



C.R.P(PD)No.3186 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

C.R.P(PD)No.3186 of 2022

and

C.M.P.No.16969 of 2022

1.Shri Dhanraj N.Kachar

2.Shri K.Ramesh Kumar

... Petitioners

Vs.

Sri Chenna Malleeswara and Sri
Chenna Kesava Perumal Devanthanam
Rep.by its Hereditary Trustee,
R.Manali Srinivasan,
S/o.Manali Ramakrishna Mudaliar,
No.85, Devaraja Mudali Street,
Park Town, Chennai-600 003.

... Respondent

PRAYER: The Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to pass ad-interim stay of all further proceeding filed in O.S.No.779 of 1997 on the file of the 1st Assistant City Civil Court, Chennai pending disposal of the civil revision petition.

For Petitioners : Mr.B.Satish Sundar



ORDER

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This Civil Revision Petition is filed by the 1st defendant in the suit challenging the order dismissing his petition seeking rejection of the plaint.

2.The respondent herein originally filed a Suit for recovery of possession against the first petitioner in O.S.No.779 of 1997 on the file of the First Assistant City Civil Court. When the said suit was pending, the respondent filed a petition for impleading the second petitioner as the second defendant in the suit on the ground that the second petitioner was inducted by the first petitioner as a sub tenant. The said impleading petition was allowed. Thereafter the second petitioner also filed his written statement.

3.After commencement of the trial, both the petitioners/defendants 1 and 2 filed a petition to reject the plaint on the ground that the plaint does not disclose any cause of action. It was also averred in the affidavit filed in support of the petition to reject the plaint, that the respondent/plaintiff has been collecting rent directly from the defendants even without any protest, pending suit and hence, sought for rejection of plaint. The Court below having not satisfied with the reasons given by the petitioners, dismissed the



petition for rejection of plaint. Aggrieved by the same, the petitioners filed the present C.R.P.

4.The learned counsel for the petitioners submitted that the plaint does not disclose any cause of action as against the second petitioner. He also submitted that at the time of considering the petition for rejection of plaint, the Court has to take into consideration the conduct of the respondent that the Suit for ejectment was filed only as against the first petitioner initially and subsequently, the second petitioner was impleaded as the 2nd defendant on the ground that 1st petitioner inducted the second petitioner as a sub tenant.

5.The learned counsel for the petitioner relied on the following judgments for the proposition that if the plaint does not disclose the cause of action, the Plaint is liable to be rejected

1. **(2020) 7 SCC 366** [*Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) dead through legal representatives and others*].
2. **2021 SCC Online 238** [*K.Akbar Ali Vs. K.Umar Khan and Others*]



3. **2021 SCC online Mad 2710**
[Heerachand Jain Vs. T.Namasivayam]

6.Heard the arguments of the learned counsel for the petitioners and perused the records.

7.With regard to the legal submissions made by the learned counsel for the petitioners that if the plaint on the face of it does not disclose any cause of action, it deserves to be rejected. This Court has no quarrel as far as the legal position is concerned. The Suit was originally filed by the respondent against the first petitioner. Subsequently, the second petitioner was impleaded by the respondent mainly on the ground that the second petitioner was inducted by the first petitioner as a sub tenant. The said implead petition was allowed and the same has not been questioned. The order of impleading has attained finality and now the petitioners have come up with this petition to reject the plaint on the ground that the plaint does not disclose any cause of action.

8.Further, the Suit is of the year 1997. It was initially decreed *ex parte* and subsequently, on petition filed by 1st petitioner, it was set aside. Now after



impleadment of 2nd petitioner, the trial had commenced and PW.1 has already entered box and at this stage the petitioners have come up with this petition to reject plaint.

9. Reading of the plaint averments would suggest that the plaint discloses the cause of action to maintain the suit for ejectment against the petitioners. The respondent alleged in the original plaint that defendant therein (1st petitioner) was tenant under it and the tenancy was terminated on 29.02.1996. Subsequently, 2nd petitioner was impleaded on the ground that he was inducted by 1st petitioner. After impleadment, 2nd petitioner filed written statement denying averment of respondent that he was inducted by 1st petitioner. He claimed that he was staff of 1st petitioner in his jewellery shop. In these circumstances, we cannot say that plaint does not disclose cause of action for ejectment. Therefore, the judgment relied upon by the petitioners are not applicable to the facts of this case. Other point raised by the petitioners is that the respondent has been receiving rent regularly without any protest even after filing of the suit, the same cannot be decided at the stage of considering petition for rejection of the plaint. All these issues can be



C.R.P(PD)No.3186 of 2022

raised only at the time of disposal of the suit. Hence, this Court is not inclined to interfere with the order of the Court below.

10.The Civil Revision Petition stands dismissed accordingly.
Consequently, the connected Civil Miscellaneous Petition is also dismissed.
No costs.

10.10.2022

rpl

Index : Yes/No
Internet : Yes / No
Speaking /Non Speaking

To

The 1st Assistant City Civil Court, Chennai



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C.R.P(PD)No.3186 of 2022

S.SOUNTHAR, J.,

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C.R.P(PD)No.3186 of 2022

10.10.2022