



CRP.No.3774 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2024

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

C.R.P.No.3774 of 2022

against

IA.No.275 of 2021

in

OS.No.71 of 2021

Diagou Mudaliar Trust,
Rep.by its Superintendent,
Arokiyasamy Samuel Gnanou Diagou,
Rep.by his general Power of Attorney,
MKS. Senthilkumar,
No.7, Indira Prushta, K.N.Palayam
Vadavalli, Coimbatore

...Petitioner/Defendant

Versus

Mr.Mahesh
S/o.Gopal

...Respondent/Plaintiff

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 27.09.2022 made in IA.No.275 of 2011 in OS.No.71 of 2021 on the file of the Principal District Munsif Judge, Cuddalore.



CRP.No.3774 of 2022

For petitioner : Mr.R.Thiagarajan

For respondent : Mr.R.Rajavelavan

ORDER

This Civil Revision Petition is filed as against the order passed in IA No. 275 of 2021 in OS No. 71 of 2022 on the file of Principal District Munsif, Cuddalore dated 27.09.2022 wherein, the petitioner herein, has filed a petition to reject the plaint under Order VII Rule 11 of CPC. The said petition was dismissed. Challenging the said order, the present petition is filed.

2. According to the petitioner, he is the defendant in the main suit and the respondent herein, has filed the suit for declaration that he is the tenant only in respect of the vacant site of the suit property and also for the permanent injunction restraining the defendants from interfering the possession and enjoyment of the suit property. The respondent is not claiming declaration of title over the property and set up the plaint, is in respect of relationship of land owner and tenant. The suit property has not been properly valued and in the absence of prayer for declaration, the suit is



CRP.No.3774 of 2022

not maintainable. Further, just because the eviction petition in RTLOP 2 of 2020 filed by the petitioner on the ground of demolition of old building was rejected by the rent court, Cuddalore on technical grounds. The rent court does not confer the jurisdiction of this court to entertain the present suit and only the rent court alone is competent to decide the dispute between the parties. That the trustee is the owner of both the site and the superstructure and the respondent is only the tenant of the suit property. He was paying the rent till February 2020 as a tenant of the shop, superstructure put up by the trust. Therefore, the suit should be rejected at the threshold with exemplary cost.

3. According to the respondent, the petition is not maintainable. The suit is filed for declaration that the respondent is the tenant, in respect of vacant site of suit property and consequential relief of permanent injunction restraining the petitioner defendant from interfering with his peaceful possession and enjoyment of the suit property unless and until evicted by due process of law. The suit is not for declaration of title of the property but it is for the declaration that he is the tenant in respect of the vacant site.



CRP.No.3774 of 2022

Therefore, the respondent plaintiff cannot seek declaration in respect of the suit land. It is false to state that the trustee is the owner of the both the sites and superstructure. *Per contra*, the trustee is only the owner of the vacant site in which the petitioner was permitted to put up superstructure and became a tenant in respect of vacant site. Whether the trustee is the owner of both the site and superstructure or rented only the vacant site are contentious issues to be decided in the suit which requires leading of both oral and documentary evidences. Therefore, the petition cannot be decided at this stage and the plaint cannot be rejected at the threshold. No any ingredients attracted as per Order VII Rule 11 of CPC. Hence, the petition is liable to be dismissed.

4. Before the trial court, no oral evidence adduced on both sides, on side of the plaintiff, they have marked Ex. A1 to A20. The trial court after hearing both sides dismissed the petition.



CRP.No.3774 of 2022

5. The Learned counsel appearing for the petitioner would contend that the petitioner is the defendant before the trial court and the respondent herein, being the plaintiff has filed the suit for declaration and permanent injunction by stating that he is the tenant only for the vacant site and the superstructure was constructed by him. Since there is no prayer for the declaration of the suit property, the suit is not maintainable before the civil court. The respondent plaintiff has not approached the court with clean hands and the same is abuse of process of court and is liable to be rejected at the threshold. The plaint does not disclose the valid tenable, plausible cause of action for institution of the suit and the plaint has not been properly valued. Therefore, the plaint is liable to be rejected. The trial court failed to consider that there is no cause of action for the suit and the suit has not been properly valued and proper court fee has not been paid and the suit is also barred by limitation but the trial court failed to consider the above said aspects and dismissed the petition. Therefore, the order passed by the trial court is liable to be set aside.



CRP.No.3774 of 2022

6. The Learned counsel appearing for the respondent would contend

that the respondent is the plaintiff in the main suit and he filed the suit for declaration declaring that the respondent/plaintiff is only tenant for the vacant site and superstructure was constructed by him and for permanent injunction. While so, he need not sought for declaration in respect of the suit land property and the petition filed by the petitioner has not made out any ground under Order VII Rule 11 of CPC. In the affidavit, they have not raised any grounds in respect of cause of action, limitation and court fee. Before the revision only they raised those questions and the plaint pleading clearly shows the cause of action and since the relief of declaration in not respect of the suit land and thereby the prayer sought for is correct and also they paid the correct court fee. Even if any deficiency of court fee is there, the trial court has to order for payment of court fee and if any court fee, after the order of the court was not been paid, then the court can reject the plaint. Therefore, in the case on hand, there is no any order passed by the court to pay the court fee and thereby Order VII Rule 11(b) would not attract. As far as Order VII Rule 11(a) is concerned, the plaintiff clearly indicated the cause of action and thereby the trial court, after considering all the aspects,



CRP.No.3774 of 2022

dismissed the petition. Hence, the present petition is liable to be dismissed.

WEB COPY

7. This court heard both sides and perused the records.

8. In this case, the plaintiff has filed a suit for the relief of declaration, declaring that the plaintiff is tenant only in respect of vacant site of the suit property and to pass a decree for permanent injunction restraining the defendant and their men agent from interfering with the plaintiff peaceful possession and enjoyment of suit property unless and until he is evicted by due process of law. In the plaint, the plaintiff has pleaded about the cause of action and once the cause of action is pleaded, whether the said cause of action is true or not has to be decided after the full trial and the same cannot be decided under Order VII Rule 11 application. The said Proposition of Law is well settled as per the catena of judgments of the Hon'ble Supreme Court. As far as another ground raised by the petitioner that the suit is not properly valued is concerned, the plaintiff has sought for the relief of declaration and valued the relief under section 25(d) of Tamil Nadu Court



CRP.No.3774 of 2022

Fees and Suit Valuation Act and paid the court fee. The trial court also admitted the plaint. Even if the valuation of court fee is not correct, the petitioner has to approach the trial court for that purpose and if the trial court is satisfied with the plea of the petitioner that the suit is not properly valued, then the trial court has to give an opportunity to the petitioner and direct the petitioner to pay the court fee. If the court fee is not paid, even after the order passed by the court, then the court can reject the plaint. In the case on hand no any such plea is raised before the Trial Court and the averments made in the Petition are vague. Therefore, the petitioner has not proved any ground to attract the provisions of Order VII Rule 11 of CPC. Therefore, the petition filed by the petitioner has no merits and deserves to be dismissed. The trial court also, in the order clearly discussed about the provisions of section 3(d) of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 and the said act does not include the vacant site. Therefore, the suit is not barred under the said act and also referred the orders of this court in CRPs batch petitions of 3056 of 2021 and thereby, the contentious issue to be decided in the suit which requires leading of both oral and document evidences and dismissed the



CRP.No.3774 of 2022

petition without cost. Though, the learned District Munsif has raised the points but not answered all the points, however dismissed the petition on the ground that the issues can be decided after adducing oral and documentary evidences. Therefore, there is no perversity or infirmity in the order passed by the District Munsiff in dismissing the petition. Therefore, this court, as discussed *supra* is of the considered opinion that this CRP has no merits and deserves to be dismissed. This civil revision petition is dismissed. There shall be no order as to costs.

9. In the result, this CRP is dismissed. There shall be no order as to costs.

30.04.2024

nst

Copy to:

Principal District Munsif Judge, Cuddalore.



WEB COPY



CRP.No.3774 of 2022

P. DHANABAL , J

nst

C.R.P.No.3774 of 2022
against
IA.No.275 of 2021
in
OS.No.71 of 2021

30.04.2024