

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD) No.3036 of 2018
and C.M.P.No.17639 of 2018

1.C.Subramanian
2.C.S.Lalitha
3.N.Pankajam
4.P.Krishnamurthy
5.P.Uma Devi
6.P.Jagadesan

... Petitioners

Vs

1.R.Varadarajan
2.R.Sankar
3.R.Saravana
4.R.Maheswari

... Respondents

सत्यमेव जयते

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against order dated 07.04.2018 made in I.A.No.15442 of 2017 in O.S.No.3055 of 2014 on the file of XI Assistant City Civil Judge, Chennai.

For Petitioners : Mr.S.Ramesh

For Respondents : R1 to R4 Notice Served & No Appearance

ORDER

This Civil Revision Petition is filed against order dated 07.04.2018 made in I.A.No.15442 of 2017 in O.S.No.3055 of 2014 on the file of XI Assistant City Civil Judge, Chennai, thereby dismissing the application for rejection of plaint.

2. The petitioners herein are the defendants 1, 3, 5 to 8 and the respondents herein are the plaintiffs in the said suit. The respondents herein filed the said suit for declaration declaring the Judgment and Decree dated 29.01.2013 passed in O.S.No.8604 of 2011 as null and void and for permanent injunction in respect of the suit property.

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3. Pending the said Suit, the petitioners herein filed an application for rejection of plaint and the same was dismissed on 07.04.2018. Aggrieved by the same, the above Civil Revision Petition has been filed.

4. The learned counsel for the petitioners herein would submit that according to the respondents herein, the suit property was originally owned by one Mr.Balasundaram, who died leaving behind his daughter Kalyani. She became the absolute owner of the property. The respondents herein were living in the suit property as tenants right from 1976. Thereafter, the said Kalyani met with an accident and died on 10.08.2010. After the death of the said Kalyani, the defendants had approached the respondents' father on 01.09.2011 to sell the suit property claiming to be class II legal heirs.

5. Further, the case of the respondents herein is that their father informed that he had already given some advance amount to the deceased Mrs.Kalyani for the purchase of the suit property. Based on which, he also filed a suit for specific performance in C.S.No.736 of 2011 before this Court and the same was subsequently transferred to the City Civil Court, Chennai. Therefore according to the petitioners herein, the respondents herein were admittedly tenants and they cannot question the compromise decree entered between the petitioners' family members. There is absolutely no cause of action for filing the said suit.

6. He further submitted that the Rent Control Proceedings are also pending before the Court challenging the Order of Eviction by the respondents herein. Therefore, the respondents herein cannot challenge the compromise decree entered between the petitioners' family members in O.S.No.8604 of 2011. Unfortunately, the Court below dismissed the application for the reason that the issue as to the second defendant in the said suit was competent to attend the compromise decree, since she was mentally ill person is an issue which could be gone into only at the time of trial.

7. He further submitted that the present suit is nothing but an abuse of process of law. Admittedly, the respondents' father was a tenant under the said Mrs.Kalyani. The eviction was also ordered against him in respect of the suit properties. In this regard, their father and the respondents herein created litigation after litigation only to stall the eviction proceedings. Therefore to file the present impugned suit there is absolutely no cause of action to make out any claim as against the petitioners herein.

8. Heard, Mr.S.Ramesh, learned counsel for the petitioners herein. Though Notice served to the respondents herein and their name also printed in the cause list, no one appeared on behalf of the respondents either in person or through any counsel.

9. The case of the respondents herein is that their father was originally inducted as a tenant in respect of the suit property. The suit property originally owned by one Mr.Balasundaram. After his demise his daughter Kalyani was the absolute owner of the property. Unfortunately, the said Kalyani met with an accident and died on 10.08.2010. The petitioners herein, being the class II legal heirs of the said Kalyani, claimed title over the property. They also sold the suit property in favour of third parties even in the year 2013 itself. The purchasers of the suit property filed eviction petition to evict the respondents herein on the ground of wilful default and denial of title. The eviction petition was ordered and confirmed in R.C.O.P.No.1659 of 2014 on the file of X Small Causes Court, Chennai and the same was confirmed by the learned Rent Control Appellate Authority. Aggrieved by the same, the respondents herein filed Civil Revision Petition before this Court and it is pending.

10. The petitioners herein were the class II legal heirs of the said Mrs.Kalyani. They filed a suit in O.S.No.8604 of 2011 on the file of XI Assistant Judge, City Civil Court, Chennai and all the family members entered in a compromise and the same was decreed by the Judgment and Decree dated 29.01.2013. Now, the respondents herein challenged the Judgment and Decree passed in O.S.No.8604 of 2011 for the following reliefs:

"a) To declare that the Judgment and Decree passed in O.S.No.8604 of 2011 dated 29.01.2013 passed by the Hon'ble XI Assistant, City Civil Court, Chennai as null and void but binding the plaintiff.

b) For permanent injunction restraining defendants, their respective heirs, henchmen, agents, any person, claiming through the or any other third parties or builders from alienating the suit schedule of property.

c) For permanent injunction restraining defendants, their respective heirs, henchmen, agents, any person claiming through them or any other third parties or builders not to disturb the plaintiff's peaceful possession and enjoyment of the schedule property without following the due process of law."

11. The respondents herein filed the present suit on the ground that the second defendant in the present suit was represented through her counsel and she was mentally sick during intermittent period and therefore the decree passed in O.S.No.8604 of 2011 was void ab-initio and the second defendant was not competent to enter into contract and that the petitioners herein played fraud and obtained decree.

12. As stated supra, the respondents herein are tenants and facing eviction order from the suit property. Admittedly, the suit property was sold in favour of the third parties even in the year 2013. Thereafter, the purchaser of the suit property filed Rent Control Original Petition for

eviction on the ground of wilful default and denial of title. While being so, the present suit has been laid by the respondents herein for the above said reliefs. Therefore, the respondents herein have no cause of action to challenge the decree passed in O.S.No.8604 of 2011. They are not having any right to file the present suit in respect of the suit property challenging the decree passed in the earlier suit which was entered between the family members. It is a clear abuse of process of law.

13. The learned counsel for the petitioners herein relied upon *the decision of the Hon'ble Supreme Court of India in (2017) 13 SCC 174 [Madanuri Sri Rama Chandra Murthy -vs- Syed Jalal]; wherein the relevant portion reads as follows:*

"The plaint can be rejected under Order 7 Rule 11 CPC if conditions enumerated in the said provision are fulfilled. 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."

14. The Hon'ble Supreme Court held that, 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.

15. As stated supra, in the present suit has been filed by the respondents herein in the capacity of tenants challenging the compromise decree entered between the petitioners' family members. Therefore, they have no any right to challenge the decree passed in O.S.No.8604 of 2011 dated 29.01.2013. Therefore, the present suit is not a valid suit in the case on hand and the plaint in the present impugned suit is liable to be rejected.

16. Therefore, the Order dated 07.04.2018 made in I.A.No.15442 of 2017 in O.S.No.3055 of 2014 on the file of XI Assistant City Civil Judge, Chennai is set aside. The plaint in O.S.No.3055 of 2014 suit is rejected.

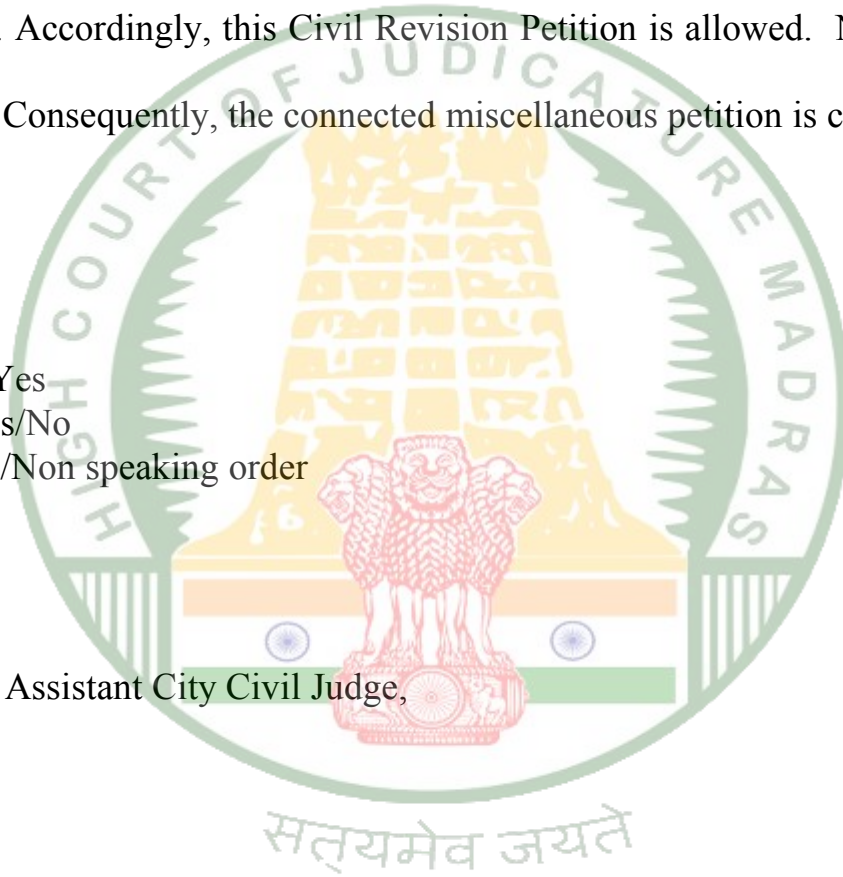
17. Accordingly, this Civil Revision Petition is allowed. No order as to costs. Consequently, the connected miscellaneous petition is closed.

19.07.2021

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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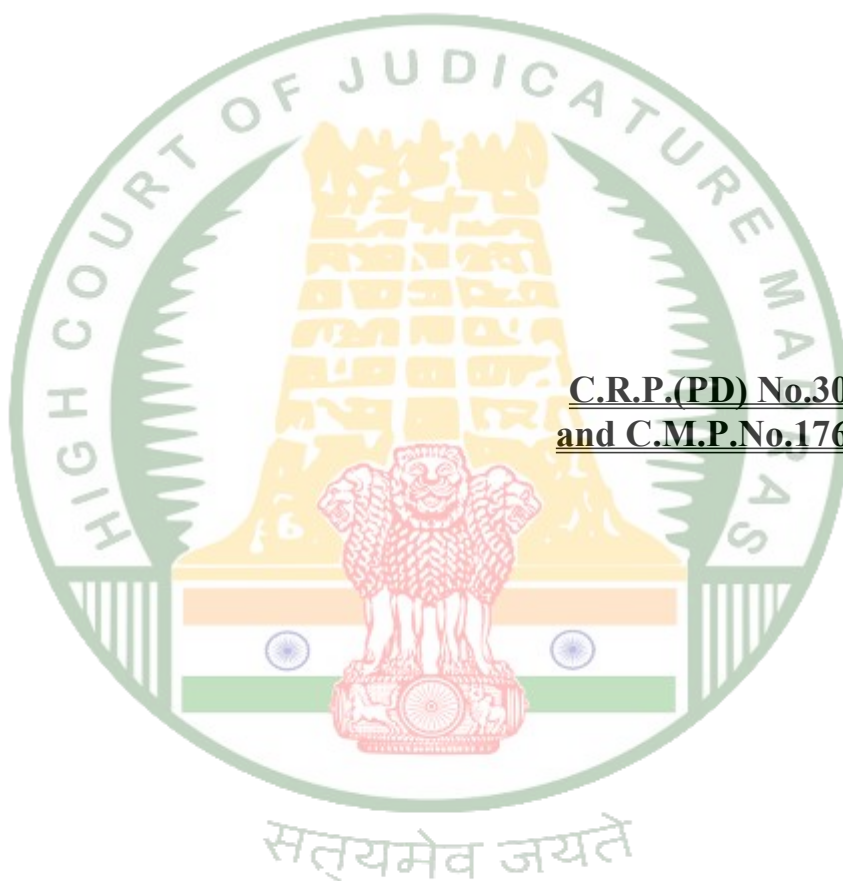
The 11th Assistant City Civil Judge,
Chennai.



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G.K.ILANTHIRAIYAN. J,

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