

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP(NPD).No.504 of 2017

1. S.Sampathkumar
2. Kumari Ammal @ Vasanthakumari ... Petitioners

Vs.

S.Jayababu ... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order and decretal order of the learned V Assistant Judge, City Civil Court, Chennai dated 04.04.2016, made in I.A.No.16998 of 2014 in O.S.No.4202 of 2008.

For Petitioners : M/s.G.Sumitra

For Respondent : No Appearance

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ORDER

This Civil Revision Petition is directed as against the order and decretal order passed in I.A.No.16998 of 2014 in O.S.No.4202 of 2008 dated 04.04.2016 on the file of the learned V Assistant Judge, City Civil Court, Chennai, thereby, dismissing the petition seeking damages payable by the respondent herein.

2. The petitioners are the plaintiffs and the respondent is the defendant. The petitioners filed a suit for declaration and delivery of vacant possession in respect of the suit 'B' schedule property. The respondent filed a written statement and contested the suit. Thereafter, by the judgment and decree dated 21.09.2012, the trial Court decreed the suit as follows:-

“1. It is hereby declared that the 1st plaintiff is owner of the suit B schedule property.

2. that the 2nd plaintiff is directed to deposit Rs.1 lakh into the Court within 2 months (i.e.,20.11.2012) and on such deposit, the defendant is entitled to withdraw the said amount and hand

over possession of the suit B schedule property to the 1st plaintiff.

3. that the defendant fails to surrender possession of the suit B schedule property to the 1st plaintiff after payment of Rs.1 lakh as aforesaid, the plaintiffs are entitled for future damages for use and occupation from the date of plaint till delivery.

4. that the quantum of such damages has to be decided separately under Order 20 Rule 12 CPC.

5. that the defendant is hereby directed to deliver vacant possession of the B schedule property to the 1st plaintiff within 3 months.

6. that the defendant do pay plaintiff a sum of Rs.10,479/- (Rupees Ten thousand four hundred and seventy nine only)."

3. Accordingly, the second petitioner was directed to deposit a sum of Rs.1 lakh within a period of two months viz., on or before 21.11.2012 to the respondent herein. On such deposit, the respondent was permitted to withdraw the said amount and then hand over the vacant possession of the suit 'B' schedule property to the first petitioner herein. The second petitioner

could not able to make the deposit as directed by the Court below on or before 21.11.2012. Therefore, the second petitioner filed a petition for extension of time to comply the condition imposed by the Court below. After receipt of the notice, the respondent appeared and filed his counter. Thereafter, the Court below by an order dated 08.11.2013 in I.A.No.8658 of 2013 extended the time for depositing of Rs.1 lakh on or before 18.11.013. Accordingly, the second petitioner herein deposited a sum of Rs.1 lakh to the credit of the suit in O.S.No.4202 of 2008.

4. According to the decree, the respondent was permitted to withdraw the said amount and directed to hand over to the vacant possession of the suit 'B' schedule property. However, the respondent did not take any steps to withdraw the said amount and the amount is lying with the account of the suit. Even then, the respondent failed to hand over the vacant possession of the suit property. Therefore, as per the decree, the petitioners filed a petition to fix the damages payable by the respondent for use and occupation of the suit property from the date of the suit till the date of delivery of possession. The Court below, without considering the above facts simply dismissed the petition only on the ground that the second petitioner having failed to prove

that he deposited a sum of Rs.1 lakh.

5. On a perusal of the records, it reveals that the second petitioner herein deposited a sum of Rs.1 lakh to the credit of the suit on 14.11.2013. Though the petitioners produced a challan for the deposit of Rs.1 lakh, they failed to state in their affidavit filed in support of the petition to fix the damages payable by the respondent.

6. Considering the above, this Civil Revision Petition is allowed and the order passed in I.A.No.16998 of 2014 in O.S.No.4202 of 2008 dated 04.04.2016 is set aside. The matter is remanded back to the trial Court for fresh consideration. The Court below is directed to verify the deposit made by the petitioners and pass orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No costs.

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Speaking/Non-speaking order

Index : Yes/No

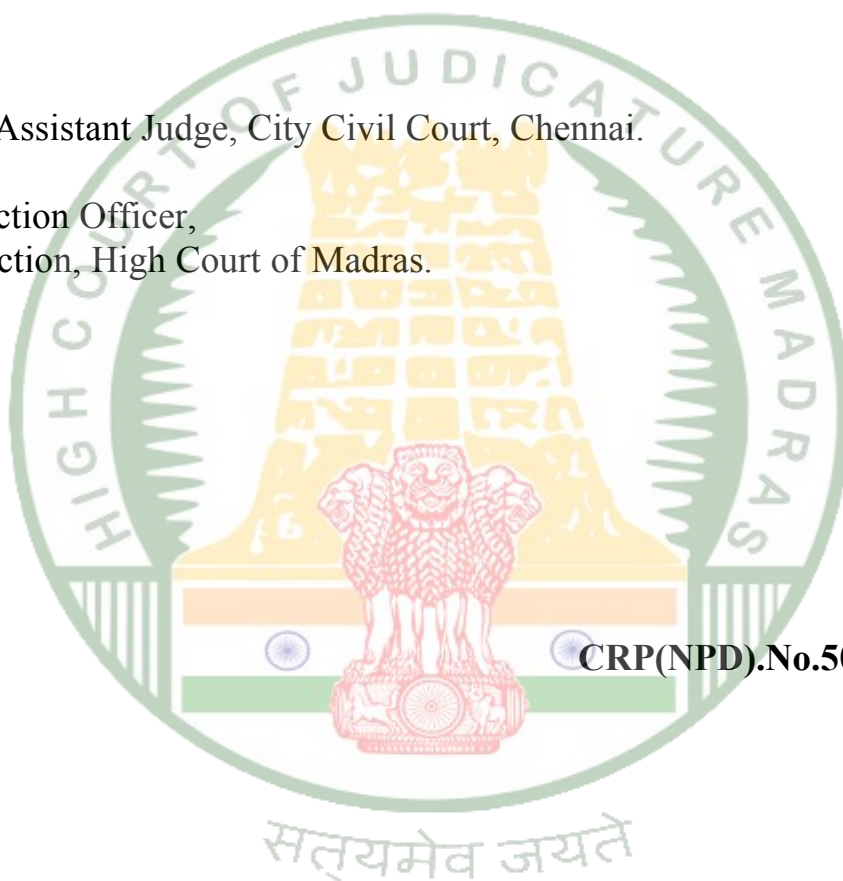
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G.K.ILANTHIRAIYAN,J.

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To

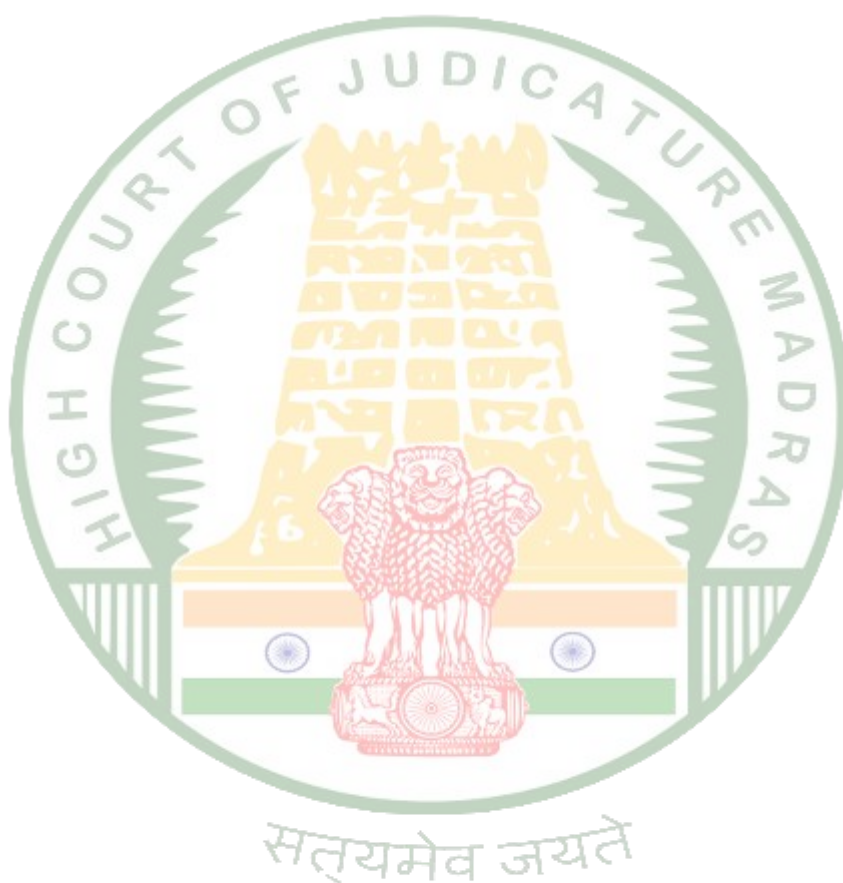
1. The V Assistant Judge, City Civil Court, Chennai.
2. The Section Officer,
V.R.Section, High Court of Madras.



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