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CRP(PD).No.787 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.02.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

CRP.(PD).No.787 of 2025

and

CMP.No.4625 of 2025

Pratap Pierre Gerard de Condappa

... Petitioner

Vs.

1.Galaxia Enterprises,
(Registered Partnership Firm vide no.227/2011)
Rep. by its Partner Mangalatchoumy
Having office at No.38, Dumas Street,
Pondicherry – 605001.

Mangalatchoumy, (Died)
Rep. by her L/Rs the plaintiffs 3 to 5/respondents 2 to 4 herein

2.Radhy Maleappane

3.Amouda Maleappane

4.Razendhiran Maleappane

5.Pierre Elouard

... Respondents

*(Respondents 2 and 3 are represented by their Power of Attorney
Razendhiran Maleappane, 4th respondent herein)*



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Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 12.02.2025 passed by the II Additional District Munsif, Puducherry in IA.No.14 of 2024 in OS.No.2347 of 2017 and allow this CRP.

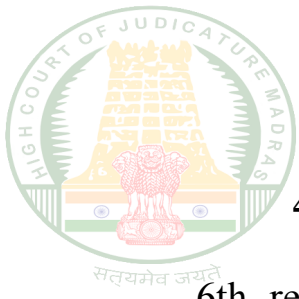
For Petitioner : M/s.R. Thiagarajan

ORDER

Challenging the dismissal of his application (I.A.No.14 of 2015) filed to eschew a portion of the proof affidavit submitted by the 5th plaintiff as P.W.1, the 1st defendant has filed the above Civil Revision Petition.

2. The facts are set out briefly herein below and the parties are referred to in the same ranking as before the Trial Court in IA.No.14 of 2025.

3. The respondents 1 to 5/plaintiffs had filed a suit O.S.No.2347 of 2017 on the file of the I Additional District Munsif, Puducherry for an injunction restraining the petitioner/1st defendant from interfering with their peaceful possession and enjoyment of the suit properties.



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4. It is the contention of respondents 1 to 5/plaintiffs that the 6th respondent/2nd defendant had originally entered into a rental agreement with the original owners, the parents of the petitioner/1st defendant for carrying on business in the schedule mentioned property. The business activities were being taken care of by the 6 respondent/ 2nd defendant and the deceased 2nd respondent/ 2nd plaintiff, namely, Mangalatchoumy. The business was being run in the name and style of Galaxia Enterprise. As per the original partnership deed, the profit sharing between Mangalatchoumy and the 6th respondent/ 2nd defendant was initially in the ratio of 60:40, with profit and loss shared equally (i.e 50% : 50%). However, after an amendment, the ratio was changed to 99:1 and the share of profit/loss also changed to 99% : 1% respectively.

5. On the demise of the original landlord, the petitioner/1st defendant had inherited the suit property and consequently became the landlord. Thereafter, the original lease deed was renewed for a further period up to 30.04.2008. During the existing period of tenancy, a partnership firm (1st petitioner/ 1st Plaintiff) was started by the



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deceased 2nd respondent/ 2nd plaintiff and the 6th respondent/ 2nd defendant on 20.02.2008 through a registered partnership deed dated 20.02.2008.

6. After the partnership deed entered into between the deceased 2nd respondent/2nd plaintiff and the 6th respondent/2nd defendant, an oral rental agreement was entered into between the petitioner/1st defendant and the plaintiffs in and by which the plaintiffs continue as tenants in the suit property on the payment of rental amount to be paid by the plaintiffs in favour of the petitioner/1st defendant. All these years, the rental amounts have been paid without any default. Therefore, the plaintiffs are in lawful possession and enjoyment of the suit property and they are entitled to all tenancy rights.

7. The plaintiffs would submit that the petitioner/1st defendant had filed HRCOP. No.53 of 2012 on the file of the Rent Controller, Puducherry for fixing a fair rent by making false allegations. Only the 6th respondent/2nd defendant was shown as the party to the proceedings and therefore, in order to protect the interest of the 1st



plaintiff firm, an impleadment petition was filed. However, the same was dismissed.

8. During the cross-examination in HRCOP proceedings, the petitioner/1st defendant had admitted that the rent was being paid by the 1st plaintiff firm into his account. Therefore, there is a landlord-tenant relationship between the petitioner/1st defendant and the 1st plaintiff firm.

9. Since the 6th respondent/ 2nd defendant had surrendered the possession of the suit premises to the petitioner/1st defendant, and the petitioner/1st defendant has been taking steps to evict the plaintiffs from the suit premises, the plaintiffs have come forward with the suit in question.

10. In the suit, the petitioner/1st defendant had filed a written statement inter alia denying the allegations contained in the plaint. The petitioner/1st defendant would contend that the plaintiffs were never in possession and enjoyment of the suit property and therefore they



cannot claim a decree for permanent injunction.

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11. After the proof affidavit of the 5th respondent/5th plaintiff was filed in the suit, the petitioner/1st defendant had come forward with I.A.No.14/2025 for the relief set out supra.

12. In the affidavit filed in support of I.A.No.14/2025, it is the contention of the petitioner/1st defendant that in the proof affidavit, the 5th respondent/ 5th plaintiff had introduced certain averments which do not find place in the pleadings. Therefore, since evidence without pleading is inadmissible under law, a portion of the evidence of the 5th respondent/ 5th plaintiff as set out in the proof affidavit, was sought to be eschewed. That apart, the petitioner/1st defendant also sought to remove Ex.A28 to A64 as the same is not supported by any pleadings.

13. A counter has been filed by the 5th respondent/5th plaintiff stating that the application for eschewing the evidence was contrary to the established legal principles governing the admissibility of the

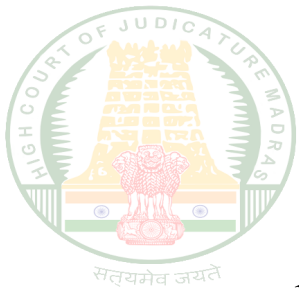


evidence. The 5th respondent/5th plaintiff would contend that the objections to admissibility or relevancy of the evidence should be considered at the time of final hearing. That apart, it is open to the petitioner to cross-examine the witness. Therefore, he sought to have the petition dismissed.

14. The learned II Additional District Munsif, after hearing the parties and relying upon the judgement of the Hon'ble Supreme Court reported in *AIR 2004 SC 355 – Ammer Trading Corporation Limited Vs. Shapoorji Data Processing Limited* had dismissed the petition. Aggrieved by which the petitioner/1st defendant is before this Court.

15. Heard the counsels on either side.

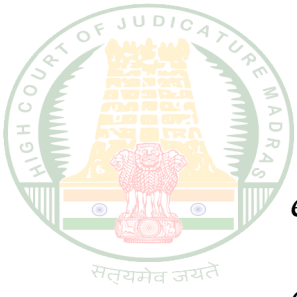
16. As rightly pointed out by the 5th respondent/5th plaintiff, objections with reference to the admissibility or relevancy of the document can be taken at the time of the final hearing of the case. Further, it is well open to the petitioner to cross examine the witness, namely, P.W.1.



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17. With reference to these averments, the learned II Additional District Munsif, Puducherry had relied upon the judgment of the Hon'ble Supreme Court cited supra wherein the Hon'ble Supreme Court had held as follows:-

“The matter may be considered from another angle. Presence of a party during examination-in-chief is not imperative. If any objection is taken to any statement made in the affidavit, as for example, that a statement has been made beyond the pleadings, such an objection can always be taken before the Court in writing and in any event, the attention of the witness can always be drawn while cross-examination him. The defendant would not be prejudiced in any manner whatsoever the examination-in-chief is taken on an affidavit and in the event, he desires to cross-examine the said witness he would be permitted to do so in the open court. There may be cases where a party may not feel the necessity of cross-examining a witness,



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examined on behalf of the other side. The time of the court would not be wasted in examining such witness in open court”

18. In the light of the above, the order passed by the learned II Additional District Musiff, Puducherry cannot be called into question and accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

27.02.2025

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.The II Additional District Munsif, Puducherry

P.T. ASHA. J.,



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