



C.R.P. No.4191 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.4191 of 2017

L.N.Madhan Guru,
Prop. Sri Ramajayam Agency

... Petitioner

Versus

M.S. Jamal Mohideen (died)
rep. by his Power of Attorney Holder
A.M. Rafiq

2 The Collector of Chennai
Chepauk,
Chennai - 5.

3 The Tahsildar,
Egmore-Nungambakkam Taluk,
Chennai - 31.

4 The Commissioner
Corporation of Madras,
Rippon Building,
Chennai - 3.



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- 5 The Asst. Executive Engineer,
Zonal Office Unit XIV,
Office of the Corporation of Chennai,
Rippon Building,
Chennai - 3.
- 6 The Executive Engineer,
Public Works Department,
Estate Officer,
Coovam Sub-Division,
Chepauk, Chennai - 5.
- 7 The Secretary
Madras State NGOs' Co-operative Society Ltd.
Madras - 600 029.
- 8 The Deputy Registrar of Cooperative Society,
Tamil Nadu Housing Board Complex,
Anna Salai,
Nandanam, Chennai - 5.
- 9 Pousia Jamal
- 10 Khan Imthiaz Mohammed
- 11 Jamal Hameed Khan

(Respondents 9 to 11 brought on record
as LR of Deceased R-1 viz., M.S.Jamal
Mohideen Vide Court order dated
21.09.2022 made in C.M.P. No.9489
of 2022 in C.R.P. No. 4191 of 2017)

... Respondents



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PRAYER : Civil Revision Petition filed under Sec.115 of Civil Procedure Code, praying to set aside the order and decretal order dated 13/10/2017 and made in I.A.No.1212/2015 in O.S.No.3733/2013 on the file of the III Asst. Judge, City Civil Court, Chennai.

For Petitioner : Ms.S.Sasikala

For Respondents : R1 – died

Ms.Aswini Devi for R4 & R5

Mrs. P.Vijaya Devi,
Govt. Advocate for R2, R3, &
R6 to R8

Mr.M.Arun Kumar for
M/s. Sampathkumar Asso.,
for R9 to R11

ORDER

Challenging the impugned order passed in I.A.No.1212 of 2015 in O.S.No.3733 of 2013, on the file of learned III Asst. Judge, City Civil Court, Chennai, the defendant preferred this Civil Revision Petition.



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2. Originally, a suit in O.S.No. 3733 of 2013 was filed by the 1st respondent/plaintiff for the relief of direction directing the defendant to deliver vacant possession of suit property with an extent of 2400 sq.ft. in the property bearing Door No.14, 1st Street, Officers Colony, Rajaram Metha Nagar, Aminjikarai, Chennai-600 029. The contention of plaintiff is that the said plot was conveyed to his father by the Madras State NGO Cooperative Building Society. The defendant entered into lease agreement with the plaintiff on 01.12.2008 in the portion of the suit property with an extent of 2400 sq.ft. for the purpose of running a open yard for dumping building materials. Thereafter, as the defendant failed to pay the rent regularly, the plaintiff filed a suit for recovery of possession as well as arrears of rent of Rs.1,20,000/- from July 2012 to June 2013. The said suit was contested by the defendant by filing the written statement and in that written statement, he stated that there is no door number allotted by the Corporation of Chennai to the property, which is in his occupation and the suit property belonged to Public Works Department and Corporation, which has been encroached by the plaintiff. Therefore, the plaintiff is not entitled to receive



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the rent, since he being a trespasser and not the owner of the property. He has also contented that the property, which is under his occupation is the Government property, thereby he denied the title of plaintiff.

3. During the pendency of the suit proceedings, the defendant filed an application in I.A.No. 1212 of 2015 under Order 1 Rule 10 of C.P.C. praying to implead the Government officials as defendants 2 to 8 in the suit. The said application was strongly objected by the plaintiff stating that the said officials are no way connected with the suit property, since the suit property belong to his father by the conveyance made by the Madras State NGO Cooperative Building Society. Furthermore, at the stage of cross-examination of P.W.1, the defendant come forward with the said application. On hearing both sides, the trial judge held that the proposed defendants 2 to 8 are not necessary to adjudicate the issue between plaintiff and defendant, who are landlord and tenant and dismissed the application. Challenging the said findings, the revision petitioner/defendant preferred this Civil Revision Petition.



4. The learned counsel for Revision Petitioner submitted that in fact, the suit property to an extent of 2400 sq.ft. is not belong to the plaintiff and as per the proceedings initiated by the Public Works Department along with the Corporation would show that the Government property is encroached by the plaintiff, for which, he is not entitled to receive any rent nor recovery of possession. To prove the said fact, he filed the said application to implead those Government officials, but the same was not properly appreciated by the trial judge.

5. By way of reply, the learned counsel for 1st respondent/plaintiff would submit that by a conveyance deed executed by the Madras State NGO Cooperative Building Society in favour of plaintiff's father on 16.09.1986, the plot No. 14 is allotted to his father and from that date onwards, he became absolute owner of the suit property and a portion of property was leased out to the defendant, for which, he executed a lease agreement and as per the said agreement, 2400 sq.ft. was leased out to him for the purpose of running a open yard for dumping construction materials for the monthly rent of Rs.10,000/-. But, continuously, he failed to pay the rent.



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6. Furthermore, he also pointed out that all the adjacent plots were under encroachment of 20 ft. in breadth on the eastern side of NGO colony allotted to eight members of the society, which were deemed as encroachment by the authorities concerned. Accordingly, a proceedings was issued on 11.06.1991, which would reveals that only a breadth in 20 ft.. on the eastern side of plot allotted to this plaintiff and others were in small encroachment by putting up a compound wall. To that effect, the authorities concerned said to have taken steps to remove the encroachment. The proceedings dated 11.06.1991 annexed in the typed set of papers would reveals that there is 20 ft. breadth was under occupation of adjacent plot owners. Therefore, the reason assigned by the defendant that the property with an extent of 2400 sq.ft. not allotted to the plaintiff is not acceptable one. Furthermore, as per the submissions of Revision Petitioner, it would reveals that till date, he has not deposited the monthly rent of Rs.10,000/- before any of the court as per manner known to law. However, the learned counsel contended that he was not aware of the owner of the property, but even he has not taken steps to deposit the rent before the court, where the



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suit is pending. Therefore, there is no merit in the application and the order passed by the learned trial judge is confirmed.

7. In the result, this Civil Revision Petition is dismissed as no merits and the order passed by the learned trial judge in I.A.No.1212 of 2015 is confirmed. However, the trial court is directed to proceed with the trial and dispose the case within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

30.11.2022

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To

III Asst. Judge,
City Civil Court,
Chennai.



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T.V.THAMILSELVI, J.

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