

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 02.09.2021	Orders pronounced on 14.09.2021
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Coram

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD) No.109 of 2021
and
C.M.P.No.1011 of 2021

1. S.Muniammal, W/o. Loganathan
(Correct name of husband is late. Shanmugam)
 2. Chellammal, W/o. Venkatesan
(Correct name of husband is late. Shanmugam)
 3. Sugumaran, S/o.Chellammal
(Correct name of father is late. Shanmugam)
 4. Sasimaran, S/o.Chellammal
(Correct name of father is late. Shanmugam)
- सत्यमेव जयते... Petitioners
Vs

Dr.S.Subbiah ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against and order and decretal order dated 12.02.2020 passed in I.A.No.2697 of 2017 in O.S.No.6196 of 2016 on the file of XVII Assistant Judge, City Civil Court, Chennai.

For Petitioners .. Mr.T.S.Rajamohan
For Respondent .. Mr.S.Saravanakumar

ORDER

This Civil Revision Petition is filed to set aside the order passed in I.A.No.2697 of 2017 in O.S.No.6196 of 2016 by the learned XVII Assistant Judge, City Civil Court on 12.02.2020.

2. The respondent, as the plaintiff, filed the suit in O.S.No.6196 of 2016 seeking the relief of permanent injunction restraining the petitioners/defendants, their men, agents, representatives or any person or persons through them from carrying out any construction activities in the suit schedule property till the determination of the ownership of the suit schedule property.

3. Petitioners entered appearance in the suit and filed I.A.No.2697 of 2017 for rejection of plaint under Order VII Rule 11 CPC. That petition was dismissed after contest. Against the said order

of dismissal, this Civil Revision Petition is preferred.

4. Learned counsel for the petitioners submitted that the suit filed in O.S.No.6196 of 2016 is a frivolous suit. Petitioners filed RCOP No.1356 of 2011 against the respondent herein under Section 10(2)(i), 10(2)(iii) and 10(2)(v) and 10(3)(a)(iii) of Tamil Nadu Buildings (Lease and Rent) Control Act for eviction. After contest, this petition was allowed and eviction was ordered under Sections 10(2)(i), 10(3)(a)(iii) and 10(2)(vii) of the Act. The respondent preferred Rent Control Appeal in RCA No. 244 of 2017 and that appeal was partly allowed on 05.11.2019, but the order of eviction passed by the learned Rent Controller on the ground of wilful default and denial of title was confirmed. The learned Rent Controller has clearly found that the denial of title of the respondents' (petitioners' herein) was not bonafide and it is a malafide denial. Petitioners herein produced Exs.P1, P2, P3 and P4 documents before the Rent Controller to show that they are the legal heirs of the deceased Shanmugam. In Ex.P7, respondent stated that Muniammal is the wife of Shanmugam and it shows that the respondent

admitted Sugumaran and Sasimaran are the sons of deceased Shanmugam. When the respondent claims that he has been paying rent to Joan Petrisha Joseph, he has not produced any evidence showing that he has been paying rents to Joan Petrisha Joseph. She was not examined as witness in the rent control proceedings. He refused to divulge the details regarding payment of rent to Joan Petrisha Joseph. He has filed petition under Section 9(3) of Rent Control Act to deposit rent in the Court, since there is doubt as to who is the landlord. Primarily on these reasons, learned Rent Controller ordered eviction of respondent from the tenanted premises on the ground of denial of title and on other grounds. As already stated, the appeal filed in RCA No.244 of 2017 was also dismissed. In the said circumstances, the filing of the suit for the relief asked is atrocious and abuse of process of Court. In this regard, he pressed into service the judgment rendered in **(1977) 4 SCC 467 (T.Arivandandam ..vs.. T.V.Satyapal and another)**, wherein it is held as follows:-

“..... The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not

disclosing a clear right to sue, he should exercise his power under Or. VII r. 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. ”

and the judgment in **Civil Appeal No.2960 of 2019 (Raghwendra Sharan Singh ..vs.. Ram Prasanna Singh (dead) by LRs.)** for the proposition that any proceedings abusing the process of Court should be nipped in the bud. The relevant portion reads as follows:-

“In the case of Madanuri Sri Rama Chandra Murthy (supra), this Court has observed and held as under:

“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be

looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. ”

5. Learned counsel for the respondent submitted that there is a real dispute as to who is the landlord in respect of the suit property. There is no doubt that the original owner was K.Shanmugam. The petitioners as well as Joan Petrisha Joseph claim themselves as legal heirs of deceased K.Shanmugam. K.Shanmugam himself directed the

respondent to pay rents to Joan Petrisha Joseph. Now the petitioners are trying to interfere with his possession with a view to evict him illegally. Therefore, the suit was filed.

6. In reply, learned counsel for the petitioners submitted that husband's name of first and second petitioners is deliberately given as Loganathan and Venkatesan respectively, when their husband's name is Shanmugam. When it is claimed in the plaint that the respondent is a tenant in Shop Nos.5 and 6, but the relief is claimed in respect of shop Nos.1 to 9, that is palpably wrong. The suit is filed only with a view to deny the petitioners the fruits of eviction order and protract the proceedings.

7. Considered the rival submissions and perused the records. As already indicated, the suit in O.S.No.6196 of 2016 was filed for the relief of permanent injunction as aforesaid. The respondent claims that he is a Doctor and was inducted as a tenant in respect of shop Nos.5 and 6 at Door No.227, GNT Road, Moolakadai, Chennai by Shanmugam @

Stanley Joseph during November 2000 at a monthly rent of Rs.1,000/-.

He paid advance of Rs.50,000/- and entered into a rental agreement on 10.12.2000. He is running a clinic in the name and style of 'Rathi Clinic'. He paid further advance of Rs.65,000/-. He filed a suit in O.S.No.5982 of 2002 on the file of learned XVII Assistant City Civil Court, Chennai, against K.Shanmugam @ Stanley Joseph for perpetual injunction not to disturb his peaceful possession and enjoyment of shop Nos.5 and 6, except by due process of law. Subsequently, he was granted permission by the learned XVII Assistant City Civil Court Judge in I.A.No.7055 of 2004 for filing fresh suit on the same cause of action.

K.Shanmugam @ Stanley Joseph filed RCOP No.641 of 2003 for eviction against the respondent and it was dismissed on 01.07.2004. The appeal filed in RCA No.1609 of 2004 was also dismissed.

K.Shanmugam @ Stanley Joseph died on 26.12.2006 leaving his wife, Joan Petrisha Joseph and his daughters Melody Maria Joseph, Sabina Mary Joseph and his son Adrin Jude Joseph as his legal heirs. He filed petition for impleading them in O.S.No.3383 of 2004 and that was allowed. They were impleaded as defendants 2 to 5 in O.S.No.3383 of

2004. That suit was decreed in favour of the respondent. Petitioners are trying to grab the clinic shop portion of the respondent. On 03.12.2015, they prevented the respondent from changing the tubelight in his clinic premises. On 16.12.2016, they trespassed into the shops and demolished the rooms by using heavy power drilling machine. Due to drill machine vibration and demolition, respondent's portion started to crack and glass portions started to break. In the said circumstances, this suit was filed.

8. Perusal of the order of learned Rent Controller shows that the learned Rent Controller found that the denial of title by the respondent of the petitioners in the suit property is not bonafide and therefore, ordered eviction. However, learned counsel for the respondent filed a copy of the order passed in I.A.No.12135 and 12136 of 2008 in O.S.No.4625 of 2001. These orders have been filed to show that Muniammal had admitted during the course of enquiry in these petitions that Joan Petrisha Joseph is the first wife of Shanmugam and she had two daughters namely, Melody Maria Joseph, Sabina Mary Joseph and one son, namely, Adrin Jude Joseph. It is seen that in paragraph-8 of the

order, learned Judge observed that Muniammal admitted that Joan Petrisha Joseph is the wife of Shanmugham and his children are (i) Melody Maria Joseph, (ii) Sabina Mary Joseph and (iii) Adrin Jude Joseph. Therefore, it is clear that there are two findings by two different Courts. In a civil suit in O.S.No.4625 of 2001, it is the finding that the legal representatives of deceased Shanmugam are (i) Joan Petrisha Joseph, (ii) Melody Maria Joseph, (iii) Sabina Mary Joseph and (iv) Adrin Jude Joseph. The Rent Controller in RCOP No.1356 of 2011 found that the petitioners herein are the legal heirs of deceased Shanmugam.

9. The case of the respondent is that Joan Petrisha Joseph is also claiming rents from him and he is also paying rents to her. It is true that he has not produced any receipts to show the payment of rent. It is also true that he is a tenant in respect of shop Nos.5 & 6. He has shown shop Nos.1 to 9 as suit properties. There is also some discrepancies in referring husband's name of defendants 1 and 2 in O.S.No.6196 of 2016. Irrespective of these facts, one undisputed fact is that the respondent was

inducted as tenant in respect of shop Nos.5 and 6 of the suit properties. There are rival claims claiming ownership in respect of these properties. It is claimed by the respondent that the petitioners are trying to damage the suit property by doing drilling work in nearby shops. Therefore, he filed the suit. Whether the relief claimed in the present form can be granted or not is a matter to be decided at the conclusion of trial. However, the allegations made in the plaint, made out a case for instituting this suit. There is no material filed by the respondent to show that Joan Petrisha Joseph and her children made any claim of title in the suit property. Admittedly, he got a decree against them in O.S.No.4625 of 2001. But vexed and mixed question of fact and law involved in this case are required to be decided only after recording oral and documentary evidence of parties. In the facts and circumstances of this case, plaint can not be rejected at the inception. Judgments relied on by the learned counsel for the petitioners are not applicable to the facts and circumstances of the case. In this view of the matter, this Court finds that the plaint cannot be rejected. Learned XVII Assistant Judge, City Civil Court, Chennai, rightly dismissed the petition filed for rejection of plaint.

This Court finds no reason to interfere with the order of the learned XVII Assistant Judge, City Civil Court, Chennai and confirms the order.

10. Resultantly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Mra

14.09.2021

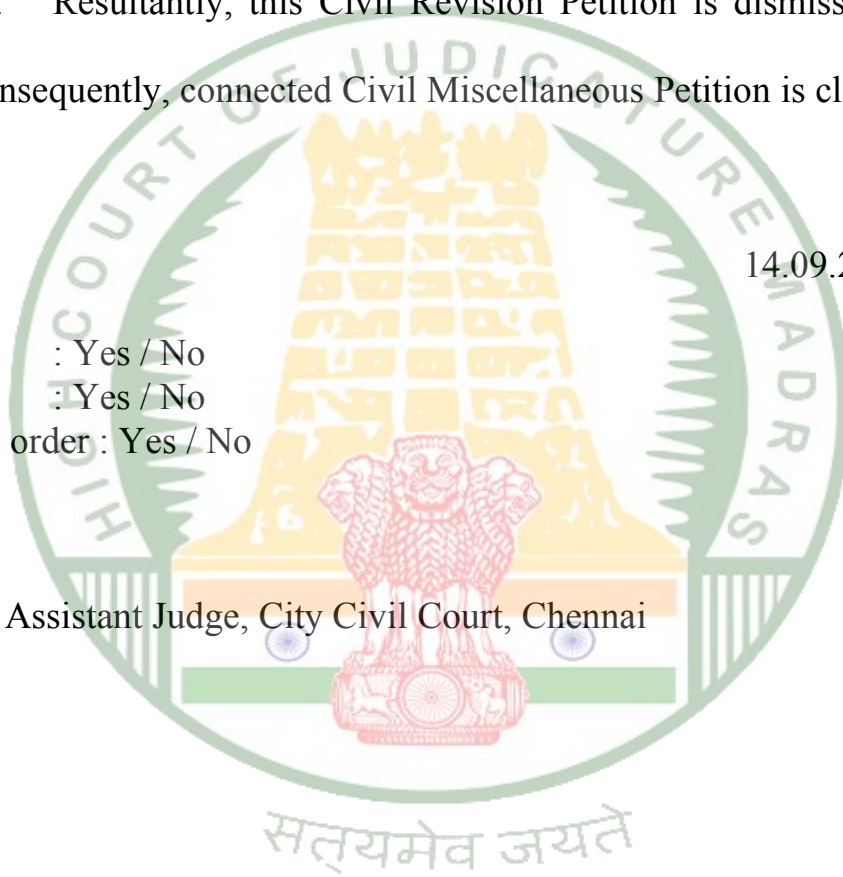
Index : Yes / No

Internet : Yes / No

Speaking order : Yes / No

To,

1. XVII Assistant Judge, City Civil Court, Chennai

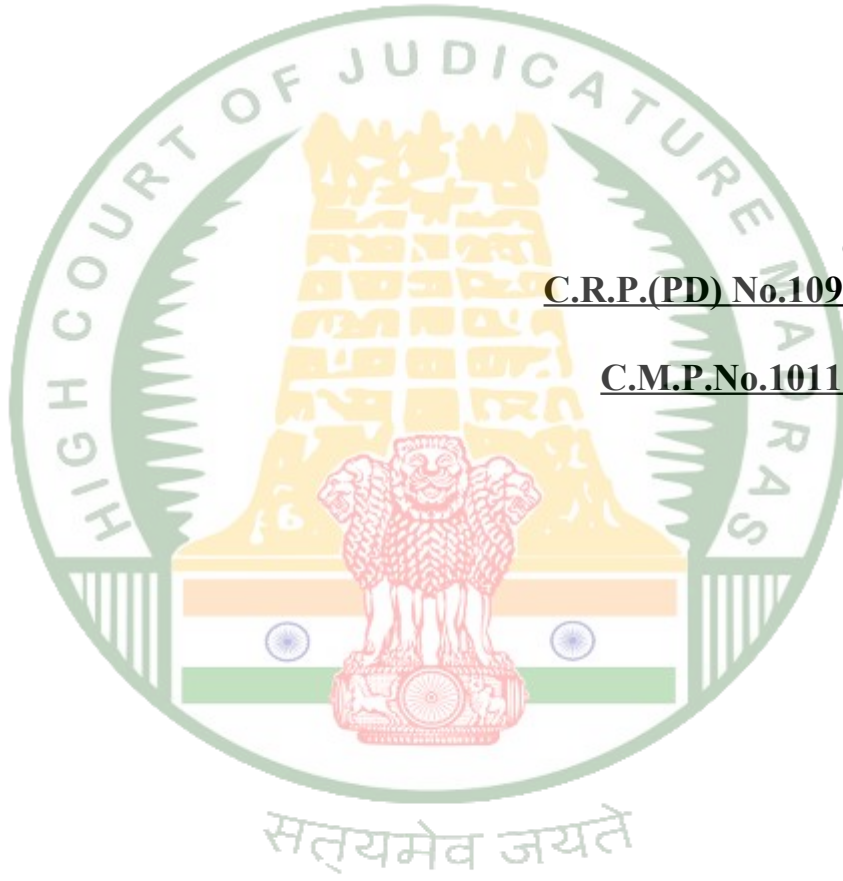


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G.CHANDRASEKHARAN, J.

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