



C.M.A(MD)No.1001 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.1001 of 2023

and

C.M.P.(MD) No.13903 of 2023

1.M.Regina Celine

2.M.Kamseeli

Josphine Mary (died)

3.Elizabeth Rani

4.Arul David Joseph

5.Nirmala

... Appellants

.vs.

1.Meenakshi Sundaram

2.Rani Elizabeth

3.M.Martin

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(r) of the Code of Civil Procedure, to set aside the fair and decretal order dated 12.06.2023 rendered in E.A.No.01 of 2021 in E.P.No.410 of 2020 in O.S.No.137 of 2009 on the file learned First Additional District Judge (PCR), Trichirappalli.



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For Appellants : Mr.K.S.Kathiravan

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JUDGMENT

This appeal is filed challenging the order passed in E.A.No.01 of 2021 in E.P.No.410 of 2020 in O.S.No.137 of 2009 on the file of the learned First Additional District Judge (PCR), Trichy.

2. The petitioners 1 and 2 herein and one Josephine Mary as plaintiffs filed the suit in O.S.No.137 of 2009 seeking the relief of partition of 9/12th shares and for separate possession. That suit was decreed and a preliminary decree for partition of 9/12th shares in favour of the plaintiffs, was passed on 07.09.2012. Against the said Judgment, the defendants filed an appeal in A.S.No.164 of 2014. The appellate Court while confirming 9/12th shares allotted to the plaintiffs, modified the share of the second defendant from 1/12th share to 3/12th share. No second appeal was filed against the Judgment and decree of the first appellate Court in A.S.No.164 of 2014 and the said Judgment and decree became final.



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3. Thereafter, the plaintiffs filed a final decree petition in I.A.No. 465 of 2013. After elaborate enquiry, final decree was passed allotting the shares to the parties on 12.06.2020. The plaintiffs filed E.P.No. 410 of 2010 for delivering the shares. When the Senior Bailiff made attempts to deliver the property as per the final decree, he was obstructed by the respondents 1 and 2. Later, the respondents 1 and 2 filed E.A.No. 1 of 2021 under Order 21 Rule 97 and Section 151 of Code of Civil Procedure, claiming that they are the tenants in respect of the property allotted to the shares of the plaintiffs. After enquiry, the learned First Additional District Judge, Trichy, allowed the said petition. Thus, this Civil Miscellaneous Appeal is filed.

4. It is the submission of the learned counsel for the appellants that the tenants are not parties to the suit proceedings. They have not taken any steps for registering themselves as tenants under the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. In the said circumstances, they cannot claim to be statutory tenants and they are bound by the decree passed in favour of the appellants. Thus, the appellants prayed for setting aside the order of the learned First Additional District Judge, Trichy and for allowing this



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appeal. In support of his contention, he produced the Judgment of the Hon'ble Supreme Court in **B.Gangadhar Vs B.G.Rajalingam**, reported in (1995) 5 SCC 238.

5. Considered the rival submissions and perused the records.

6. From the submissions of the learned counsel for the appellants and the records produced, it is evident that the appellants were allotted 9/12th shares in O.S.No.137 of 2009. In the final decree petition filed in I.A.No.465 of 2013, the properties were earmarked and allotted. When the execution petition is filed in E.P.No.410 of 2020, the respondents 1 and 2 herein obstructed/resisted the execution of the decree on the ground that they are the tenants in respect of the properties allotted to the appellants. It is pertinent to refer the return made by the Senior Bailiff, which reads as follows:-

01.09.2021 ம் தேதியில் கட்டளையில் கண்ட
கிராமத்திற்கு சென்று ஷை ஸ்தாவர சொத்தை
மனுதாரர்களுக்கு சுவாதீனம் செய்து கொடுக்க
முற்பட்டபோது ஷை எதிர்மனுதாரர் மற்றும் முன்றாம்
நபர்கள் சுவாதீனம் செய்யவிடாமல் தடுத்துவிட்டனர். மேலும்
மீறி சுவாதீனம் செய்யப்பட்டால் தகராறு ஏற்படும் சூழ்நிலை



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நிலவுவதால் தகராறு ஏற்படாமல் இருக்க போலீஸ் உதவிக்கும், சுவாதீன காலத்தில் தகராறு ஏற்படாமல் இருக்கவும், மேலும் சுவாதீன ஜாபிதா பூட்டப்பட்டிருந்தால் ப பூட்டை உடைத்து சுவாதீனம் செய்யவும் V.A.O உதவிக்கும் மனுக்கள் தாக்கல் செய்து சமூகம் கோர்ட்டில் உத்தரவு பெற்று சுவாதீனம் பெற்றுக் கொள்கிறேன் என்று மனுதாரர்கள் கூறியதால் அது விபரத்திற்கு அத்தாட்சி எழுதி வாங்கியும், இறுதிநிலை தீர்ப்பாணை நகல், அத்தாட்சி சகிதம் கட்டளையை ரிட்டன் செய்துள்ளேன்.

7. It is seen that the respondents 1 and 2 have produced Ex.P.1 to Ex.P.24 documents to show that they are residing in the property allotted to the appellants in the capacity of tenants. In the said circumstances, the petition filed by the respondents 1 and 2 came to be allowed. It is further seen from the order of the learned First Additional District Judge, Trichy and the records perused that the respondents 1 and 2 claimed to be in possession of the properties as tenants even from the year 1998. After introduction of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, either the tenants or the landlords have not taken any steps for entering into a tenancy agreement as required under Section 4 of the Act and register it



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with the Authorities. No doubt, the appellants were allotted their shares in the final decree proceedings only on 12.06.2020. When there are already tenants in the property allotted to the appellants, the appellants ought to have taken steps for entering into tenancy agreement with the respondents 1 and 2 and proceeded to evict them in the manner known to law, i.e., under the provisions of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. The Judgment relied on by the learned counsel for the appellants relates to the case where the tenants claim title, right or interest in the property through the Judgment debtor. In this case, the appellants are decree holders. The respondents 1 and 2 are the tenants in the properties allotted to the appellants even from the year 1998. Therefore, the respondents 1 and 2 can be evicted only in terms of the provisions under the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017.

8. In view of this matter, this Court finds that the Judgment relied on by the learned counsel for the appellants is not applicable to the facts and circumstances of the case.



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9. In fine, this Court concludes that the learned First Additional District Judge, Trichy, has rightly allowed the petition filed by the respondents 1 and 2 and there is no illegality or irregularity in the order passed by the learned First Additional District Judge, Trichy, and the same is confirmed. Accordingly, this Civil Miscellaneous Appeal is liable to be dismissed.

10. After dictating the order, it is submitted by the learned counsel for the appellants that E.P.No.410 of 2020 is still pending and requested that the learned First Additional District Judge, Trichy, may be directed to record symbolic delivery of possession giving liberty to the appellants to work out their remedy against the respondents 1 and 2 in the manner known to law.

11. Thus, this Court directs the learned First Additional District Judge, Trichy, to record symbolic delivery of possession. Appellants can work out their remedy for evicting the respondents 1 and 2 in the manner known to law.



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12. With the above observations and directions, this Civil

Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index :Yes/No
Internet :Yes/No
NCC :Yes/No
cp

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To

The First Additional District Judge (PCR),
Trichirappalli.



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G.CHANDRASEKHARAN,J.

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