assistant Judge,
City Civil Court,
Chennai.

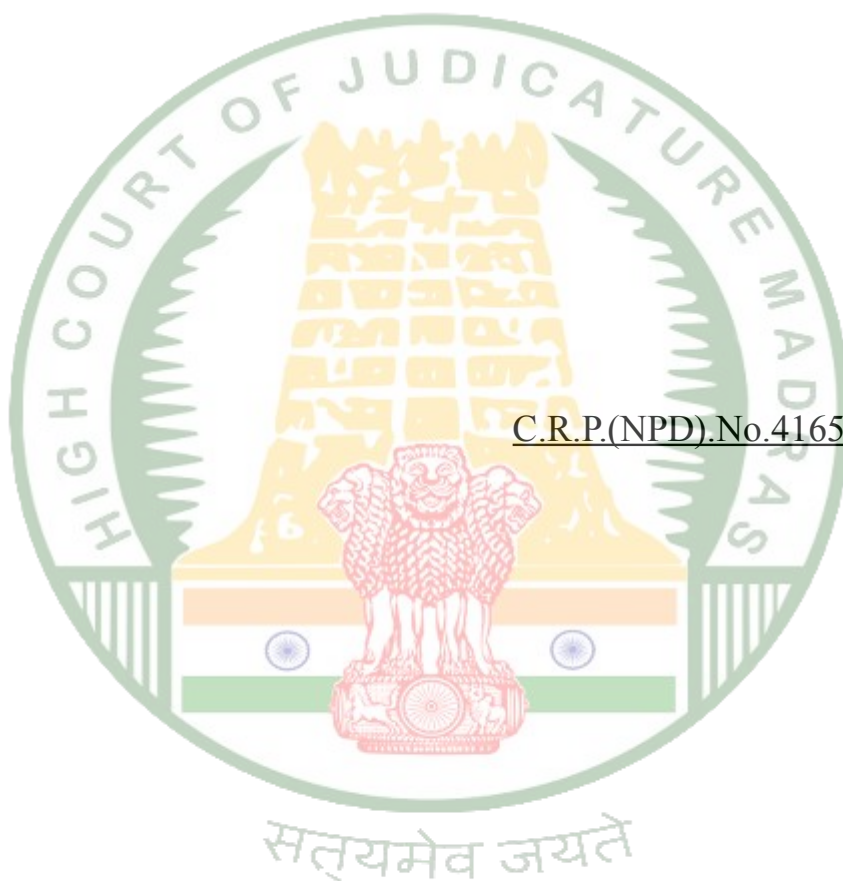


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V.M.VELUMANI, J.

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