



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :22.01.2021

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (MD)No.577 of 2014 (NPD)

and

M.P(MD)No.1 of 2014

Balu @ Balusamy

...Petitioner

Vs.

S.Ashok Kannan

...Respondent

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order passed by the learned District Munsif cum Judicial Magistrate, Vadipatti in I.A.No.103/2012 in O.S.No.131 of 2011 dated 28.11.2013.

For Petitioner : Mr.S.Natesh Raja

For Respondent : Mr.V.Maragathavel

O R D E R

Aggrieved by the dismissal of the application for rejection of plaint filed under Order 7 Rule 11 of Civil Procedure Code as having become infructuous, defendant in O.S.No.131 of 2011 is on Revision.

2.The original suit was laid by the plaintiffs seeking recovery of possession upon termination of tenancy. Pending the suit, the defendant filed an application in I.A.No.103 of 2012, seeking rejection of the plaint on the ground that the plaintiff is not the owner of the property and in earlier proceedings between the same parties, the competent Civil Court had decreed the Suit holding that the property belongs to the Government. The said decree has become final. Therefore, according to the defendant, the present suit for recovery of possession is not maintainable.

3.It is the submission of the learned counsel for the petitioner that pending application in I.A.No.103 of 2012, the plaintiff sought for an amendment to include the prayer for declaration of his title to the suit property in I.A.No.751 of 2012. The said application came to be allowed on 26.09.2013. Probably, it is because of the amendment, the learned District Munsif felt that the petition to reject the plaint has become



infructuous. As rightly contended by the learned counsel for the petitioner, the finding of the learned District Munsif that the petition to reject the plaint has become infructuous, because of the amendment including the relief of declaration is incorrect. There are certain findings regarding the character of the property and the ownership of the property in the earlier suit. According to the defendant, those findings would prevent the plaintiff from claiming any right over the suit property and seeking eviction of the defendant. The said claim has to be decided.

4.Since the learned trial judge has not gone into those questions, it is necessary for me to interfere with the order impugned. Hence, this Revision stands allowed. The order of the trial Court in I.A.No.103 of 2012 is set aside and I.A.No.103 of 2012 is remanded to the trial Court to be heard and disposed of on merits, without being influenced any observations made by me in this order.

5.With the above observation, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The District Munsif cum Judicial Magistrate, Vadipatti
Madurai District.

Order made in
C.R.P. (MD)No.577 of 2014(NPD)
and
M.P(MD)No.1 of 2014
22.01.2021

SJ(CO)

TR(05.03.2021) 2P 2C