

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 30.11.2020]

[ORDERS PRONOUNCED ON : 30.12.2020]

CORAM:

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

C.R.P.[PD] No.2682 of 2019

and

C.M.P.No.17693 of 2019

M/s.Sarmani Hotels Pvt. Ltd.,
Rep. by its Managing Director,
B.R.Ramakrishna Achar,
S/o. Late B.K.Ramachandra Achar,
No.38/106, General Patters Road,
Anna Salai, Chennai - 600 002.

... Petitioner/Defendant

.. Vs ..

B.S.Venkataramana Thantry

सत्यमेव जयते

... Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Judgment and Order dated 31.07.2019 passed in I.A.No.1 of 2019 in O.S.No.6121 of 2017, by the learned XVI Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.Shanmugam Nambi
for Mr.S.Nambi Arooran
For Respondent : Mr.A.K.Sriram
for M/s.A.S.Kailasam Associates

ORDER

This civil revision petition is filed under Article 227 of the Constitution of India, against the Judgment and Order dated 31.07.2019 passed by the learned XVI Additional Judge, City Civil Court, Chennai, in I.A.No.1 of 2019 in O.S.No.6121 of 2017.

2. The defendant is the revision petitioner herein. The respondent herein has filed the above said suit in O.S.No.6121 of 2017 before the learned XVI Additional Judge, City Civil Court, Chennai, for delivery of possession of the suit property and arrears of rent on the ground that the defendant is in arrears of rent. The revision petitioner is the defendant in the original suit. The respondent is the plaintiff therein. The original suit was instituted for the relief of recovery of possession on

the premise that the revision petitioner is a tenant, who has committed wilful default in payment of rent. Prior to the suit, the respondent/plaintiff has issued notice under Section 106 of the Transfer of Property Act [hereinafter referred to as T.P. Act] In the original suit, the revision petitioner entered appearance and he filed written statement. Issues have been framed by the trial Court and trial was also begun. Proof affidavit of the respondent herein/plaintiff was filed and the case was posted for his cross-examination. At that stage, the revision petitioner/defendant has filed the application in I.A.No.1 of 2019 under Order VII Rule 11 of C.P.C., for rejection of the plaint in O.S.No.6121 of 2017.

3. The defendant specifically averred in the petition to reject the plaint that he is not a tenant under the plaintiff and no lease deed was executed between himself and the plaintiff. The defendant is not liable to pay any rent to the plaintiff and the relationship of landlord and tenant is not existing between the plaintiff and the defendant. The notice under Section 106 of T.P. Act, was issued to wrong person and since the notice of eviction under Section 106 of T.P. Act was sent only to

B.K.Ramachandra Achar and not to the defendant, the plaintiff has no cause of action to file the suit against the defendant. The said application in I.A.No.1 of 2019 was dismissed by the learned XVI Additional Judge, City Civil Court, Chennai, and hence, the present Civil Revision Petition has been preferred by the defendant.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. Application in I.A.No.1 of 2019 was filed by the revision petitioner/defendant under Order VII Rule 11 of CPC to permit him to reject the plaint in O.S.No.6121 of 2017 as no cause of action arises as against him. In that application, the respondent herein/plaintiff has filed a counter stating that the defendant is a tenant and he is liable to pay the arrears of rent. According to the plaintiff, the petition cannot be allowed on the basis of written statement filed by the defendant.

6. The sum and substance of the submissions made by the revision petitioner/defendant is that one late Shri B.K.Ramachandra

Achar is the lessee in respect of the suit property and he died on 01.04.2018 leaving behind his legal heirs, wife and children. No lease deed was entered between both the parties and the defendant is not liable to pay any rent to the plaintiff. Since the revision petitioner/defendant is not the actual lessee, no cause of action arisen in this case as against the defendant.

7. The contention of the learned counsel for the respondent herein/plaintiff is that the defendant has been remitting rents to the plaintiff and the same has been received towards damages for use and occupation and without prejudice to the present suit, the defendant had admitted the landlord tenant relationship.

8. The scope and enquiry in respect of the application filed under Order VII Rule 11 of CPC are that the averments made in the plaint and the documents filed along with the plaint alone will be taken for consideration.

9. The learned counsel for the respondent/plaintiff drawn my attention to the various paragraphs in the written statement to the effect that the tenancy has been admitted by the defendant before the trial Court and when the matter was posted for cross-examination of D.W.1, the present Civil Revision Petition has been filed.

10. As stated supra, in respect of the application filed under Order VII Rule 11 C.P.C., plaint averments alone must be taken into consideration and the plaint documents have to be looked into. It is not in dispute that as per the plaint averments, notice under Section 106 of T.P. Act for possession of the property was served on the defendant. But the defendant says that it was served on the wrong person. As per the plaint averments, amounts have been paid by the defendant and the same was adjusted for possession and also for use and occupation of the building. The case of the revision petitioner/defendant is that the original lease was executed between the plaintiff and B.K.Ramachandra Achar and he died on 01.04.2018 leaving behind his legal heirs, wife and children. There is no lease deed entered between both the plaintiff and

the defendant and therefore, the suit is not maintainable. Certain payments have been made by the defendant to the plaintiff as per the plaint document. Lease Deed and Partition Deed were marked as Document Nos.1 and 2 along with the plaint. The plaint document Nos.3,4, 5, 6 and 7 are the letter and legal notice exchanged between the parties viz., pre-suit notice including one under Section 106 of T.P. Act. Whether there exists a relationship of landlord and tenant between the plaintiff and the defendant and the disputed facts that have to be gone into by letting in evidence at the time of trial.

11. Secondly, it is the specific case of the plaintiff that he has received the amount paid by the defendant towards use and occupation and hence, all the points that have been raised by the defendant/revision petitioner have to be gone into only at the time of trial. According to the defendant, he is paying the lease rent only on behalf of the actual lessee viz., B.K.Ramachandra Achar and not on his own. Whether the defendant has paid the amount on his behalf or on behalf of B.K.Ramachandra Achar is the question of fact which is disputed by the other side. The fact that whether the defendant is the lessee of the suit land and whether

notice of termination of the lease issued under Section 106 of the T.P. Act is sustainable in law are all matters for evidence and hence, due to the restricted scope of enquiry under Order VII Rule 11 CPC, this Court finds that the points that have been raised by the defendant are matter for trial.

12. In this view of the matter, this Civil Revision Petition is dismissed. However, the learned XVI Additional Judge, City Civil Court, Chennai, is directed to complete the case, within a period of six months from the date of receipt of copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

30.12.2020

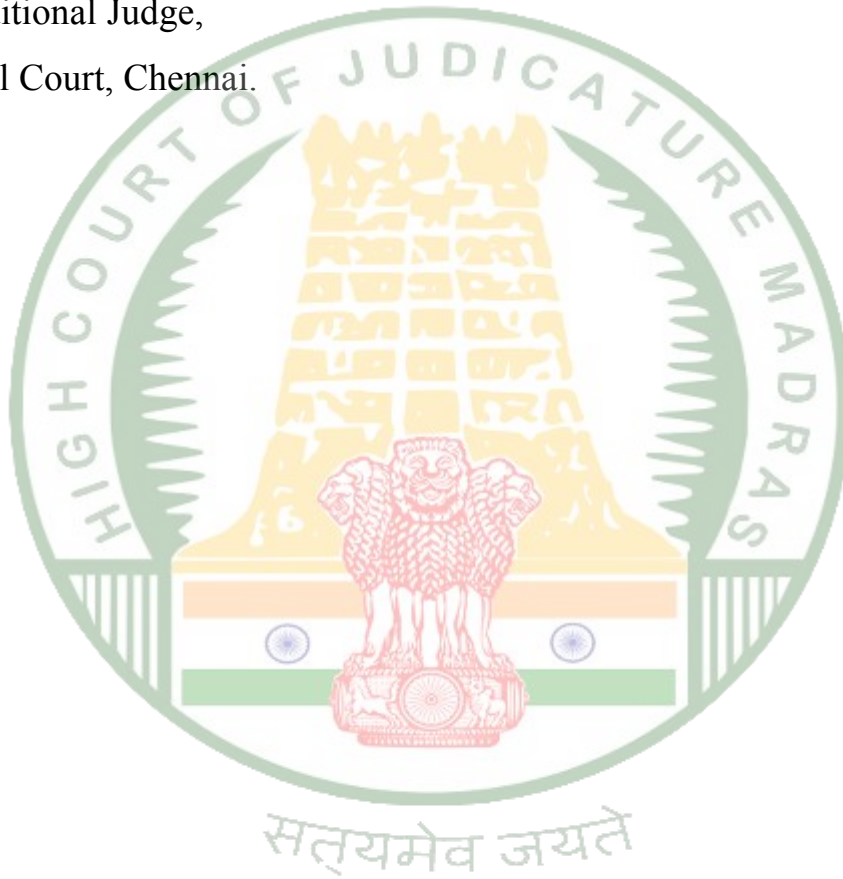
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To

XVI Additional Judge,
City Civil Court, Chennai.



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RMT.TEEKAA RAMAN, J.

JRL



**Order made in
C.R.P.[PD] No.2682 of 2019**

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