

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2015

C O R A M

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

CRP.NPD.No.1169 of 2015
and M.P.No.1 of 2015

V.Somasundaram

... Petitioner / Obstructor

Vs.

1.Mrs.F.Najma
rep.by her power agent

S.Faizudheen

... 1st Respondent / Decree holder

2.Renukadevi

3.Umamaheshwaran

4.Padmaprakasam

5.Geetha Sundararajan

... Respondents / Judgment Debtors

PRAYER : Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order of the learned District Munsif, Pollachi made in E.A.No.235/2014 in E.P.No.35 of 2014 in O.S.No.364 of 2001 dated 10.03.2015.

For Petitioner : Mr.K.A.Vimal Kumar

ORDER

This revision is directed against the order passed by the District Munsif, Pollachi in E.A.No.235 of 2014 in E.P.No.35 of 2014 in O.S.No.364 of 2001 dated 10.03.2015.

2. The petitioner is the third party to the suit. The first respondent had instituted a suit in O.S.No.364 of 2001 against the respondents 2 to 5 for recovery of possession. The suit has reached its finality in view of the judgment passed by this Court in S.A.No.626 of 2014. Thereupon, the decree holder laid an execution petition in E.P.No.35 of 2014 for delivery of possession. In the execution petition, the petitioner filed E.A.No.219 of 2014 under Order 21 Rule 97 and 151 C.P.C. to record his objections for execution of the decree.

3. In the affidavit filed in support of the application, the petitioner has averred that on 21.06.2012, the father of the judgment debtors, late A.P.Shanmugam had borrowed Rs.9,00,000/- from the petitioner on execution of a promissory note and thereafter the petitioner was permitted to pluck coconuts from the petition property. The petitioner, as a lessee, was in possession and enjoyment of the suit property and since he was prevented by the decree holder from enjoying the coconut trees, he filed a suit in O.S.No.242 of 2014. The decree holder filed an application in E.A.No.235 of 2014 to decide the maintainability of the application as a preliminary issue. The Executing Court allowed the application filed by the decree holder. Challenging the order, the present revision is filed.

4. Mr.K.A.Vimal Kumar, learned counsel for the petitioner submitted that the petitioner has been in possession and enjoyment of the suit property as a licensee and unless his right is adjudicated, the claim of the petitioner cannot be rejected on the application filed by the decree holder. The learned counsel further submitted that the father of the judgment debtors namely A.P.Shanmugam had taken a loan and thereafter planted coconut trees and developed the land and therefore the decree holder is entitled to take only symbolic possession and the petitioner and the judgments debtors are entitled for the yield from the coconut trees.

5. I am unable to accept the contention of the learned counsel for the petitioner. Indisputably, the first respondent/decreed holder had instituted the suit in the year 2001 and even as per the case of the petitioner, he came into possession of the suit property only as a licensee as per the agreement dated 21.06.2012.

6. This Court, in **2014 (5) MLJ 522 [K.Gowtham Chand v. G.S.Chandra Pushpa (deceased) and others]** has held that the pendent lite tenant cannot maintain the application under Order 21 Rule 97 and this Court has held that the application itself is a clear abuse process of law. The relevant portion would run thus :

32. An attempt was sought to be made to contend that since eviction was sought for on the ground of subletting, the alleged subtenant Navin Kumar should have been made a party respondent and since he was not made a party respondent in the R.C.O.P, the eviction petition was bad for non-joinder of necessary party. Nowhere in Section 10 it has been stated that in a petition for eviction on the ground of unauthorized subletting, the subtenant should be made a party respondent. The said section does not state that even though the main tenant might have been permitted to sublet, the subtenants should be made a party to the eviction petition filed against the main tenant on any one of the grounds mentioned in Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. However Section 26 of the Act provides as follows:

26. Order under the Act to be binding on sub-tenants. - Any order for the eviction of a tenant passed under this Act shall be binding on all sub-tenants who were made parties in the application for eviction but any person who became a sub-tenant after the date of the application for eviction shall be bound by the order of eviction and be evicted as if he were a party to the proceedings, provided that such order was not obtained by fraud or collusion.

A reading of the said provision may seem to make it possible to contend that subtenants should be made parties in the petition for eviction and that the exemption is only in respect of persons who become subtenant after the date of filling of the eviction petition. The said section has been interpreted in such a way that it is intended to protect the subtenants from orders obtained on collusion between the landlord and the main tenant. In *Abdul Jameel v. Simpson and Machonochy Ltd.* reported in 1967 (1) MLJ 337, it has been held that the landlord has a right to evict the lessee and recover possession of the entire premises and the sub-lessee will have no independent right or superior right on the

basis of sub-lease in his favour. However, in the said case itself, it has been held that the statutory right of protection given to the subtenant is limited to the derivation of the right against his own landlord, namely the main tenant and it shall not extend any further. In *K.K.Krishnan Vs. M.K.Vijaya Ragavan* reported in 1980 (4) SCC 88, the Hon'ble Supreme Court held that the tenant, whose tenancy was secure and protected by the rights conferred by the Act, should alone be entitled to such security and protection and that the tenant should not be allowed to make profit by the protection given to him by subletting the premises and extending the protection to others besides himself, unless the landlord, by his own act, had agreed for such a course. In *Parthasarathi Chetti Vs. Chitrapillai* reported in (1967) 1 MLJ 83 it has been held that Section 26 of the Act only enables the subtenant to make a claim on the ground of fraud and collusion when the eviction order obtained against the main tenant is sought to be used against him for his eviction. It has been stated therein that while the section seeks to ensure that the subtenants are not evicted straight away in execution by snap orders of eviction obtained behind their back, it saves the landlord from prolonged litigation at the stage of execution.

33. The decisions of this Court and the Apex Court indicate the position that whenever a subtenant is made a party to the eviction proceedings filed against the main tenant, the eviction order can be straight away executed against them and that in case the eviction order against the main tenant was obtained without making the subtenant a party respondent, he shall have a right to obstruct execution against him contending that the order of eviction was obtained playing a fraud or collusively. In such an event, the Executing Court has to decide whether such an obstruction has to be removed and the eviction order is to be executed against him. It is also obvious that even such a right to obstruct will not be

available to a person who get inducted as a subtenant after the filing of the eviction petition. Therefore, there cannot be any scope for contending that the eviction petition was bad for non-joinder of necessary parties since RW1, the subtenant, was not made a party respondent and the eviction order was obtained only against the revision petitioner/the main tenant.

7. In the case of *Chelladurai & Others vs. Avudaiappa Konar &*

Others reported in **2015 (2) L.W. 91**, this Court has held as follows -

8. I have perused the order passed by the First Appellate Court. The First Appellate Court has found on facts that there was a collusion between the appellants herein and the respondents 2 and 3 in effecting the sales during the pendency of the suit. As rightly contended by the learned counsel for the first respondent plaintiff, the obstruction application has to be rejected in limine without going into the merits of the case in view of Order 21 Rule 102. He has submitted that the obstruction application under Order 21 Rule 97 cannot be adjudicated under Order 21 Rule 98 and 100, if the sale was effected after the institution of the suit. It is relevant to extract Order 21 Rule 102.

"Rules not applicable to transferee pendente lite.- Nothing in rules 98 and 100 shall

apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person."

9. The learned counsel appearing for the first respondent plaintiff has relied upon decisions of this Court (i) 2001(4) CTC 755 -N .S.S.Narayana Sarma and others Vs. M/s.Goldstone Exports P. Ltd & Others and (ii) 2002(5) CTC 483 - Banumathi @ Karunaiammal Vs. A.P.Arthanari and 3 others and the decision of the Apex Court viz., (2008)7 Supreme Court Cases - 144 - Usha Sinha Vs. Dina Ram and Others, wherein, it was held that the obstruction application is not maintainable under Order 21 Rule 102, if the transfer took place after the institution of the suit and the suit is decreed.

10. I am in agreement with the submissions of the learned counsel for the first respondent plaintiff that the application in E.A.No.505 of 2011 is not maintainable. As per the decisions of this Court and the Apex Court, the obstructors cannot invoke Order 21 Rule 97 in the said circumstances, since the transfer of

property took place, after the institution of the suit. Hence, the appeal deserves to be rejected.

8. In the light of the decisions of this Court, I am of the view that the petitioner is not entitled to maintain the application under Order 21 Rule 97 and Section 151 C.P.C. The Executing Court has rightly rejected the application which does not warrant interference by this Court.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

18.03.2015

Index : Yes
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To

The District Munsif,
Pollachi.

K.KALYANASUNDARAM, J.

rgr

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