





**C.R.P. No.3520 of 2022**

petition to reject the plaint under Order VII Rule 11 of Code of Civil Procedure and the same was dismissed. Against which, the present civil revision petition is filed.

2. The petitioner is the defendant in the main Suit and the respondent has filed the main Suit for the relief of mandatory injunction as against the petitioner herein. According to the petitioner, the Plaintiff, in the plaint itself, pleaded that the Plaintiff decided to direct the defendant to vacate the Suit property and the same was also communicated to the defendant on 04.01.2001. Thereafter, the Plaintiff refused to extend the license in favour of the defendant. The said Suit is filed after 19 years from the date of refusal to extend the license. Therefore, the Suit is barred by limitation.

3. The learned counsel appearing for the petitioner would contend that the petitioner is the defendant in the main Suit and the license was granted to him for the purpose of using the property for constructing buildings for office-cum-residential purpose . In the said license, it has been stated that the defendant has paid a sum of Rs.1 lakh towards capital payment and a token license fee of Rs.1 per annum payable to the Plaintiff. As per the terms of the license, as long as the licensee used the property for its own use as mentioned



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above or the assignee used it for its own purpose, the licensee shall not be evicted and if the licensee observes all the covenants herein contained, the license shall not be liable to be revoked. While so, the respondent filed a Suit for eviction and for recovery of possession and the Suit is barred by limitation under Article 65 and 66 of Limitation Act. The prayer of mandatory injunction for delivery of possession is not maintainable in view of Section 60 of Easements Act. The Suit has been filed by the President of the respondent, who has no authority to file the above Suit as per the Articles of Association of the respondent / Plaintiff company as only the Secretary has the right to sue or defend the cases on behalf of the respondent. There is no cause of action for the respondent / Plaintiff to file this Suit. Therefore, before the Trial Court, he filed a petition to reject the plaint and the same was dismissed. The Trial Court failed to consider the scope of Order VII Rule 11 of Code of Civil Procedure and dismissed the petition. Therefore, the order passed by the Trial Court is liable to be set aside.

4. In support of his contention, the learned counsel appearing for the petitioner has relied upon the following judgments:

(i) ***Raghwendra Sharan Singh vs. Ram Prasanna Singh (dead) by legal representatives reported in (2020) 16 Supreme Court Cases 601.***



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***(ii) N.V. Srinivasa Murthy and Others vs. Mariyamma (Dead) by***

***Proposed LRs and others reported in (2005) 5 Supreme Court Cases 548***

***(iii) Solaiammal (died) and another vs. Rajarathinam and Five***

***Others reported in 2003 (4) CTC 268.***

5. On the side of respondent, no representation. Though the learned counsel appeared earlier, not come forward to argue the matter. Therefore, this Court heard the petitioner's side and perused all the materials available on record and passed orders.

6. In this case, the petitioner has filed petition before the Trial Court for rejection of Plaint and the same was dismissed. Before the Trial Court, he filed the petition on the ground of 'barred by limitation' and there is no cause of action and the Trial Court after hearing both sides, dismissed the petition for the reason that *cause of action is a bundle of facts which gives right to the Plaintiff to sue. On reading of the entire Plaint in whole, it is evident that the averments thereon spells out cause of action for the Suit.* As far as limitation is concerned, the Trial Court held that since the license was cancelled, Suit is filed within the limitation and the same *can be adjudicated only after conclusion of trial.* Therefore, the Trial Court has passed the said order after



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referring the pleadings pleaded in the Suit.

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7. This Court also perused the entire records and the affidavit filed by the petitioner before the Trial Court. Before the Trial Court, the petitioner has stated that the Suit is barred by limitation and there is no reference as to how the Suit is barred by limitation and not even mentioned about the dates in the pleadings as to the date of limitation accrues. On perusal of Complaint, it reveals that the respondent pleaded in the Complaint that they decided to evict the defendant on 04.01.2001 and thereafter, Management Committee meeting was held on 31.07.2001 reiterating the earlier stand of the Plaintiff by refusing to extend the license agreement in favour of the defendant and thereafter they pleaded that the defendant attempted to alienate the suit property and demanded the Plaintiff to execute a conveyance in favour of the defendant and thereafter, on 25.09.2007, the Plaintiff revoked the license in favour of the defendant. The Plaintiff filed the Suit only for mandatory injunction, but in the Complaint prayer, it is stated that for recovery of possession, the Court fee is also paid under Section 27(c) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. Therefore, these aspects have to be decided by the Trial Court after elaborate trial and at this stage, the claim of the petitioner cannot be decided through Order VII Rule 11 of Code of Civil Procedure.



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8. As far as limitation is concerned, it is mixed question of law and facts and it can be decided after elaborate trial. As far as cause of action is concerned, the Plaint disclosed some cause of action and genuineness of the cause of action can be decided only after full trial. Therefore, the order passed by the Trial Court by declining to entertain the petition of the petitioner filed for rejection of plaint is perfectly correct and there is no perversity or infirmity found in the order passed by the Trial Court.

9. The learned counsel appearing for the petitioner has produced following judgments:

(i) ***Raghwendra Sharan Singh vs. Ram Prasanna Singh (dead) by legal representatives reported in (2020) 16 Supreme Court Cases 601.***

(ii) ***N.V. Srinivasa Murthy and Others vs. Mariyamma (Dead) by Proposed LRs and others reported in (2005) 5 Supreme Court Cases 548***

(iii) ***Solaiammal (died) and another vs. Rajarathinam and Five Others reported in 2003 (4) CTC 268.***

On perusal of the above said judgments, they will not be applicable to the present facts of the case, because in this case, there are some pleadings



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with respect to limitation and cause of action, which can be decided after full trial.

10. In view of the above discussions, this Court is of the opinion that the civil revision petition has no merits and deserves to be dismissed.

11. In the result, the civil revision petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

**02.08.2024**

Index : Yes/No  
Speaking order/non-speaking order  
mjs

**To**

The XIX Assistant City Civil Court, Chennai..



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**P.DHANABAL, J.,**

mjs

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**02.08.2024**