

This revision is filed to strike off the plaint in O.S.No.7412 of 2014 ending on the file of the III Asst. Judge, City Civil Court, Chennai.

2. Heard Mr.M.Venkateswaran, learned counsel for the petitioner and Mr.R.Abdul Mohideen, learned counsel for the first respondent and perused the records.

3. The undisputed facts are as follows -

(A) The petitioner Shri Sivanarayana Sah instituted a suit against the second respondent in C.S.No.860 of 2008 before this Court for specific performance of agreement of sale dated 23.09.2004 and the suit was decreed on 08.09.2010. Since the judgment debtor did not execute the sale deed, the Asst. Registrar (O.S.I) of this Court executed the sale deed in favour of the petitioner on 04.01.2013 in E.P.No.21 of 2012. Thereupon, the petitioner filed application No.4324 of 2013 in E.P.No.21 of 2012 for delivery of vacant possession of the suit property. The judgment debtor opposed the application contending that there was no decree for delivery of possession. However, the learned Master allowed the application by order dated 22.11.2013 directing the judgment debtor to handover possession of the ground and first floors to the petitioner. Challenging the same, the judgment debtor filed Appeal in A.No.5971 of 2013 and the same was dismissed by this Court.

(B) The Application filed by the petitioner for delivery of possession of ground and first floors of the suit property was ordered. Since the

execution was resisted, the bailiff returned the warrant unexecuted alongwith his report dated 21.04.2014. Thereupon, the petitioner filed Application Nos.3929 and 3930 of 2014 for removal of obstruction created by the judgment debtor in the ground and first floor of the suit property and also to provide police protection for carrying out delivery of vacant possession of the suit property.

(C) One Mr.Khajamohideen filed Application No.3933 of 2014 contending that he has been the tenant in respect of the ground floor portion alongwith some other tenants and that he should not be evicted except undue process of law. Similarly, one Mr.Vivekanandan claiming to be the tenant in respect of the first floor portion and running his company in the name and style of M/s.Park Town Benefit Fund Limited filed Application No.4627 of 2014. Application Nos.3929 & 3930 of 2014 were allowed by the learned Master on 24.11.2014 directing issuance of warrant to the bailiff to break open the locks put up in the ground floor and removal of judgment debtor and the third party and also ordered for police protection for execution of the warrant. The Registry issued the warrant on 22.12.2014 in pursuance of order of the learned Master dated 24.11.2014.

(D) At that juncture, one Mr.Akram Khan filed a suit in O.S.No.185

of 2015 on the file of III Asst. Judge, City Civil Court, Chennai claiming to be a tenant of first floor portion as per the lease agreement dated 16.06.2010. One Krishnarajulu, claiming to be a tenant in respect of 600 sq.ft in the first floor as per the lease agreement dated 18.02.2013, filed a suit in O.S.No.186 of 2015. The first respondent herein filed a suit in O.S.No.7412 of 2014 against the petitioner and the 2nd respondent herein contending that he was inducted as a tenant in respect of the ground and first floor of the suit property, as per rental agreement dated 05.02.2010 and obtained an order of ex parte injunction in I.A.No.19943 of 2014 on 23.12.2014. On 26.12.2014, the petitioner alongwith court bailiff went to the suit property to effect delivery of vacant possession. A staff of the judgment debtor company obstructed delivery of possession armed with an order of ex parte injunction. Therefore, on 27.12.2014, the petitioner lodged a police complaint, since no action was taken on the complaint, he preferred Crl.OP Nos.755 & 936 of 2015 to direct the Inspector of police (Law & Order), F-1, Police Station, Chindatripet, Chennai to register a case and to provide police protection until delivery of possession of the suit property is handed over to the petitioner pertaining to E.P No.21 of 2012.

4. This Court, on 09.02.2015, while considering the petitions in Crl.OP Nos.755 & 936 of 2015 has gone into the entire facts of this case from filing of the suit in C.S.No.860 of 2008 and the obstructions made by the first

respondent by institution of the suit in O.S.No.7412 of 2014 and after elaborate discussion, has held as follows -

19. As per the plaint allegation in O.S.No.185 of 2015, the plaintiff-Akraham Khan claimed to be the tenant of entire first floor, having 1685 sq.ft., under the lease deed, dated 16.06.2010. In O.S.No.186 of 2015, the plaintiff-P.Krishnarajalu, claimed to be lessee under the lease deed, dated 18.02.2013 in respect of 600 sq.ft., in the first floor. In Application No.4627 of 2014, filed by Park Town Benefit Fund, represented by R.Vivekanandan, he claimed to be lessee under the lease deed, dated 25.02.2010 in respect of first floor and in Application No.3933 of 2014, filed by Bay Shore Records, represented by S.Khajamohideen, he claimed to be tenant in respect of ground floor, having extent of 600 sq.ft., along with other persons under the lease deed, dated 10.12.2010. In O.S.No.7412 of 2014, the suit filed by Breadway, represented by C.Asaiithambi, he claimed to be the tenant under the rental agreement, dated 05.02.2010, in respect of ground and first floor, having 1685 sq.ft.,

20. Therefore, having regard to various extents of property, claimed by all those alleged tenants under the judgment-debtor, it can be

safely inferred that they cannot be in possession of respective portions under the lease documents, stated by them. Park Town Benefit Fund, claimed to be the tenant of the first floor, having 1685 sq.ft., and Akram Khan also claimed tenancy in respect of first floor of 1685 sq.ft., and therefore, there cannot be two tenants in respect of same extent in the first floor. Further, in O.S.No.186 of 2015, plaintiff-Krishnarajalu also claimed to be in possession of 600 sq.ft., in the first floor and that also cannot be true, having regard to the claim made by Park Town Benefit Fund in A.No.4627 of 2014 and Akram Khan in O.S.No.185 of 2015. Similarly, in O.S.No.7412 of 2014, the plaintiff-C.Asaitambi, claimed to be the tenant of 1685 sq.ft., in the ground and first floor. This claim of tenancy also cannot be true, having regard to the tenancyship claimed by other tenants.

21. Therefore, having regard to the extent of property and having regard to the claim made by all those persons, who are claiming to be tenants under the judgment-debtor, the case putforth by them and the judgment-debtor cannot be true, as they cannot be tenants in respect of various portions as claimed by them under various lease agreements entered into with the judgment-

debtor. Therefore, on that ground, it can be held that they are not entitled to any protection.

22. The matter can also be looked at from another angle under the provisions of Civil Procedure Code. As stated *supra*, C.S.No.860 of 2008, was filed by the petitioner to enforce the agreement of sale, dated 23.09.2004. The suit was decreed on 08.09.2010. The sale deed was executed on 04.01.2013 in favour of the petitioner. The plaintiffs in O.S.No.185 of 2015 and O.S.No.186 of 2015, claimed to be tenants under the lease deeds, dated 16.06.2010 and 18.02.2013, respectively and the plaintiff in O.S.No.7412 of 2014, claimed to be tenant under the rental agreement, dated 05.02.2010. All these agreements came into existence only after the filing of the suit. Insofar as the plaintiff in O.S.No.186 of 2015 is concerned, he claimed to be the tenant after the decree was passed in favour of the petitioner. Similarly, in A.No.3933 of 2014, filed by Khajamohideen representing Bay Shore Records, he claimed to be inducted into as tenant under the lease deed, dated 10.12.2010.

23. Therefore, the applicant in A.No.3933 of 2014, in CS.No.860 of 2008 and the plaintiff in O.S.No.186 of 2015, admittedly came into possession of the property after the suit was

decreed. The plaintiffs in O.S.No.185 of 2015 and O.S.No.7412 of 2014, and the applicant in A.No.4627 of 2014, came into possession on various dates prior to the passing of the decree, but after the filing of the suit. Therefore, we will have to see whether such persons can obstruct the delivery of possession, in the light of provisions contemplated under Order 21, Rules 98 to 102 CPC.

24. As per Order 21 Rule 98 (2) CPC, when the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor, or by some other person at his instigation, or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit, or execution proceeding, the Court shall direct that the applicant be put into possession of the property, and if there is still resistance by the obstructor, or by the judgement-debtor, or by any other person acting at his instance, shall also be detained in the civil prison.

25. As per Order 21 Rule 102 CPC, 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 person. As per Order 21, Rule 101 CPC, all questions arising between the parties to a proceeding on an application under Rule 97 or 99 or their representatives, shall be determined by the Court dealing with the application and not by a separate suit. As per Order 21 Rule 98, upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2), either make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application or pass such other order, as the case may be.

26. Therefore, a reading of all these provisions will make it clear that whenever possession is claimed by decree-holder, and the person, who is obstructing claims any independent title, dehors, the judgment-debtor, he has to workout remedy as per Order 21 Rules 97 and 99. Such applications will be dealt with under the provisions of Order 21, Rules 98 to 102. But, such a right is not available to transferee pendente lite. It is also made clear under Order 21, Rule 101, that objection or all questions

relating to right/title/interest over the property shall be determined by the Court dealing with application and not by separate suit. As stated supra, all the persons claimed to have been inducted into the property after the filing of the suit, and therefore, their alleged rights are affected by pendente lite, hence, they are not entitled to any protection as per Order 21, Rules 98 to 102 CPC. Further, separate suit is not maintainable and person, who claims to be in possession of the property on independent title, has to approach the Executing Court to get the relief. In this case, all the obstructors claim tenancy through the judgment-debtor after the filing of suit by petitioner.

5. The learned counsel for the petitioner submitted that the petitioner had instituted the suit C.S.No.860 of 2008 against the second respondent for enforcing the sale agreement dated 23.09.2004 and the suit was decreed after contest, on 08.09.2010; that the petitioner has laid an execution petition in E.P.No.21 of 2012 in C.S.No.860 of 2008 facing resistance from one Khaja Mohideen and Vivekanandan, who were claiming to be the tenants inducted by the judgment debtor, the petitioner filed applications under Order 21 Rule 97 for removal and obstruction and after adjudication of the rights of the parties, this Court ordered removal of obstruction. Thereafter, at the instance and instigation of the second respondent/judgment debtor, three

other suits were filed in respect of the same property by Akram Khan, Mr.Krishnarajulu and the first respondent herein claiming to be the tenants in respect of the same property.

6. The learned counsel further submitted that this Court, after threadbare consideration of the entire facts, held that the suits are not maintainable and that the suits are clear abuse of process of law and therefore the same are liable to be struck off by this Court invoking Article 227 of the Constitution of India. It is also contended that the first respondent has laid the suit based on the bogus documents.

7. Per contra, the learned counsel for the first respondent submitted that the first respondent is a statutory tenant in respect of the suit property and he is entitled for protection under Order 21 Rule 96 C.P.C.; that the first respondent has every right to file a suit against the defendants and the genuineness of the lease deed can be decided only after the trial. It is further contended that the revision itself is not maintainable in view of the fact that the petitioner can very well approach the same court for vacating the interim injunction and he is also having an alternate remedy of filing appeal, under Section 104 and Order 43 Rule 1 C.P.C. placing reliance upon a judgment of the Hon'ble Supreme Court in *Venkatasubbiah Naidu, A. v. S.Challappan reported in 2000 (4) CTC 358*.

8. The learned counsel further submitted that the petitioner can take only symbolic possession as prescribed under Order 21 Rule 96 C.P.C., that when the first respondent has raised obstruction for execution of the decree, it is the duty of the decree holder to approach the executing court for removal of the obstruction under Order 21 Rule 97 CPC and without resorting the remedy, the petitioner cannot take delivery of possession through the aid of a police. The learned counsel for the respondent submitted that the right of the plaintiff/first respondent has to be adjudicated as per Order 21 Rule 97, relying up on the judgment of the Hon'ble Supreme Court in *Tanzeem-e-Sufia v. Bibi Haliman & others reported in CDJ 2002 SC 501*.

9. In *2000 (4) CTC 358 (cited supra)*, a question arose whether an exparte injunction order granted in a suit could be challenged straightaway without filing a petition to vacate the exparte order of injunction. In the above facts, the Hon'ble Supreme Court has held as follows -

18. It is the acknowledged position of the law that no party can be forced to suffer for the inaction of the Court or its omissions to act according to the procedure established by law. Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2A, 4 or 10 of Order 39 of the Code in terms of Order 43 Rule 1 of the Code. He cannot approach the

appellate or revisional Court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances the party who does not get justice due to the inaction of the Court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39 Rule 3A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate Court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate Court in complying with the provisions of Rule 3A. In appropriate cases, the appellate Court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex-parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirtydays mentioned in the Rule.

10. In **CDJ 2002 SC 501**[*Tanzeem-e-Sufia v. Bibi Haliman & others*], the Hon'ble Apex Court held thus -

14. We find that in the case in hand the appellant is claiming its independent right over the property and asserts its possession thereof. Order 21 Rule 101 clearly provides that all questions relating to right, title or interest in property relevant to the adjudication of the application, shall be dealt with the application and not by a separate suit. The High Court therefore, erred in refusing to hear the appellant, on the ground that it has already filed a suit for declaration of its title and for declaration that the decree passed in title suit No. 8 of 1983 is not binding on it. The provision contained under Order 21 Rule

101 CPC seems to have escaped notice of the High Court while passing the order. We would also like to observe that the reasoning given by the execution Court while rejecting the application of the appellant as indicated in the order of the High Court, that the remedy of the appellant would only lie by moving an application under Order 21 Rule 99 CPC is also erroneous as in case of Brahamdeo Chaudhary' (supra), it has been held that it should not be insisted that possession be delivered first and the objector may later on move the Court under Order 21 Rule 99 CPC.

11. In the instant case, undisputedly the 1st respondent herein instituted the suit based on the lease agreement dated 05.02.2010. It is not in dispute that the petitioner had filed the suit for specific performance against the 2nd respondent in the year 2008. Hence, questions arise for consideration in this revision whether the suit is maintainable and the respondent could even maintain an application under Rule 97 of Order 21.

12. Mr.Justice Hariparanthaman in the case of ***Chelladurai & another v. Avudaippan Konar & others reported in 2015 (2) L.W. 91***, following the decisions of the Hon'ble Supreme Court reported in 2008 (7) SCC 144, this Court in 2001 (4) CTC 755 and 2002 (5) CTC 483 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.

13. In the present case, Mr.Justice R.S.Ramanathan, in CrI.OP Nos.755 and 936 of 2015, has elaborately considered the entire facts and law involved in this subject and observed that the suit is not maintainable in law. I respectfully agree with the views taken by this Court. I am of the opinion that the suit is liable to be set struck off on the ground of abuse of process of law and is not maintainable, as per Rules 101 & 102 of Order 21 CPC. The first respondent is also not entitled to maintain an application under Order 21 Rule 97 CPC. Therefore, I am of the considered opinion that the decisions cited by the learned counsel for the 1st respondent have no bearing on the facts of this

case.

14. In the result, this Civil Revision Petition is allowed and the
plaint in O.S.No.7412 of 2014 on the file of III Asst. City Civil Court, Chennai is
struck off. No costs. Consequently, connected Miscellaneous Petitions are
closed.

30.03.2015

Index : Yes
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To

The III Asst. Judge,
City Civil Court,
Chennai.

K.KALYANASUNDARAM, J.

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Order in
C.R.P(NPD)No.421 of 2015

30.03.2015