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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.NOS.2717 AND 4257 OF 2018
AND
C.M.P.NOS.16000 AND 23333 OF 2018

C.R.P.No.2717 of 2018

M.Nirmala

...Petitioner

Vs.

N.K.Selvaraj

...Respondent

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India to set aside the order and decretal order dated 04.04.2018 and made in I.A.No.74 of 2017 in unnumbered C.M.A.No..... of 2018 on the file of the Subordinate Judge, Villupuram.

For Petitioner : Mr.V.Sundaram
for Mr.V.Bhiman

For Respondent : Mr.T.Dhanasekaran

C.R.P.No.4257 of 2018

N.K.Selvaraj

...Petitioner

Vs.

M.Praveen

...Respondent

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India to set aside the order and decretal order



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dated 26.09.2018 made in I.A.No.778 of 2016 in O.S.No.64 of 2015 on the file of the Court of the Principal District Munsif, Villupuram.

For Petitioner : Mr.T.Dhanasekaran

For Respondent : Mr.V.Sundaram for
Mr.V.Bhiman

COMMON ORDER

C.R.P.No.2717 of 2018 is directed to set aside the order and decreetal order dated 04.04.2018 made in I.A.No.74 of 2017 in unnumbered C.M.A.No. ... of 2018 on the file of the Subordinate Judge, Villupuram. C.R.P.No.4257 of 2018 is directed against the order and decreetal order dated 26.09.2018 made in I.A.No.778 of 2016 in O.S.No.64 of 2015 on the file of the Principal District Munsif Court, Villupuram.

2. N.K.Selvaraj, the respondent in C.R.P.No.2717 of 2018 instituted the suit in O.S.No.26 of 2015 against M.Nirmala for permanent injunction. His case before the Munsif Court was that the suit property was owned by M.Nirmala's husband-Mohanraj and by an unregistered lease agreement dated 24.02.2012, she agreed to induct him as a tenant on the monthly rent of Rs.5,500/-. It is his further case that the landlord was not in the habit of issuing receipt for payment of rent and on 22.01.2015, her brother-Dinesh along with rowdy people asked him to vacate the building. He immediately lodged a complaint with Villupuram Town Police, but no action was taken. Hence, he filed the suit for permanent injunction restraining the defendant from interfering his peaceful possession and enjoyment of the property except due process of law.

3. The suit was resisted by Nirmala contending that the property was originally owned by her father-in-law Kushal Raj and it was allotted to her husband-Mohanraj in a family partition on 30.03.2004. He died intestate and thereafter, his son Praveen filed the suit in O.S.No.158 of 2009 for partition and it was allotted to him by a Judgment dated 10.07.2009. Therefore, her son Praveen is the absolute owner of the property. She has categorically denied the execution of lease agreement dated 24.02.2012 and stated that it is a forged document. Her further case is that the property was leased out to one Veerappan and he was asked to vacate the premises to carry out repair. Though he originally agreed, but subsequently he had sublet the premises to his brother-N.K.Selvaraj. Along with the suit, the said N.K.Selvaraj filed I.A.No.66 of 2015, seeking interim injunction. The learned Principal District



Munsif granted interim injunction on 25.06.2015, holding that the documents produced by him, the lease agreement, electricity bill, property tax receipt and the complaint would prove that the petitioner is the tenant of the premises and an attempt was made to evict him forcibly.

4. Aggrieved over the order, an appeal was filed by the said Nirmala before the Principal Sub Court, Villupuram with a delay of 767 days. The petition to condone the delay in I.A.No.74 of 2017 was dismissed by the appellate Court. Questioning the same, she has come up with the Revision in C.R.P.No.2717 of 2018.

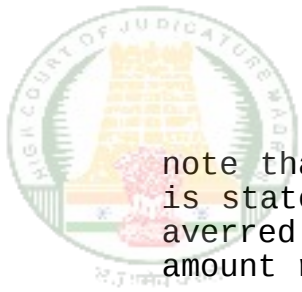
5. O.S.No.64 of 2015 was filed by M.Praveen against N.K.Selvaraj for declaration of his title over the property and recovery of possession. The plaintiff would state that the suit 'A' schedule property was allotted to him in a compromise decree passed in the partition suit in O.S.No.158 of 2009. Since he was a minor at that time, his mother-Nirmala was acting as his guardian. He also stated that the defendant N.K.Selvaraj was not a tenant under his mother and the unregistered rental agreement dated 24.02.2012 is a fabricated one. The defendant is an encroacher in 'B' schedule property and he is entitled for recovery of possession.

6. In the written statement, the defendant-N.K.Selvaraj has contended that he is a statutory tenant in the premises; the lease agreement is genuine since one of the family members of the plaintiff-Praveen has leased out the premises, he could be evicted only in a Rent Control Proceedings and not by way of suit. He filed I.A.No.778 of 2016 in O.S.No.64 of 2015 to reject the plaint under Order VII Rule 11 of C.P.C. The learned Judge dismissed the same. Assailing the order, he filed C.R.P.No.4257 of 2018.

7. I have heard the learned counsel on either side and carefully perused the materials available on record.

8. In the case on hand, it is an admitted fact that the property was originally owned by K.Mohanraj and he died intestate leaving behind his wife-Nirmala, son-Praveen and three daughters. The suit in O.S.No.158 of 2009 was filed by Praveen seeking partition. A compromise final decree was passed on 10.07.2009, thereby, he became the absolute owner of the property.

9. O.S.No.26 of 2015 was filed by N.K.Selvaraj against Nirmala, who is wife of deceased K.Mohanraj on the ground that she inherited the suit property as a legal-heir of her deceased husband-Mohanraj and let out the property to him under a registered lease agreement dated 24.02.2012. It is pertinent to



note that he did not produce the original lease agreement and it is stated that it was that the defendant-Nirmala. It is further averred that the defendant did not issue receipt for the lease amount received from him.

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10. In the suit, a written statement was has been filed stating that the property was allotted to Praveen in O.S.No.158 of 2009 vide Decree dated 10.07.2009 and in the unregistered lease agreement, her signature was forged by the plaintiff-Selvaraj. It is clearly stated that Selvaraj was not a tenant and he is an encroacher. The same stand was taken by the said Praveen in the suit in O.S.No.64 of 2015, filed for declaration and recovery of possession of the suit property from Selvaraj.

11. As aforementioned, the learned Principal District Munsif, Villupuram granted interim injunction in I.A.No.66 of 2015 holding that the documents viz., the unregistered lease agreement, electricity bill, property tax receipt show that the property was leased out to the said N.K.Selvaraj and he is in possession of the property. At this juncture, it is relevant to note that in my considered view, this observation cannot be taken advantage by N.K.Selvaraj, since the execution of lease agreement was seriously disputed by Nirmala and her son-Praveen. Since the said N.K.Selvaraj was found in possession of the premises, the learned appellate Judge, while dismissing the Application in I.A.No.74 of 2017, has held that the suit has ripened for trial and the issue is not on title. Further the said N.K.Selvaraj was being in possession of the property, whether he is in illegal possession and the lease agreement is a forged document can be decided in the trial, than in the interim application.

12. I concur with the view taken by the learned Principal Sub Judge, Villupuram in I.A.No.74 of 2017 for the reason that even if the delay is condoned and the appellant-Nirmala is given opportunity, the litigation would not reach finality in the near future. It is must be mentioned that the plaintiff-Praveen seeks declaration of his title in O.S.No.64 of 2015 on the basis of a Decree passed in O.S.No.158 of 2009. He also contended that the defendant was an encroacher and he was not a statutory tenant. As already pointed out, the said Selvaraj neither produced the original lease agreement, nor receipts for payment of rent.

13. In the light of the averments made in the plaint in O.S.No.64 of 2015 and the materials produced by the said Selvaraj, in my opinion, the civil Court has jurisdiction to decide the rights of the parties. The learned trial Judge dismissed the application filed for rejection of plaint on the ground that the jural relationship itself is disputed in the suit and the title of the property is necessarily to be



determined by the civil Court. In the considered opinion of this Court, the defendant-Selvaraj in O.S.No.64 of 2015 has not made out any case to reject the plaint and it was rightly dismissed by the trial Court.

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14. For the foregoing reasons, both the revisions are liable to be dismissed, accordingly, they are dismissed. The learned Principal District Munsif, Villupuram is hereby directed to dispose of both the suits O.S.No.26 of 2015 and O.S.No.64 of 2015 as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. The parties are hereby directed to cooperate for completion of trial in the time frame. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

1. The Sub Judge,
The Sub Court,
Villupuram.
2. The Principal District Munsif,
Villupuram.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.41304

C.R.P.Nos.2717 and 4257 of 2018
and
C.M.P.Nos.16000 and 23333 of 2018

BR(CO)
RLP(27/09/2021)