

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2015

CORAM

THE HON'BLE Ms. **JUSTICE K.B.K.VASUKI**

**CRP (NPD) Nos.3551 and 3552 of 2007
and MP.No.1 of 2007**

1.Jayaraman

2.Meera Manohar

... Petitioners in both

VS.

Joseph Pouvatchy

represented by his Power of Attorney

Claude Marius

No.106, Saint Therese Street,

Pondicherry – 605 001.

(cause title amended

vide order dated 21.04.2015 made in

MP.Nos.1 and 1 of 2013 in

CRP.Nos.3551 & 3552 of 2007)

... Respondent in both

CRP.3551/2007: Civil Revision Petition is filed against the order dated 24.1.2006 made in I.A.No.109 of 2005 in RCA.No.31 of 2004 on the file of the Principal District Judge, Pondicherry.

CRP.3552/2007: Civil Revision Petition is filed against the order dated 24.1.2006 made in RCA.No.31 of 2004 on the file of the Principal District Judge, Pondicherry confirming the order dated 14.3.2003 made in I.A.No.521/2002 in HRCOP.No.49/1999 on the file of the Principal District Munsif, Pondicherry.

For Petitioners : Mr.T.P.Manoharan

For Respondent : Mr.R.Subramanian

COMMON ORDER

The tenants are the petitioners and the landlord is the

respondent herein. The present Civil Revision Petitions are filed against the orders made in I.A.No.109 of 2005 in RCA.No.31 of 2004 and RCA.No.31 of 2004 respectively by the Principal District Judge, Pondicherry.

2.For the sake of convenience, the parties are, as per their rank in the Rent control proceedings, referred to in these Civil Revision Petitions.

3.Few facts, which are relevant for consideration herein are as follows :

The petition in HRCOP.No.49/1999 was filed by one Joseph Pouvatthy seeking eviction of the tenants. During the pendency of the petition, the landlord came forward with IA.411/1999, permitting him to be represented by and through his power of attorney by name Dr.Claude Marius under registered General Power of Attorney dated 10.02.1999 to appear, plead, defend, give evidence and to conduct the proceedings of HRCOP. The application was filed along with the original power of attorney dated 10.02.1999 registered on the same day and the same was after hearing both sides, allowed on 24.12.1999. Thereafter, the Rent Control proceedings was originally conducted by the power of attorney on

behalf of the landlord. As a matter of fact, the power of attorney was examined as PW1 on behalf of the landlord in HRCOP.49/1999. The RCOP was after due contest, dismissed on 28.2.2001. Aggrieved against the same, the landlord represented by his power of attorney filed RCA.32/2001. The appellant/landlord was in the cause title of RCA.32/2001 described as Joseph Pouvatchy represented by his power of attorney Claude Marius. The learned Rent Control Appellate Authority allowed the appeal and ordered eviction by granting two months time to the tenants to vacate and hand over the premises. The Eviction order passed by the learned Appellate Authority was challenged by the tenants by way of CRP.3898/2001 before this court, wherein also, the landlord/respondent was shown as represented by his power of attorney Claude Marius. The Civil Revision Petition was, by order dated 19.12.2001, dismissed thereby confirming the eviction order passed by the learned Rent Control Appellate Authority. Even thereafter, the tenants did not come forward to vacate the premises, which compelled the landlord to file EP.No.41/2001 for executing the decree of eviction.

4. Pending Execution Petition, one of the tenants by name Jayaraman came forward with the suit in OS.103/2002 in respect of a portion of the property, which is the subject matter of RCOP, for

permanent injunction restraining the defendant/landlord from entering into and dealing with the suit property in any manner. The relief sought for in the suit is mainly on the ground that the plaintiff therein is the absolute owner of the suit property by adverse possession, having open, continuous, uninterrupted and long possession adverse to the knowledge of all and the same is not covered by the judgment and decree of the learned Rent Control Appellate Authority and the Execution Petition filed is by newly incorporating the suit item. Pending EP.41/2001 and OS.103/2002, the landlord came forward with IA.521/2002 for amending the schedule of property in HRCOP by incorporating the omitted portion of the property which is the subject matter of HRCOP. The learned Rent Controller, having found that the omission was due to typographical error, allowed the application as prayed for. In pursuance of the same, the description of the property in Rent Control decree was amended. Aggrieved against the order of amendment, the tenants filed RCA.31/2004. The landlord entered appearance in RCA through his power of attorney Claude Marius. The tenants also came forward with IA.109/2005 to reject the vakalat filed in RCA.31/2004 on behalf of the landlord by contending that the vakalat was not signed by the landlord and the signature contained in the vakalat is that of a third party, who was not authorised to represent the landlord in RCA. The

learned Rent Control Appellate Authority disposed of both I.A.109/2005 and RCA.31/2004 simultaneously on 24.1.2006. While RCA was dismissed on merits, by confirming the order made in I.A.521/2002, IA.109/2005 was also dismissed separately. Aggrieved against the same, the tenants are now before this court by way of present two Civil Revision Petitions. As per the order made in MP.Nos.1 and 1 of 2015 in CRP.Nos.3551 and 3552 of 2007, the respondent/land lord is permitted to be represented by his power of attorney.

5.Heard the rival submissions made on both sides and perused the records.

6.As already stated above, the landlord filed HRCOP.49/1999 seeking eviction before the learned Rent Controller and the subject matter of the property in HRCOP, as per the original records, reads as follows:

SCHEDULE OF PROPERTY

"All that piece and parcel of land and brick built building partly tiled, and partly terraced building in Pondicherry R.D., S.R.D, Town limits, situated at New door No.429 (old no.207) Bharathi Street in Ward D, Block No.13, T.S.No.158, R.S.No.239 pt, Patta No.1258, measuring an

extent of 1 Are 82 centiares with boundaries as follows:

To the East of the Bharathy Street

*To the South of the house originally belonged to
Saint Hillaire*

To the North of the house of Saint innocent

*To the West of owners land and the house of Divane
Diagarassa Candappa Mudaliar along with
vacant land and garden attached to the house
situate at Montorsier street with*

boundaries as follows:

To the South of the Montorsier Street

*To the West of house belonging to Chinnappa
Pattar and now belonging to Gnanou.*

*To the North of the house of the said Divane
Diagarassa Candappa Mondaliar*

*To the East of owner's house and the house of
Saint Hillaire*

*Measuring East-West 11 Meters and South-North 33
Meters"*

7.The eviction petition was dismissed by the learned Rent Controller and the schedule of property mentioned in the fair and decreetal order made in HRCOP is as follows:

SCHEDULE OF PROPERTY

*"All that piece and parcel of land and brick built building
partly tiled and partly terraced building in Pondicherry
R.D., S.R.D, Town limits, situated at New door No.429*

(old no.207) Bharathi Street in Ward D, Block No.13, T.S.No.158, R.S.No.239 pt, Patta No.1258, measuring an extent of 1 Are 82 centiares with boundaries as follows:

To the East of the Bharathy Street

To the South of the house of originally belonged to Saint Hillaire

To the North of the house of Saint innocent

To the West of owners land and the house of Divane Diagarassa Candappa Mudaliar along with vacant land and garden attached to the house situate at Montorsier street with boundaries as follows:

To the South of the Montorsier Street

To the West of house belonging to Chinnappa Pattar and now belonging to Gnanou"

8.The combined reading of the schedule of property in the petition and decreetal order as extracted above would reveal that the entire property as described in the petition was not shown in the fair and decreetal order made in HRCOP. In view of the same, though the appeal in RCA.32/2001 was filed by the landlord through his power of attorney in respect of the entire property, as described in the HRCOP petition, the later portion of the same was thereafter struck off to be in confirmity with the fair and decreetal order of the learned Rent Controller. The schedule mentioned property given in RCA No.32/2001, after deletion is extracted hereunder:

SCHEDULE OF PROPERTY

"All that piece and parcel of land and brick built building partly tiled and partly terraced building in Pondicherry R.D., S.R.D, Town limits, situated at New door No.429 (old no.207) Bharathi Street in Ward D, Block No.13, T.S.No.158, R.S.No.239 pt, Patta No.1258, measuring an extent of 1 Are 82 centiares with boundaries as follows:

To the East of the Bharathy Street

To the South of the house of originally belonged to Saint Hillaire

To the North of the house of Saint innocent

To the West of owners land and the house of Divane Diagarassa Candappa Mudaliar along with vacant land and garden attached to the house situate at Montorsier street with boundaries as follows:

To the South of the Montorsier Street

To the West of house belonging to Chinnappa Pattar and now belonging to Gnanou"

9.The appeal RCA.32/2001, after due contest, was allowed by setting aside the order made in HRCOP No.49/99. The operative portion of the judgment made in RCA.32/2001 further reads as follows:

"In the result, the appeal is allowed with costs throughout. The order passed in HRCOP.No.49/99 dated 28.2.2001 by the Rent Controller, Pondicherry is set aside.

HRCOP.No.49 is allowed and eviction is ordered as prayed for. Two months time is granted to the tenants to vacate and hand over possession of the petition schedule premises to the landlord."

The same order was also confirmed by the Revisional Authority in CRP.No.3898/2001. Thus, what is omitted in the fair and decreetal order of the trial court while drafting the same is north and eastern boundaries and measurement of vacant land and garden attached to the house bearing New Door No.429 (old Door no.207).

10.The omission as above stated is admittedly due to typographical error, while drafting the fair and decreetal order of the trial court. The description of schedule of property mentioned in RCA.No.32/2001 with the same omission is under the bonafide impression that the description was to be given in conformity with the description as given in the decreetal order made in HRCOP and the same was taken advantage by the tenants in the execution proceedings in EP.41/2001. Taking advantage of the same, one of the tenants has also come forward with independent suit against the landlord. Realising the mistake crept in the order, the landlord approached the trial court by way of IA.521/2002 for rectification of the same and the same was ordered thereby rectifying the mistake committed while drafting the decreetal order on the first occasion.

Challenging the same, the tenants filed RCA.No.31/2004, arising out of which is one of the present Civil Revision Petitions.

11.It is contended by the learned counsel for the petitioners/tenants that the decree granted by the Appellate Authority in respect of vacant site and garden is unenforceable by reason of defective description and after the decree of eviction was granted by the Appellate Authority as confirmed by the Revisional Authority, the order of the learned Rent Controller by amending the schedule of property, got merged with the orders of the higher forum, as such, the trial court has no locus standi to rectify any error and the order passed by the learned Rent Controller is without any jurisdiction, illegal and non est in law. The learned counsel for the petitioners has also cited the authority of Full Bench of Kerala High Court reported in **2005 (5) CTC 241 (Thomas v. Kunjamma)** in support of his contention that the amendment application ought to have been filed before the Appellate Forum, which confirmed the judgment of the trial court.

12.This Court has no quarrel with the principle laid down by the Full Bench of Kerala High Court in the decision cited supra. In the

said case, the petition for amendment of plaint as well as trial court decree was filed after the decree of trial court was confirmed by the appellate court and second appellate court and the same was dismissed by the trial court for want of jurisdiction. The same was questioned before High Court of Kerala by placing reliance on the learned single judge decision in **Vasudevan's case** reported in **2000 (3) KLT 704** to the effect that the trial court has jurisdiction to allow such amendments. The learned single judge of Kerala High Court, by relying on the Division Bench of Kerala High Court decision in **Kattamkandi Puthiya Matiackal Saheeda v. P.V.Hemalatha, 2002 (2) KLJ 306** was pleased to hold that there is merger of the trial court decree with the decision of the appellate court and hence the appellate court alone has jurisdiction to amend the decree. However, the learned single judge referred the case to Division Bench after expressing an opinion that the decision in **Vasudevan's case** required re-consideration. When the case reached the Division Bench, they referred the case to the Full Bench of Kerala High court. The Full Bench in para 4 of its judgment referred to the decision of the Hon'ble Supreme Court in **Jayalakshmi Coelho v. Oswald Joseph Coelho, reported in 2001 (4) SCC 181** wherein the Apex Court dealt with the scope and content of an amendment to be made under Section 152 C.P.C. The principle laid down by the Supreme Court therein is

that the rectification must be limited to something originally intended to include and which is erroneously left out or something which has to be included to give effect to the original intention. Further it was also held that a mistake by a court ought not to make that party to suffer. The Full Bench, following the same, observed that while considering an application under section 152 the real intention of the court in passing the decree has to be considered and when the decree which has become final is that of the appellate court it is not advisable to leave it to the trial court to decide the real intention of the appellate court. The possibility of the parties approaching the trial court for correction of the judgment and decree on the supposed intention of the appellate court cannot be ruled out and in that view of the matter also it is always desirable that the parties approach the appellate court or second appellate court which decided the case finally for making any correction of the judgment and decree. The Full Bench by observing so, dismissed the amendment petition without prejudice to the right of the plaintiff to move such petition before the second appellate court which confirmed the decree of the trial court. In my considered view, the observation made by the Full Bench of Kerala is more in favour of the decree holder than the judgment debtor herein.

13.As already referred to, the learned Rent Control Appellate

Authority allowed the appeal and ordered eviction in respect of the petition mentioned property and granted two months time to the tenants to vacate and hand over the possession of the schedule mentioned property to the landlord. The subject matter of the eviction order is the property as described in schedule of property in the eviction petition i.e., land and building at new door no.429 (old no.207) and vacant site and garden attached to the house. The omission of two of the boundaries and measurement in the memorandum of grounds of appeal in RCA.32/2001 is only due to typographical error, while drafting the decree. This omission in my considered view, is not likely to affect the right of the parties to get eviction order in respect of the petition mentioned property. As the omission is only due to typographical error in the order drafted by the trial court, there is no mistake on the part of the landlord and the trial court having found so, rightly allowed the amendment application and rectified the mistake and the same was also confirmed by the Appellate Authority in RCA.31/2004. As such, this court finds no error or infirmity in the order so passed by the learned Rent Controller as confirmed by the learned Rent Control Appellate Authority.

14.The learned counsel for the petitioners has at this juncture argued that unless and otherwise, the amendment is formally carried

out in the fair and decreetal order of the Appellate Court or Revisional Court, which finally disposed of the same, the Execution Proceedings cannot be proceeded with and the landlord has to necessarily approach the authority concerned, by way of separate application for carrying out the consequential amendment in the decreetal order in CRP.No.3898 of 2001. This Court finds merit and acceptance in the contention so raised on the side of the petitioners.

15.In view of the same, CRP.3552/2007 is dismissed with liberty given to the decree holder/landlord to approach the appellate and Revisional Authority with appropriate application for carrying out consequential amendment of the schedule of property mentioned in fair and decreetal order made in RCA.No.32 of 2001 and CRP.No.3898/2001, in and under which, the eviction order made in RCOP.No.49 of 1999 was confirmed.

16.Insofar as the relief sought for in CRP.3551/2007 is concerned, the same is filed against the order made in IA.109/2005 in RCA.31/2004, thereby dismissing the application filed by the tenants seeking rejection of vakalat filed by the power of attorney holder on behalf of the landlord in RCA.31/2004. It is not in dispute that the landlord was through out in RCOP No.49/1999, RCA.32/2001,

CRP.3898/2001, EP.41/2001 and other proceedings, represented by and through his power of attorney by name Claude Marius. Though the landlord was described so in the cause title, the same was not so properly carried out in the fair and decreetal order of the proceedings as mentioned above. As the impugned order is made in I.A.No.109/2005 in RCA.31/2004, arising out of I.A.521/2002 in RCOP No.49/1999 and as the landlord is represented by his power of attorney in the Rent control and other proceedings, vakalat filed by the power of attorney holds good and no objection can be raised in this regard, as such, the petitioners/tenants are dis-entitled to get any relief in this Civil Revision Petition and this revision is also accordingly dismissed.

17.In the result, CRP.No.3551/2007 is dismissed. No costs. Consequently connected miscellaneous petition is closed.

18.In the result, CRP.3552/2007 is dismissed with liberty given to the decree holder/landlord to approach the appellate and the Revisional Authority which confirmed the order of eviction made in HRCOP.49/1999 with appropriate application for carrying out consequential amendment of the description of the property mentioned in fair and decreetal order made in RCA.32 of 2001 and

CRP.No.3898/2001. No costs.

29-04-2015

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Index:Yes
Internet:Yes

To
1.The Principal District Judge, Pondicherry.
2.The Principal District Munsif, Pondicherry.

K.B.K.VASUKI, J.

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**CRP (NPD) Nos.3551 and
3552 of 2007**

29.04.2015