

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(NPD) No.2426 of 2017
in
CMP.No.11432 of 2017

Sri Shantha Lakshmi Brick Works
Represented by its Partner
T.Shantha Kumari
W/o.Thanickachalam
Thondanthulasi Village and Post,
Katpadi Taluk,
Vellore District

...Revision Petitioner / Petitioner/Appellant
Vs.

Govindasamy Reddy (Died)

- 1.P.G.Ravi S/o. (Late) Govindasamy
- 2.Neelammal W/o. (Late) Govindasamy
- 3.G.Ragunathan S/o. (Late) Govindasamy
- 4.G.Chandran S/o. (Late) Govindasamy
- 5.G.Harshavardhanam S/o. (Late) Govindasamy
- 6.G.Thulasi Raman S/o. (Late) Govindasamy
- 7.G.Soundara Rajan S/o. (Late) Govindasamy
- 8.Vimala D/o. (Late) Govindasamy
- 9.Jothi D/o. (Late) Govindasamy

...Respondent / Respondent/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Civil Procedure Code to set aside the fair and decreetal order passed in I.A.No.10 of 2016 in A.S.No.43 of 2014 on the file of the Principal District Judge at Vellore, dated 16.11.2016.

For Petitioner : M.E.V.Thulasi
For Respondents : Mr.P.Krishnan

ORDER

(This case has been heard through video conference)

This petition has been filed to set aside the fair and decretal order passed in I.A.No.10 of 2016 in A.S.No.43 of 2014 on the file of the Principal District Judge, Vellore dated 16.11.2016.

2. The brief facts of the case is that the petitioner/appellant had filed O.S.No.415 of 1990 before the Subordinate Court, Vellore against the respondents/defendants seeking to pay a sum of Rs.1,94,400/- towards damages for loss of income along with interest @ Rs.24% from the date of filing of the suit. The claim of the plaintiff in the suit was that he had taken lease of lands in plaint schedule "B" properties in S.No.237/1, S.No.174/1 (both dry lands) and S.No.198/8 (wet land) in Thondanthulasi Village, Gudiyattam Taluk, North Arcot District from the respondents/defendants and had put up a Brick kiln Chamber in the name of Sri. Shantha Lakshmi Brick Works with 24 ovens and Metal Chimney with accessories and asbestos cement roof and Thatched sheds in leased lands. Since, the respondents/defendants did not permit him to do the business, he was made to suffer loss and thereby, he had filed the suit for damages. The suit was dismissed on 08.04.2013 and against the dismissal of the suit, the petitioner

had filed A.S.No.43 of 2014 before the Principal District Court, Vellore. During the pendency of the appeal, the revision petitioner had filed I.A.No.10 of 2016 under Order 26 Rule 9 and Section 151 CPC for appointment of Advocate Commissioner for inspecting the schedule mentioned property namely the Brick kiln and to note down its physical features and file report. The I.A.No.10 of 2016 was dismissed by the appellate Court by order dated 16.11.2016. Against which, the present Revision Petition has been filed.

3. The learned Counsel for the petitioner/appellant would submit that the petitioner/plaintiff had taken lands mentioned in suit schedule “B” Properties from the respondents/defendants on lease and had put up a Brick-kiln to the value of Rs.2 lakhs. The respondents/defendants did not allow him to do the business properly and thereby, the petitioner was put to severe loss and therefore, he had filed O.S.415 of 1990 before the Subordinate Court, Vellore, to direct the respondents/defendants to pay a sum of Rs.1,94,400/- along with interest towards damages for the loss of income of the petitioner/plaintiff, whereas the trial Court without proper appreciation of facts and law, had dismissed the suit. Thereafter, the petitioner had filed A.S.No.43 of 2014 before the Principal District Judge, Vellore and during the

pendency of the appeal, the petitioner had filed a petition for appointment of Advocate Commissioner to prove the fact that the petitioner had spent an amount Rs.2 lakhs and had built a Brick-kiln on his own amounts and that due to the interference of the respondents/defendants, the petitioner was unable to do the business properly and he sustained loss. He would submit that the appointment of the Advocate Commissioner was very much essential, whereas the Appellate Court without taking into consideration the fact, had dismissed the application against which, the present revision has been filed.

4. The learned Counsel for the respondents/defendants would submit that the respondents had leased out their lands to the petitioner to put up a Brick-kiln in their property. The lease taken in the year 1983 and the lease was only for the period of 15 years and as per the lease, the petitioner has to leave the place as and where it is. Whereas, even after the expiry of the lease, the petitioner did not leave the place and the lease was also not extended. He would submit that after the expiry of the lease, the petitioner also did not pay arrear amounts to the tune of Rs.75,875/- and continued to harass the respondents/defendants, owners of the property. Therefore, the respondents/defendants also filed a suit in O.S.No.70 of 1994 before the

District Munsif Court, Katpadi, for recovery of the arrear amounts and the same was decreed on 07.03.2001. Against the Judgment and decree, the petitioner has not filed any appeal and thereby, the order has also become final. The decree amount had not been paid by the revision petitioner. Subsequently, the respondents/defendants also filed another suit in O.S.No.769 of 2009 before the District Munsif Court, Katpadi, Vellore for recovery of arrears of lease amount for the subsequent period with interest @ Rs.6% per annum from the date of filing of the suit and it is pending. Meanwhile, the revision petitioner also filed an appeal against the order passed in O.S.No.415 of 1990 with delay and it was numbered condoning the delay of 347 days as A.S.No.43 of 2014. He would submit that at the time of filing the appeal, the petitioner had not moved any petition for appointment of Advocate Commissioner whereas, when the Appeal was ripe for hearing, in order to delay the proceedings in A.S.No.43 of 2014, the petitioner had filed I.A.No.10 of 2016 for appointment of Advocate Commissioner after a period of two years. The appellate Court rightly finding that the suit was filed during the year 1990 and it had been disposed during the year 2013 and that there had been much delay and that it would not be possible for the Brick-kiln to be in the same condition after a long period, had dismissed the petition. The trial Court had taking into consideration that there had been a

gap of 26 years from the date of filing of the suit and the petition seeking for appointment of Advocate Commissioner had found that the physical features would not exist in the same condition and manner as it was on the date of filing the suit, had dismissed the application. The trial Court had also specifically found that the petition was filed only for the purpose of delaying the appeal. Hence, he would submit that the order passed by the appellate Judge needs no interference.

5. Heard both sides and perused the materials available on record.

6. The petitioner is the plaintiff in O.S.No.415 of 1990 seeking for damages. The contention of the petitioner is that he had taken lease of lands from the respondents/defendants and put up a Brick kiln in the year 1983 and that he was not allowed to do business properly and thereby, he suffered loss. The respondents/defendants had filed a written statement stating that the lease of the lands was taken in the year 1983 and the lease to run the Brick kiln was only for 15 years and thereafter, the lease had not been extended. The trial Court finding that the petitioner /plaintiff had continued to be in the place after expiry of lease period, had dismissed the suit. Against which, the petitioner had filed A.S.No.43 of 2014. Even in the appeal, only after two

year he had filed I.A.No.10 of 2016 seeking for appointment of Advocate Commissioner to inspect the schedule mentioned property namely the Brick kiln and to note down its physical features and to file a report. The trial Court taking note of the fact that the suit is of the year 1990 and the same was dismissed in the year 2013 and thereafter, the appeal had been filed in the year 2014 and that the application for appointment for Advocate Commissioner was filed after a period of two years of the appeal and also finding that no valid reasons had been stated as to how the report of the Advocate Commissioner will be of help deciding the issue, had dismissed the petition. Further, the appellate Court has held that it cannot be expected that the same physical features would be available after a period of 26 years.

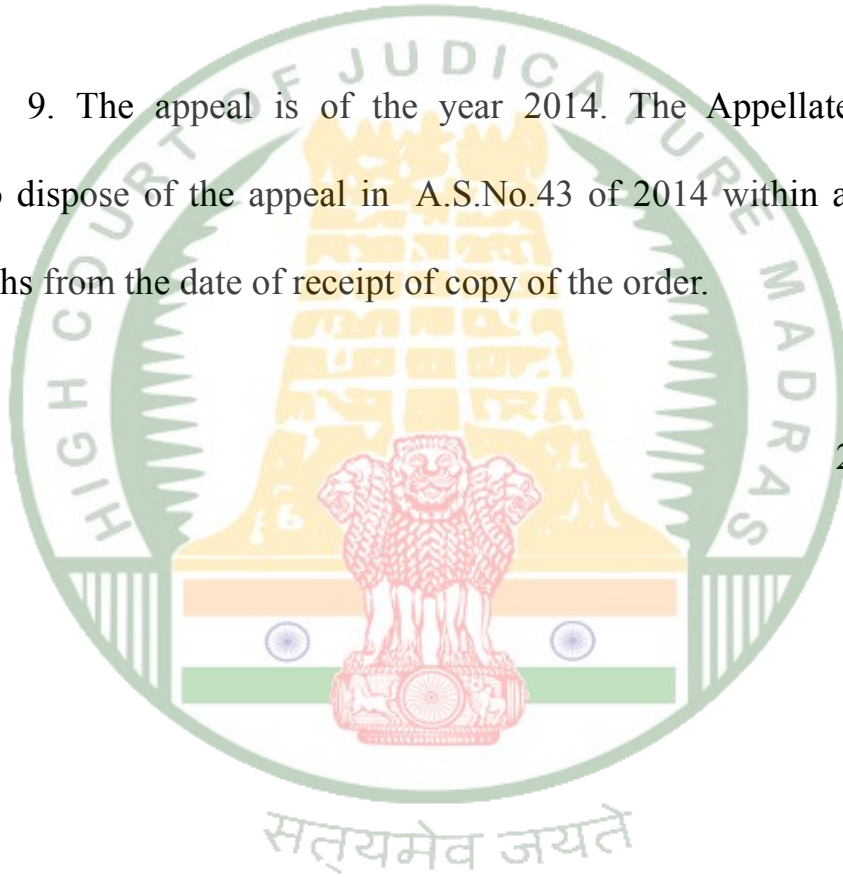
7. Having gone through the reasons stated by the appellate Court, this Court is satisfied that it cannot be expected that the same physical features would be available after a period of 26 years and further, as rightly held by the appellate Court, the petitioner has not stated any valid reasons as to how the report of the Advocate Commissioner will help in deciding the issue involved.

8. This Court does not find any infirmity in the order passed by the appellate Court in I.A.No.10 of 2016 in A.S.No.43 of 2014 dated 16.11.2016. In view of the same, the Revision petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

9. The appeal is of the year 2014. The Appellate Court is directed to dispose of the appeal in A.S.No.43 of 2014 within a period of three months from the date of receipt of copy of the order.

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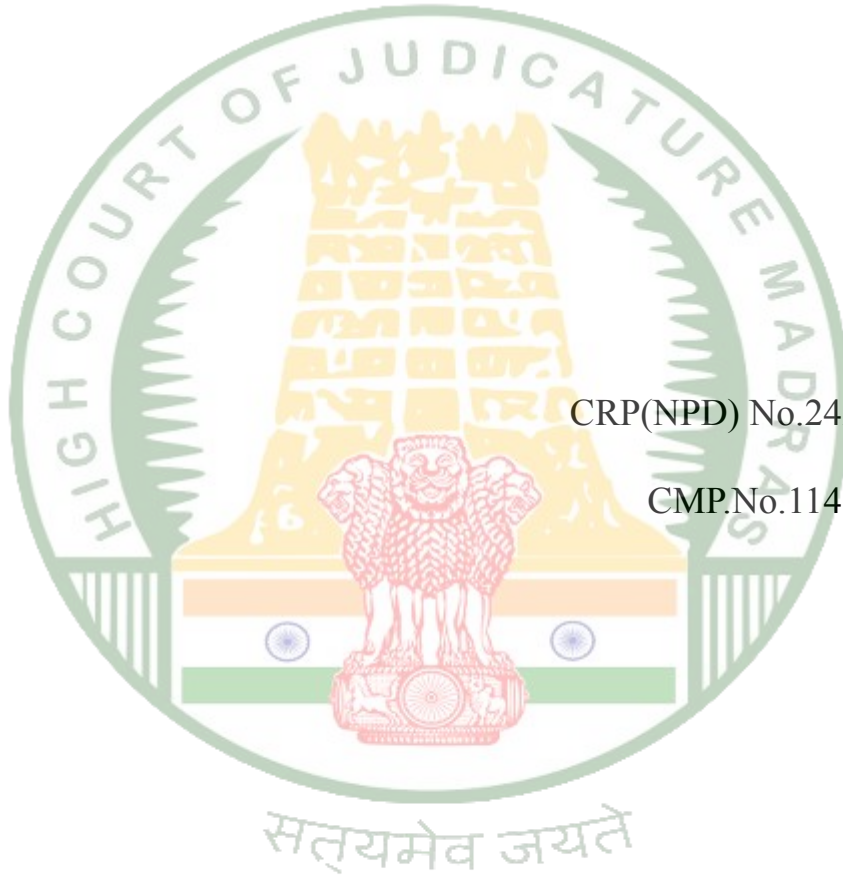
To
The Principal District Judge, Vellore,



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A.D.JAGADISH CHANDIRA,J.

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