



WEB COPY



C.R.P (PD) Nos.4163 & 4165 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P (PD) Nos.4163 & 4165 of 2023
& C.M.P.Nos.25393 & 25397 of 2023

CRP.No.4163 of 2023

Jaburnnisa

.. Petitioner

VS.

1. Board of Trustees,
P.T.Lee Changavaraya Naicker Trust,
Rep. By its Secretary,
No.2-3, EVK Sampath Salai, Vepery,
Chennai – 600 007.

2. Baharunisha Begum,
No.31, Kolakarapet 1st Lane,
Royapettah, Chennai – 600 014.

3. S.A.Basha

4. Aaliya Sultana

..Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in un-numbered IA.No... of 2023 in O.S.No.2603 of 2012, on the file of the XI-Assistant City Civil Court at Chennai, dated 31.08.2023 by allowing the present civil revision petition.

C.R.P.No.4165 of 2023

Ansari Basha

.. Petitioner

VS.

1. Board of Trustees,



C.R.P (PD) Nos.4163 & 4165 of 2023

P.T.Lee Changavaraya Naicker Trust,
Rep. By its Secretary,
No.2-3, EVK Sampath Salai, Vepery,
Chennai – 600 007.

2. S.Babu @ Saleem Babu

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in un-numbered IA.No... of 2023 (Sr.No.49627 of 2023 in O.S.No.2599 of 2012, on the file of the XI-Assistant City Civil Court at Chennai, dated 31.08.2023 by allowing the present civil revision petition.

For Petitioners : Mr.Ma.P.Thangavel
[in both CRPs.]

For Respondents : Mr.E.Manokaran [R1]
[in both CRPs.]

COMMON ORDER

These Civil Revision Petitions are at the instance of the first defendant in O.S.No.2599 of 2012 and O.S.No.2603 of 2012 on the file of the XI Assistant City Civil Court, Chennai.

2. The respective suits have been presented by the first respondent trust seeking for ejectment of the defendants from the suit schedule mentioned property and for damages for the respective premises from the date of filing of the suits and for mesne profits. Pending the suits, applications were taken out in order to eschew the documents filed as



C.R.P (PD) Nos.4163 & 4165 of 2023

Ex.A1 to Ex.A5 in O.S.No.2599 of 2012 and Ex.A1 to Ex.A11 in O.S.No.2603 of 2012. The said applications were dismissed by the learned Trial Judge on 31.08.2023. Aggrieved by the same, the present civil revision petitions have been filed.

3. According to Mr.Ma.P.Thangavel, learned counsel appearing for the civil revision petitioners, the documents, which have been filed along with the proof affidavit were not documents, which were presented along with the plaints. Therefore, it comes within the teeth of Order VII Rule 14 and without the leave of the Court, the said documents cannot be received.

4. *Per contra*, Mr.E.Manoharan, learned counsel appearing for the first respondent in both civil revision petitions, would state that these documents were introduced by way of proof affidavit and that they are the Will, which had been probated by this Court, as well as a scheme decree that has been settled by this Court for the purpose of Managing P.T.LEE., Chengalvaraya Naicker Trust. He would point out that the proof affidavit had been served on the learned counsel appearing for the defendants and thereafter, the witness was subjected to cross-examination



on those documents. He would state that the non-filing of an application under Order VII Rule 14 is only a procedural requirement and that cannot be the basis for eschewing evidence.

5. I have considered the arguments of both sides and I have gone through the records.

6. Order VII Rule 14 sub-clause(2) is an enabling provision to enable the plaintiff to produce documents, which should have been in the list of documents but were not filed at the relevant time. It is only a procedural matter, for which, the remedy is not a revision under Article 227 of the Constitution of India. A revision under Article 227 of the Constitution is to keep the Courts subordinate to this Court within their bounds and to interfere when they have acted without jurisdiction or in excess of jurisdiction.

7. For mere procedural irregularities, which does not affect the interest of either side, Article 227 of the Constitution of India is not an appropriate remedy.



8. *De-hors* the jurisdiction of this Court, even on the merits of the case, from the order impugned as well as from the submissions of either side, it is clear that the witness was cross-examined on the basis of the documents. In fact, it is the argument of Mr.Ma.P.Thangavel that at the time of marking the documents they were objected to, but, the Court decided to receive the same. This implies that even at the earliest available point, an objection had been raised by the defendant and it had been considered and overruled. That order has not been put in challenge before me.

9. The documents have been received subject to relevancy and proof and it is always the duty of the plaintiff to substantiate the same at the time of trial. Furthermore, in terms of Civil Rules of Practice under Section 3 sub-clause (2), an application under Order VII Rule 14 can be in writing or can be made orally. The fact that, it was objected to at the time of marking and the Court had permitted the same implies that an oral application had been made, objections had been received from the defendants, considered and an order was passed thereon. Therefore, the submission of Mr.Ma.P.Thangavel that no application had been filed does not stand a moment's scrutiny. From the records, I am able to see that an



application orally had been made, considered and had been received.

WEB COPY

10. At this stage, Mr.Ma.P.Thangavel, would rely upon the judgment of this Court in the case of ***Rajammal Vs. Sumathi & Ors.*** reported in **2016 – 2- L.W. 713** to argue that if an application is not made, it is fatal to receive the documents. As stated above, in terms of Rule 3 of the Civil Rules and circular standing orders as well as the Code of Civil Procedure, an application is deemed to have been made, considered and allowed and therefore, the said judgment does not apply to the facts and circumstances of this case.

11. Furthermore, I am not able to see how a defendant, who had cross-examined the plaintiff on the very documents, can now turn around and move an application saying that the documents ought not to have been received and should be eschewed. He could have approached the Court at the earliest point of time when the documents were received subject to objection. He did not do so. Above all, the learned Trial Judge has exercised his discretion and received the documents. Unless and until discretion is exercised in a improper or arbitrary manner it is not susceptible to the revisional jurisdiction of this Court.



WEB COPY

12. I am able to see neither in the order.

13. I note from the papers that a trust has initiated proceedings for ejectment of tenant 12 years ago and it is still at the stage of evidence of defendants.

14. Mr.Ma.P.Thangavel, would submit that defendants will have to file their proof affidavit in order to substantiate their case.

15. Taking into consideration the suit has been pending for past 12 years, the learned XI Assistant City Civil Judge is directed as follows:

1. To advance the hearing from the date on which, it has been posted to 24.06.2024. On that day, the defendants shall commence their examination in chief. On filing of the proof affidavit, the Trial Judge shall grant time for cross-examination till 28.06.2024.
2. Further evidence on the side of the defendant should be completed within 12.07.2024. The arguments should be commenced on 15.07.2024 and the judgment in any event should be completed on or before 30.07.2024.
3. A report in compliance of the aforesaid directions shall be



C.R.P (PD) Nos.4163 & 4165 of 2023

submitted to this Court on 31.07.2024.

WEB COPY

With the above directions, the Civil Revision Petitions are dismissed. No costs. Connected miscellaneous petitions are closed.

18.06.2024

Index:Yes/No

Neutral Citation:Yes/No

mp

Note: Order copy to be uploaded by 19.06.2024

To

1. XI Assistant City Civil Court,
Chennai.

2. The Section Officer
VR Section
Madras High Court



WEB COPY



C.R.P (PD) Nos.4163 & 4165 of 2023

V. LAKSHMINARAYANAN, J.

mp

C.R.P (PD) Nos.4163 and 4165 of 2023

18.06.2024