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C.R.P.No.3277 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3277 of 2018
and C.M.P.No.18583 of 2018

1.Santhanam (Died)
2.S.Raji
3.Manju
4.Prasanth
5.S.Prakash .. Petitioners
(Petitioners 2 to 5 brought on
record as LRs of the deceased
Sole Petitioner vide order dated
09.01.2023 made in CMP.No.251
of 2023 in CRP.No.3277 of 2018)

Versus

1.S.Rajagopal (Died)
2.S.Vasanth Kumar
3.S.Seethapathy
4.S.Jeyachandran
5.S.Venkatesan
6.R.Rajeswari
7.R.Bharathi
8.R.Nandakumar
9.R.Ravi
10.R.Deenadayalan .. Respondents
(Respondents 6 to 10 brought on
records as LRs of the deceased
first respondent vide order dated



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27.03.2023 made in CMP.No.254
of 2023 in CRP.No.3277 of 2018)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order of the V Assistant City Civil Court, Chennai dated 19.02.2018 passed in I.A.No.11890 of 2017 in O.S.No.5381 of 2013.

For Petitioner : Mr.S.Baskaran

For Respondents
2 to 5 : No appearance

For Respondents
6 to 10 : Not ready in notice

ORDER

This civil revision petition challenges the order of the learned V Assistant City Civil Court at Chennai in I.A.No.11890 of 2017 in O.S.No.5381 of 2013 dated 19.02.2018.

2. The civil revision petitioners are the defendants in the suit. O.S.No.5381 of 2013 was a suit presented for permanent injunction restraining the defendants from putting up any superstructure.



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3. Originally, RCOP.Nos.719 and 720 of 2004 were presented before on the file of the 11th Court of Small Causes, Chennai seeking eviction. Eviction was ordered on 19.10.2004 and 14.10.2004 respectively. Aggrieved by the same, the tenants preferred two appeals in RCA.No.1561 of 2004 and RCA.No.1504 of 2004 on the file of the VIII Court of Small Causes, Chennai. The said RCAs came to be allowed on 10.01.2007 and 12.11.2007 respectively. Consequently, the rent control petitions stood dismissed.

4. Aggrieved by the same, the landlords preferred civil revisions in CRP(NPD).No.1215 of 2007 and CRP(NPD).No.2666 of 2008 to this Court. The civil revision petitions were dismissed on 11.04.2011 confirming the order of the rent control appellate authority. During the course of discussion, the learned Single Judge came to a conclusion that, on the admitted case of the petitioners, that it has not been filed by the landlord-Trust and since it had not been established that the petitioners are trustees, he dismissed the revision. He held that for the purpose of maintaining an eviction petition, the landlords on their own pleading had accepted that there is a trust and therefore, dismissed the revision.



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5. Subsequently, as the defendants were attempting to remove the existing superstructure and put up a concrete structure, they come forward with O.S.No.5381 of 2013.

6. On being served with summons, the civil revisions petitioners took out an application in I.A.No.3409 of 2014 pleading that the suit has to be rejected as only City Tenants Protection Act would apply and that Rent Control Act or Transfer of Property Act would not be applicable to the case. When this application was pending, the plaintiffs filed an application seeking for amendment of the plaint. They sought for amendment to declare that the alleged trust, namely, Srinivasalu Naidu Trust is not a legal entity as it has not been created by any acceptable deed and also to declare that the plaintiffs are entitled to manage the suit property as a Madam in their own right as had been done by their ancestors. This application was numbered as I.A.No.2652 of 2016. Pending these applications, the plaintiffs filed another petition in I.A.No.11890 of 2017 seeking permission of the court to withdraw the suit and file a comprehensive suit to settle all the issues involved between the parties.



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7. A counter was filed by the civil revision petitioners /tenants. The learned Judge came to a conclusion that the findings rendered by the rent control authority does not satisfy the requirements of Section 11 of the Code of Civil Procedure and therefore, allowed the application for withdrawal of the suit. Aggrieved by the same, the tenants are on revision before me.

8. I have heard Mr. S.Baskaran for the civil revision petitioners.

9. Mr.S.Baskaran submits that the findings of the rent control appellate authority as confirmed by this Court operates as *res judicata*. Hence, the respondents are not entered to file an application for withdrawal and leave to file a comprehensive suit between them. He further adds that there is no “formal defect” in the suit for them to withdraw the suit and file a fresh suit as sought for and granted by the Trial Court.

10. I have carefully considered the submissions of Mr.S.Baskaran.



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11. In a rent control proceeding, a rent Court decides whether the jural relationship between the landlord and the tenant exists. A further condition, under the erstwhile Act 18 of 1960, was that if a property is a trust property, a rent control petition is not maintainable. The findings rendered by the rent control appellate authority as well as this Court shows that the plaintiffs as the landlords in the said RCOPs had pleaded that on account of the property being a trust property, as recorded under the revenue records, they are not entitled to seek for eviction.

12. Both the aforesaid courts came to a conclusion that since the landlords have pleaded that it is a trust property, the rent control court will not have jurisdiction to try the petition. At no stage, the issue of property being a trust property was ever framed for consideration and answered by the Court. It is one of the requirements of Section 11 of Code of Civil Procedure that a Court must come to a clear and categorical conclusion that the property is a trust property. In this case, RCOPs had been dismissed by the appellate authority and by the revisional court on the ground that the petitioners/landlords had pleaded that it is a trust property. At no point of



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time, did the Court ever frame an issue whether the property is a trust property or not and answer the same.

13. For *res judicata* to apply, an issue should have been framed, it should have been contested, heard and finally decided by a Court earlier. Only then, such finding will operate as *res judicata* in the subsequent proceedings. In any event, the specific plea of the plaintiffs is that it was only a private madam and a bajanai koil that was being run by one Srinivasalu Naidu and unfortunately, this fact had been misconstrued by the revenue authorities and they have entered into their records as if there exists a trust by name “Srinivasalu Naidu Trust”.

14. Whether Srinivasalu Naidu Trust exists or not is a matter which certainly requires evidence. It would be opened to the tenants to plead that a trust exists and of course, it will be opened for the plaintiffs to plead that no such trust was ever created. The RCOPs as pointed out above were dismissed on the pleadings of the landlords. A trust requires to be specifically created and existence thereof must be proved. It is for that



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purpose, the plaintiffs want to withdraw the said suit and file a comprehensive suit to settle the issues between the parties.

15. Furthermore, I should point out being a suit for permanent injunction, the cause of action arises day to day i.e., to say, every time the tenants attempt to put up a permanent superstructure after dismantling the hut, that is alleged to exist, as of today. This is because under Section 108(p) of the Transfer of Property Act, no tenant can put up a permanent superstructure without obtaining a permission of the landlord.

16. The plea that the tenant is entitled to the benefits of City Tenants Protection Act arises, only if a suit for ejectment is filed. The question of discussing the provisions of City Tenants Protection Act in a suit for permanent injunction is unknown.

17. Section 9 of the City Tenants Protection Act is a weapon given to the tenants to purchase the property, when the landlord issues a notice for ejectment under Section 11 of the said Act. The condition precedent of Section 9 is presentation of a suit for ejectment. That situation not having



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arisen in a suit for permanent injunction, the plea of Mr.S.Baskaran that the tenants are entitled to the benefit of City Tenants Protection Act is, at best, a red herring argument.

18. Further, Order XXIII Rule 1 is not confined only to “Formal defects”. Order XXIII Rule 1(b) includes other “sufficient grounds”.As the parties want to file a comprehensive suit, the learned Trial Judge has permitted them to withdraw the suit and file a fresh suit. I do not find any error in the order passed by the Trial Court. This civil revision petition is dismissed. The leave granted by the Trial Court stands confirmed.

19. It is open to the civil revision petitioners/ tenants to raise all such pleas that are available to them, when a comprehensive suit is presented before the Court. No costs. Consequently, the connected miscellaneous petition is closed.

13.11.2024

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no

To



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V.LAKSHMINARAYANAN, J.

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