

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.1562 of 2021

Neithavoyal Chettiar Thanneerpandal Dharmam,
Neithavoyal,
Rep. by its Trustee Mohana Sundaram,
Plot No.97, 2nd Street,
Ambal Nagar,
Keezhakattalai,
Chennai - 600 117.

...

Petitioner

versus

S.Palani

...

Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 08.03.2021 made in I.A.No.141 of 2018 in A.S.No.44 of 2017, on the file of the learned Additional Subordinate Judge, Ponneri and allow the Civil Revision Petition.

For Petitioner : Mr.S.Angamuthu

ORDER

This Civil Revision Petition is filed to set aside the order dated 08.03.2021 in I.A.No.141 of 2018 in A.S.No.44 of 2017 passed by the learned Additional Subordinate Judge, Ponneri.

2. I.A.No.141 of 2018 was filed under Section 151 of C.P.C., seeking the respondent / tenant to pay kuthagai arrears of Rs.45,000/- to the petitioner Trustee.

3. The case of the petitioner is that the respondent is a tenant in respect of the property of the petitioner. The suit was filed for the relief of "directing the defendant to quit and deliver vacant possession of the suit schedule properties to the plaintiff Trust; directing the defendant to pay kuthagai arrears of Rs.15,000/- computed for past three years preceding the date of the suit @ Rs.5,000/- per year; and directing the defendant to pay the plaintiff Trust damages @ Rs.30/- per day from the date of the plaint till the date of recovery of vacant possession of the suit properties." The suit was partly decreed, whereby, the learned District Munsif, Ponneri, dismissed the prayer 1 and 3 and decreed the prayer with regard to the recovery for a sum

of Rs.15,000/-. The main reason of the dismissal of the suit is that, notice under Section 106 of the Transfer of Property Act, was not properly given and therefore, it was held that the petitioner was not entitled for the relief of ejectment and future damages. Against the said judgment and decree, the petitioner has preferred an appeal in A.S.No.44 of 2017, which is pending before the learned Subordinate Judge, Ponneri.

4. When the suit was dismissed on the ground that notice under Section 106 of the Transfer of Property Act, was not properly given and that, the appeal is preferred against the judgment and decree, this Court is of the considered view that, the present petition filed by the petitioner seeking the respondent to pay Rs.45,000/- towards kuthagai arrears, cannot be entertained. The entitlement of arrears will have to be decided only in the appeal. The learned appellate Judge has rightly found that, when the appeal is pending, the petitioner's claim cannot be entertained. However, it is seen from the written statement filed by the respondent that, "he is always ready and willing to pay the kuthagai amounts for three years prior to suit and also for subsequent years after suit provided either Mohanasundaram, the present

Trustee representing the plaintiff or for that matter any of the children of Rajamani Ammal proves their right to trusteeship in respect of the plaintiff's Trust". It is seen that the respondent admits his liability to pay kuthagai arrears. Therefore, the learned Additional Subordinate Judge, Ponneri, is directed to dispose of A.S.No.44 of 2017, as expeditiously as possible, preferably, within a period of three (3) months from the date of receipt of a copy of this order.

5. Accordingly, this Civil Revision Petition is disposed of. However, there is no order as to costs.

10.08.2021

Speaking order / Non-speaking order

Index : Yes / No

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To

1. The Additional Subordinate Judge, Ponneri.
2. The District Munsif, Ponneri.



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G.CHANDRASEKHARAN, J.

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