

2012 in H.M.O.P.No.247 of 2008. Thus, the revision fails and the same is liable only to be dismissed.

21. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected MP is closed.

22. After the order was dictated in open court, the learned counsel for the respondent submitted that there may be a direction issued to the trial court to dispose of the original petition in HMOP No.247 of 2008 as expeditiously as possible within a time frame to be fixed by this Court. The learned counsel for the respondent further submitted that the respondent is prepared to pay the entire arrears of interim maintenance, if any, as ordered in the earlier proceedings under Section 24 of the Hindu Marriages Act till the date of disposal of HMOP No.114 of 1999. The said statement is recorded.

23. In view of all the above, the trial court shall expedite the trial of the proceedings in HMOP No.247 of 2008 and dispose of the same within a period of six months from the date of receipt of a copy of this order.

VCJ/VCS

2013-2-L.W. 365

**IN THE HIGH COURT OF
JUDICATURE AT MADRAS**

22.02.2013/Civil Revision Petition (PD)
No.788 of 2013

S.Nagamuthu, J.

Mr. V.Umapathy, S/o.M.Venkatesan
.. Petitioner

Vs.

1. Mrs. Santha Sivagnanam, W/o. Late.Mr.V.Sivagnanam
2. Mr. Yuvaraj, S/o. Late.Mr.V. Sivagnanam
3. Mrs. Mahalakshmi, D/o.Late.Mr.V. Sivagnanam

4. Miss. Gowri, D/o.Late.Mr.V. Sivagnanam .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the Principal District Court, Thiruvallur, to number the suit in O.S.SR.No.6301 of 2012.

Constitution of India, Article 227/Power of District Courts, to try suits summarily,

C.P.C., Order 37, Rr.1,2/Power of District Courts, to try suits summarily; Suit on Promissory Note, Power of District Judge, Thiruvallur to try summarily, Scope of,

C.P.C. (Amendment Act) (1976), Proviso to Order 37, Effect of,

CRP was filed under Article 227 seeking a direction to the learned District Judge, Thiruvallur, to take on file and number the suit, filed to recover a sum laid on the basis of a promissory note by following summary procedure under Or.37. Para 2

Learned District Judge, returned the plaint, pointing out as to how a suit under Order 37, could be entertained by the District Judge. Para 3

Learned District Judge, Thiruvallur, is directed to entertain the suit. Para 18

All the Courts throughout the State, have got power under Order 37, CPC, to try those suits which are enumerated under Order 37 CPC summarily. Para 17

Held: Power of the High Court is only to the limited extent of restricting the categories of suits to be tried summarily — High Court has not been empowered as per the amended provisions to completely take away or oust the jurisdiction of any Courts to try suits summarily under Order 37, CPC. Para 16

After amendment, Order 37, Rule 1 (b) CPC, has been repealed and in its place, new Rule 1 (b) has been introduced — As per this Rule, not only the High Court, all the other Courts have been empowered to entertain the suits under Order 37 CPC and to try the same summarily. Para 14

A cursory comparison of the provision, Order 37 as it stood prior to the amendment and after the amendment, would go to show that prior to the amendment, apart from the High Court of Judicature at Fort William, Madras and Bombay, any District Court or other Court specially empowered in this behalf by the State Government, alone shall have power, to try a suit summarily, as provided under Order XXXVII CPC. Therefore, it is crystal clear that prior to 1977, unless there had been an order by the respective State Government, empowering the District Courts or any other Court to try the suit summarily under Order XXXVII CPC, such District Courts or any other Courts cannot have jurisdiction to try suits under Order XXXVII CPC. Para 13

So far as the State of Tamil Nadu is concerned, prior to 01.02.1977, there was no such notification issued by the State Government empowering the District Courts or other Courts constituted outside the Madras City limits to entertain and try any suit under Order XXXVII CPC. Now after the amendment, Order XXXVII, Rule 1 (b) CPC, has been repealed and in its place, new Rule 1 (b) has been introduced. As per this Rule, not only the High Court, all the other Courts have been empowered to entertain the suits under Order XXXVII CPC and to try the same summarily. Para 14

So far as Order XXXVII CPC, as it stands after the amendment, the power of the State Government as it stood prior to the amendment under Order XXXVII, Rule 1 (b) CPC has been taken away. Now, by introducing the proviso clause, the High Court has been empowered to issue a

notification by means of an Official Gazettee. Even the power of the High Court is only to the limited extent of restricting the categories of suits to be tried summarily. Even the High Court has not been empowered as per the amended provisions to completely take away or oust the jurisdiction of any Courts to try suits summarily under O.37 CPC. Para 16
P.P.Aravindakshan v. K.Sukumaran, 2000 AIHC 2190; — Referred to.

CRP allowed.

For Petitioner : Mr. V.Lakshminarayanan

ORDER

Invoking the jurisdiction of this Court, under Article 227 of the Constitution of India, the petitioner, who is the plaintiff, in the suit in O.S.SR No.6301 of 2012, has come up with this Civil Revision Petition, seeking a direction to the learned District Judge, Thiruvallur, to take on file and number the said suit.

2. The above suit has been filed by the petitioner herein to recover a sum of Rs.26,69,918/-, with interest at the rate of 18% per annum, from the defendants. The said suit has been laid on the basis of a promissory note. The petitioner filed the suit under Order XXXVII, Rules 1 and 2 of the Code of Civil Procedure (in short "CPC"), to try the suit, by following the summary procedure, as provided under Order XXXVII of the CPC.

3. The suit was presented before the court below on 15.11.2012. But the learned District Judge, returned the plaint, pointing out as many as twenty defects. One of the main defects mentioned in the order of return was that, as to how a suit under Order XXXVII, Rules 1 and 2 CPC, could be entertained by the District Judge.

4. The suit was re-presented by the petitioner, by citing the provisions of Order XXXVII, Rule 1 (b) of CPC, after it had

undergone amendment, as per the Amending Act 104 of 1976, which came into force with effect from 01.02.1977. Thereafter, the learned District Judge, ordered the matter to be called in the open court, for the learned counsel for the petitioner, to make his submissions on the question of maintainability. The matter was accordingly heard for sometime. But, so far as, he has not passed any order. Under those circumstances, the learned counsel has come up with this petition.

5. I have heard the learned counsel for the petitioner and perused the records carefully.

6. The learned counsel for the petitioner would point out that in the return order, dated 21.12.2012, the learned District Judge, has mentioned as follows:-

"Notification, if any, under which the Tiruvallur District is notified to try the plaints filed under Order 37 Rule 2 CPC may be furnished."

For the said return, the learned counsel for the petitioner submitted that as per Order XXXVII, Rule 1 (b) of CPC, the District Court, Thiruvallur, has got jurisdiction to try the suit summarily, as provided under Order XXXVII CPC.

7. The learned District Judge was not satisfied with the same.

8. The learned counsel would submit that it is perhaps the opinion of the learned District Judge, Thiruvallur, that a notification is required from the High Court, as per the proviso to Order XXXVII Rule 1 CPC, extending the application of Order XXXVII CPC, to the District Courts, constituted out of the Chennai City limits. The learned counsel for the petitioner would further submit that, after the amendment of the Code of Civil Procedure, the code itself confers jurisdiction on all the District Courts and it is not necessary that there has to be notification issued by the High Court.

In this regard, the learned counsel for the petitioner has also placed reliance on a Division Bench judgment of the Kerala High Court in the case of *P.P.Aravindakshan v. K.Sukumaran*, reported in 2000 AIHC 2190 wherein speaking for the Bench, The Hon'ble Dr. Justice AR.Lakshmanan, (as he then was), after making a scientific analysis of the provisions of Order XXXVII CPC, both prior and after the amendments, has held that the Amendment Act 1976, extends to the whole of India, and thus, the new Order XXXVII CPC, is in force, with effect from 01.02.1977 throughout the country.

9. I have heard the aforesaid submissions. At the outset, I want to express that I am in full agreement with the submissions made by the learned counsel for the petitioner. My reasons are as follows.

10. Prior to the Amending Act 104 of 1976, Order XXXVII CPC stood as follows:-

" ORDER XXXVII

SUMMARY PROCEDURE ON
NEGOTIABLE INSTRUMENTS

Application of Order. R.1. This order shall apply only to -

(a) the High Court of Judicature of Fort William, Madras and Bombay;

(b) any District Court or other Court specially empowers in this behalf by the State Government;

(c) (* * *) and

(d) any other court to which Sections 532 to 537 of the Code of Civil Procedure, 1882, have been already applied."

11. At this juncture, it needs to be mentioned that there is no Madras High Court Amendment to Order XXXVII.

12. Now let us see Order XXXVII CPC, as it stands after the amendment.

" Order XXXVII

SUMMARY PROCEDURE

1. Courts and classes of suits to which the Order is to apply. - (1) This Order shall apply to the following Courts, namely :

(a) High Court, City Civil Courts and Courts of Small Causes; and

(b) other Courts;

Provided that in respect of the Courts referred to in Clause (b), the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper, and may also, from time to time as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.

(2) Subject to the provisions of sub-rule (1), the Order applies to the following classes of suits, namely:

(a) suits upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt, or liquidated demand in money payable by the defendant, with or without interest, arising.-

(i) on a written contract, or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only".

13. A cursory comparison of the provision, as it stood prior to the amendment and after the amendment, would go to show that prior to the amendment, apart from the High Court of Judicature at Fort William, Madras and Bombay, any District Court or other Court specially empowered in this behalf by the State Government, alone shall have power, to try a suit summarily, as provided under Order XXXVII CPC. Therefore, it is crystal clear that prior to 1977, unless there had been an order by the respective State Government, empowering the District

Courts or any other Court to try the suit summarily under Order XXXVII CPC, such District Courts or any other Courts cannot have jurisdiction to try suits under Order XXXVII CPC.

14. So far as the State of Tamil Nadu is concerned, prior to 01.02.1977, there was no such notification issued by the State Government empowering the District Courts or other Courts constituted outside the Madras City limits to entertain and try any suit under Order XXXVII CPC. Now after the amendment, Order XXXVII, Rule 1 (b) CPC, has been repealed and in its place, new Rule 1 (b) has been introduced. As per this Rule, not only the High Court, all the other Courts have been empowered to entertain the suits under Order XXXVII CPC and to try the same summarily.

15. I believe that the proviso clause appended to Order XXXVII Rule 1 CPC, has caused some confusion in the mind of the learned District Judge, Thiruvallur, while understanding Order XXXVII CPC. The proviso clause, in the clear terms, states that, by means of a notification in the official Gazettee, the High Court may restrict the operation of Order XXXVII CPC only to such categories of suits as it deems proper, and may also, from time to time, further restrict, enlarge or vary, the categories of suits brought under the operation of order as it deems proper.

16. So far as Order XXXVII CPC, as it stands after the amendment, the power of the State Government as it stood prior to the amendment under Order XXXVII, Rule 1 (b) CPC has been taken away. Now, by introducing the proviso clause, the High Court has been empowered to issue a notification by means of an Official Gazettee. Even the power of the High Court is only to the limited extent of restricting the categories of suits to be tried summarily.

Even the High Court has not been empowered as per the amended provisions to completely take away or oust the jurisdiction of any Courts to try suits summarily under Order XXXVII CPC.

17. In this regard, I may state that the Madras High Court has not issued any notification so far, as per the proviso to Order XXXVII CPC, thereby restricting the categories of any suit from the application of Order XXXVII CPC. Therefore, as things stand as on today, all the Courts throughout the State, may it be District Courts or the Subordinate Courts or the Munsif Courts, have got power under Order XXXVII CPC, to try those suits which are enumerated under Order XXXVII CPC summarily.

18. In the result, this Civil Revision Petition is allowed and the learned District Judge, Thiruvallur, is directed to entertain the suit, if it is otherwise in order, and try the same in accordance with law. No costs.

VCJ/VCS

2013-2-L.W. 369

IN THE HIGH COURT OF
JUDICATURE AT MADRAS

26.02.2013/Civil Revision Petition [PD]
No.342 of 2012 and M.P.No.1 of 2012

S.Nagamuthu, J.

Ganapathy ... Petitioner
-Versus-

1.Maheshkumar
2.Dhanapal ... Respondents
Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 09.11.2011 made I.A.No.242 of 2011 in O.S.No.260 of 2008 on the file of the learned I Additional Subordinate Judge, Cuddalore.

Tamil Nadu Cultivating Tenants' Protection Act [25 of 1955], Section

4(B)/Lease Deed, Agricultural, whether requires to be stamped, registered, Admissibility, Scope of,

Transfer of Property Act (1882), Section 117/Agricultural lease, exempted, whether from being stamped/registered, Admissibility, Scope of,

Stamp Act (1899), Article 35/Agricultural lease, exempted, whether from being stamped/registered, Admissibility, Scope of.

In view of conflict of decisions in 1997 L.W. 401; 2006(5)CTC681; and CDJ 2007 MHC 4113 — Question referred to larger Bench is as to whether an agricultural lease needs to be stamped and registered and whether the document drawn in triplicate as per Section 4(B) (1) is only an intimation to the authorities for the purpose of updating the record of tenancy rights or does it create lease — Matter referred to Division Bench. Para 14

Arumugham v. Kulandaivelu, 1997 LW 401;
Sikkender Anees v. Vaiyalimuthu Thevar, CDJ 2007 MHC 4113;

Duraisami Naidu v. C.Ramakrishnan, 2006 (5) CTC 681; and

Tulsi v. Para (Dead), (1997) 2 SCC 706;

— Referred to.

For petitioner: Mr.R.Subramanian

For respondents : Mr.S. Kingster Jerold

Amicus Curiae: Mr.V.Lakshminarayanan

ORDER

The petitioner is the 2nd plaintiff in O.S.No.260 of 1998 on the file of the learned I Additional Subordinate Judge, Cuddalore. The said suit has been filed for declaration of title for the suit property in favour of the plaintiffs and for recovery of vacant possession. The suit was originally filed by one Rajavel. Pending suit, he died.