

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 31.03.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P(NPD)No.5008 of 2014
and M.P.No.1 of 2014

1.Thiru Syed Ahemed
2.Tmt. Noorjahan

.. Petitioners / Third parties

Vs

1.Thiru Venkатыesh
2.Tmt.Mehaboob Bibi

.. Respondent / Landlord

.. Respondent / Tenant

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the docket order of delivery possession passed in E.P.No.22 of 2008 in R.C.O.P.No.8 of 2005 dated 17.11.2014 pending on the file of the District Munsif cum Rent Controller at Tirupur.

For Petitioners : Mr.V.Raghavachari for
M/s.Ma.P.Thangavel

For Respondents : Mr.R.Gandhi,
Senior Counsel for
M/s.V.Vijayakumar

ORDER

This revision arises out of the order passed by the District Munsif
Cum Rent Controller at Tirupur in E.P.No.22 of 2008 in R.C.O.P No.8 of 2005.

2. The first respondent had initiated eviction proceedings against the second respondent in RCOP No.8 of 2005 on the grounds of wilful default and for demolition and reconstruction. Due to non-appearance of the second respondent, the Rent Controller passed an order of eviction on 16.06.2006. The first respondent laid an execution petition in E.P.No.22 of 2008 for recovery of possession. In the execution petition, the petitioners filed E.A.No.107 of 2008 under Order 21 Rule 58 C.P.C contending that the tenanted premises originally belong to the first petitioner's ancestors namely Sheik Mohammed and others. He died long back leaving the first petitioner's mother Fathima Bibi and the petitioner's father Gows Bai as his legal heirs. Since then, they are in possession and enjoyment of the property and the second respondent Mrs.Mohamed Bibi is their distant relative and she was not in possession of the premises.

3. Resisting the application, the first respondent filed his counter stating that the petition property was purchased by one Velammal in the year 1964 from the respondent's father and her aunty namely Kair Mohideen Saheb, Ameena Bibi and Azmed Bibi, that the second respondent has filed a vexatious suit in O.S.No.20 of 1981 alleging that sale deed was not binding upon her and the signature was obtained by fraud, however the suit was dismissed and the same was confirmed by the Appellate Court also, that the first respondent

became the absolute owner of the petition property by virtue of sale deed dated 31.03.1994 executed by his father Deivasigamani and others. On the above grounds, he prayed for dismissal of the application.

4. The second petitioner Mrs.Noorjahan examined herself as PW1 and also produced documents. PW1 in her evidence has admitted that she was not aware on whose name the house tax receipts stand, that whereabouts of her father Mohammed Gows is not known, that she has not given any complaint nor given advertisement about missing of her father, that she was not aware of the property details, viz. Plot Number, T.S.Number, and the extent of the property, etc. She has further deposed that she was not aware of the payment of water tax and she has fairly admitted that she has not produced any documents of title standing in the name of her predecessors.

5. PW1 has further admitted in her evidence that her neighbour Swaminathan had informed her about the notice in the petition, about 7 to 8 years ago and she also met her counsel in this regard, that she was not aware of Nachimuthu Gounder, Vellamal and Deivasigamani and she also was not aware of the suit filed by the said Vellamal before Sub Court, Tirupur in O.S.No.20 of 1981 against her and her mother and the settlement reached in the suit. The learned District Munsif, Tirupur dismissed the application and

ordered delivery of possession. Challenging the order, the present revision is filed.

6. Mr.V.Raghavachari, learned counsel for the petitioners submitted that the order of the Rent Controller is manifestly erroneous, illegal and without jurisdiction, that the first respondent has not at all approached the Court with clean hand since the second respondent herein is insane and she is not actually residing in the petition mentioned property; that the petitioners are actually residing in the petition premises and therefore the court below ought to have allowed the claim petition filed by the petitioners in E.A.No.107 of 2008 instead of that, the executing court, while dismissing the application had ordered delivery of possession in E.P.No.22 of 2008, without considering the evidence of PW1 and various exhibits marked in the claim petition and therefore the order of delivery is liable to be set aside in limini. It is further contended that the court below ought not to have ordered delivery of possession based on the exparte order passed against the insane person whose whereabouts are not known, without impleading the persons who are in actual possession and without affording them opportunity and the order is an unexecutable one.

7. Per contra, Shri R.Gandhi, learned Senior Counsel for the first

respondent submitted that the petitioners are not at all tenants in occupation of the petition premises and they are relatives of the second respondent; that while the petitioners were residing alongwith the second respondent, they have created some documents to claim right over the property. It is further contended that the petitioners have claimed right over the property, however, admittedly the petitioners have not produced any documents before the executing court to establish their right over the property and on the other hand, PW1 herself has categorically admitted in her evidence that she did not produce any documents. The learned Senior Counsel further submitted that admittedly the property tax and water tax are standing in the name of the first respondent and he was paying the tax regularly to the local body and that is the reason the petitioners have not produced any documents to prove that their title over the petition property. The learned Senior Counsel further contended that the petitioners have no semblance of right over the petition property and therefore their claim was negatived rightly by the Executing Court which does not warrant interference by this Court.

8. It is seen from the records that the petitioners have filed E.A.No.107 of 2008 specifically contending that their ancestors namely Sheik Mohiden, Fathima Bibi and Gows Bai are the owners of the property and they derived titled from them. The petitioners have further contended that the

second respondent Tmt.Mehaboob Bibi is their distant relative and her whereabouts are not known to them. It is not in dispute that the suits were instituted before the competent Civil Court in respect of title over the property in O.S.No.20 of 1981 and O.S.No.118 of 1983. The first respondent claims title based on the sale deed executed in favour of Vellamal in the year 1964 by Kair Mohideen Saheb, Ameena Bibi and Azmed Bibi and subsequently sale deeds executed by the said Vellamal in favour of Deivasigamani, his brother-in-law and co-brother and on the basis of the sale deed dated 31.03.1994 executed by Deivasigamani and others in favour of the first respondent.

9. It is further seen that except the second petitioner, Mrs.Noorjahan, no other witness was examined by the petitioners and in her evidence, the second respondent has categorically stated that she was not aware of the payment of house tax, water tax, extent of the property, block number, TS Number, etc. Further, PW1 has categorically admitted that she has not produced any documents to prove her title over the suit property. The evidence of PW1 further reveals that she had knowledge about the eviction petition through her neighbour Swaminathan, about 7 to 8 years prior to the filing of the application under Order 21 Rule 58. Indisputably, the first respondent has laid the execution petition for delivery of possession on the

basis of an order passed in the eviction petition in RCOP No.8 of 2005. Rule 58 of Order 21 deals with adjudication of claims to/or objections to attachment of property.

10. In the case on hand, neither the Rent Controller nor any other authorities have ordered attachment of the petition property. Therefore, in my considered opinion, the application filed under Order 21 Rule 58 is not maintainable in law. Further, the petitioners who claim right over the property have not produced any material to establish their title. On the other hand, the first respondent claims title over the property based on the decree passed in O.S.No.20 of 1981, O.S.No.108 of 1983 and by virtue of registered sale deed dated 31.03.1994. The Rent Controller, having satisfied that the first respondent herein has proved his case, ordered eviction on 16.06.2006. In my considered view, the petitioners have no title over the petition property and the application is clear abuse process of law. The order of the Executing Court does not suffer from any illegality or material irregularity. I do not find any reasons to interfere with the order impugned in this revision. The revision is devoid of merits and the same is liable to be dismissed.

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

31.03.2015

Index:Yes
rgr

Note: Issue order copy by 15.04.2015

To

The District Munsif,
Tirupur.

K.KALYANASUNDARAM,J
rgr

Order in
C.R.P(NPD)No.5008 of 2014

31.03.2015