



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.06.2015

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

CMSA.(MD)No. 10 of 2015
and
M.P(MD)No.1 of 2015

1.P.O.Murugan
2.P.O.Periyaraja : Appellants
Vs.

1.A.P.T.Alagar,
2.C.N.Parameswaran : Respondents

Appeal filed under Section 100 of Civil Procedure Code, to set aside the Fair and Decretal Order dated 03.10.2013 passed in C.M.A.No.16 of 2012 on the file of the Additional Subordinate Judge, Dindigul, reversing the Fair and Decretal Order dated 07.12.2010 passed in E.A.No.112 of 2006 in E.P.No.513 of 2004 in R.C.O.P.No.37 of 2003 on the file of the Principal District Munsif, Dindigul and allow the present Civil Miscellaneous Second Appeal.

For Appellants : M/s.P.Kalaiyarasi Bharathi
for M/s.Udhaya Law Associates
For Respondent No.1 : Mr.H.Lakshmi Shankar

JUDGMENT

The appellants are the third parties and petitioners in E.A.No.112 of 2006 in E.P.No.513 of 2004 and respondents in C.M.A.No.16 of 2012. This appeal has been filed by the appellants against the order, dated 03.10.2013, made in C.M.A.No.16 of 2012.

2. The case of the appellants

I) The first respondent is the owner of the suit property. The second respondent is a tenant under the first respondent from the year 1959 and was carrying on business in the name and style of Krishna Vilas Hotel. On 24.01.1996, a Joint partnership business agreement was entered into between the appellants and the second respondent. The appellants contributed a sum of Rs.25,000/- and second respondent contributed a sum of Rs.25,000/-. The first appellant was the Managing Director.

<https://hcservices.courts.gov.in/hcservices> 10.2003, the second respondent withdrew from the partnership and went to his native place in Kerala. With the consent of the first respondent, the appellants started to run the business



in the name and style of "Sri Murugan Idlikadai" on a monthly rent of Rs.500/- and paid Rs.10,000/- as advance. With the consent of first respondent, the appellants spent Rs.2,00,000/-, for renovating the suit property.

iii) The first respondent demanded a further sum of Rs.15,000/- as advance. The appellants agreed for the same and requested the first respondent to enter into the rental agreement. Without executing the rental agreement, the first respondent has filed R.C.O.P.No.37 of 2003 before the learned Rent Controller, District Munsif Court, Dindigul, against second respondent only without impleading the appellants as parties and obtained an ex-parte order. Based on the said ex-parte order, the first respondent filed E.P.No.513 of 2004 in R.C.O.P.No.37 of 2003. The appellants came to know of ex-parte order in E.P.No.513 of 2004 in R.C.O.P.No.37 of 2003 only during execution process.

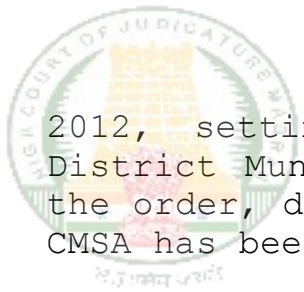
iv) When the Court Amin came to execute the warrants, the appellants informed him that they are in possession of suit property and that there is no order evicting them. The Amin noted the objections of appellants. The first respondent without filing petition under Order 21 Rule 97 C.P.C., taking note of appellants' absence, on 26.07.2006, came to the suit premises with Court Amin with police protection and Court Amin took possession of the suit property from one Chinnathambi and handed over to the first respondent. There is enmity between Chinnathambi and appellants and taking advantage of such enmity, first respondent has settled the execution petition indirectly without following any procedural aspects.

v) In the year 2003 itself, the first respondent filed O.S.No.665 of 2003 against the appellants and second respondent seeking permanent injunction and obtained decree. In the said suit, the first respondent admitted the possession of appellants. In spite of the same, the first respondent did not implead the appellants as respondents in R.C.O.P.No.37 of 2003. As the first respondent failed to invoke Order 21 Rule 97 C.P.C., the alleged execution on 26.07.2006 is non-est in law. The appellants filed E.A.No.112 of 2006 before the Principal District Munsif Court, Dindigul and also filed O.S.No.312 of 2007, for injunction against the first respondent. The learned Principal District Munsif, Dindigul, conducted simultaneous enquiry in E.A.No.112 of 2006 and O.S.No.312 of 2007. The learned Judge on 07.12.2010 allowed E.A.No.112 of 2006 and granted injunction in O.S.No.312 of 2007.

vi) Against the order, dated 07.12.2010, made in E.A.No.112 of 2006 the first respondent filed C.M.A.No.16 of 2012 and A.S.No.131 of 2011 against the judgement and decree made in O.S.No.312 of 2007.

<https://hcservices.ecourts.gov.in/hcservices/>

vii) The Additional Subordinate Judge, Dindigul, without properly going into the merits of the case, allowed C.M.A.No.16 of



2012, setting aside the order passed by the learned Principal District Munsif, Dindigul, in E.A.No.112 of 2006. Aggrieved against the order, dated 03.10.2013, made in C.M.A.No.16 of 2012, the present CMSA has been filed.

3. The case of the first respondent:

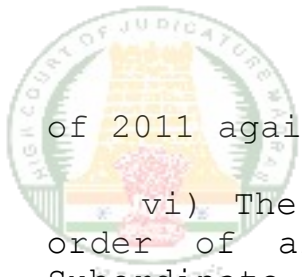
I) The second respondent was the tenant under the first respondent in respect of the suit property. He did not paid the monthly rent for 7 months and kept the premises locked and thus, caused damages to the suit property. Further, the first respondent wanted the suit property for demolition and re-construction. For the above grounds, the first respondent filed R.C.O.P.No.37 of 2003 against the second respondent. The first respondent came to know that the appellants without any authority is effecting alteration in the suit property. The first respondent filed O.S.No.665 of 2003 before the learned II Additional District Munsif, Dindigul, for permanent injunction against the appellants and the second respondent, restraining them from altering the suit property and the suit was decreed ex-parte as appellants did not contest the suit after entering appearance. The first respondent never admitted the possession of the appellants. The second respondent did not have power or authority to sublet the appellants. The appellants never become tenants of the first respondent on monthly rent of Rs.500/- and the first respondent did not received a sum of Rs.10,000/- as advance. It is unbelievable that the first respondent would have agreed to let out the suit property for Rs.500/- per month while the first respondent was paying Rs.1,000/- per month.

ii) The second respondent filed a petition to set aside the ex-parte order of eviction ordered in R.C.O.P.No.37 of 2003 with condonation of delay. In the said petition, the second respondent did not state about the alleged agreement between the appellants and second respondent. Similarly, the appellants also did not state about the alleged agreement between the appellants and the second respondent.

iii) The appellants are the tress-passers. They are claiming right only through the second respondent. They are not tenants of first respondent therefore, the order of eviction passed against the second respondent is executable against the appellants.

iv) On 26.07.2006, when Court Amin went to execute the warrant of eviction, the appellants' brother Chinnathambi was present in the suit premises. He removed all the materials kept in the premises and handed over vacant possession to Court Amin, then the Court Amin handed over the possession to the first respondent. The alleged enmity between the appellants and his brother Chinnathambi is false and is made to drag on the proceedings.

<https://hcservices.dindigul.gov.in/hcservices/> Principal District Munsif, Dindigul, on erroneous consideration of facts and law, allowed E.A.No.112 of 2006 and decreed O.S.No.312 of 2007. The first respondent has filed A.S.No.131



of 2011 against the judgement and decree made in O.S.No.312 of 2007.

vi) The first respondent filed C.M.A.No.16 of 2012 against the order of allowing E.A.No.112 of 2006. The learned Additional Subordinate Judge correctly appreciated the facts and law and allowed C.M.A.No.16 of 2012 setting aside the order passed by the learned Principal District Munsif, Dindigul, in E.A.No.112 of 2006. The said order passed in C.M.A.No.16 of 2012 is valid and legal.

4. Heard the learned counsel appearing for the appellants and the respondents. The learned counsel for the appellants reiterated the averments referred to above.

5. The learned counsel for the appellants further contended that the first respondent knowing fully well the possessions of appellants, deliberately did not implead them in R.C.O.P.No.37 of 2003 and obtained ex-parte order of eviction against the second respondent, which is not binding on the appellants. The learned Sub Judge failed to appreciate the evidence marked in O.S.No.312 of 2007 and failed to consider the documents Ex.A1 to Ex.A8. The lower appellate Court failed to see that when the Court Amin came for executing a warrant at the first instance, the appellants objected to the same. Without obtaining order under Order 21 Rule 97 C.P.C., obtaining possession is non-est in law. The learned Sub Judge failed to consider the evidence of P.Ws.2 & 3.

6. Per contra, the learned counsel for the first respondent contended that the order of Principal District Munsif, Dindigul, the order of eviction obtained against the second respondent cannot be executed against the appellants is contrary to provisions of the Tamil Nadu Rent Control Act and law as per the well settled judicial pronouncement. The learned Additional Sub Judge appreciated the facts in proper perspective and there is no reason to interfere with the said order.

7. The learned counsel for the first respondent relied on the following judgments:-

1968(1) MLJ 386 (Madurai Nayagamma v. Plantain Merchants Association)

"... Order:- The only question in the Civil Revision Petition is whether an order for eviction obtained against the chief tenant is binding on the sub-tenants also, even though they might not have been added as parties to the proceedings. The matter was before a Bench and it has since decided that it is binding on the sub-tenants. There is no other question in the Civil Revision Petition and it is accordingly dismissed with costs. The petitioners will have a period of three months to vacate."

<https://casefiles.courts.gov.in/cse/743/> (E.Sundarrajan vs. B.Kanchanamala), wherein in paragraph 10 & 11 it has been held as follows:



"10. The case of the petitioner in the appeal was that the original tenant Mr.V.Devaraj had let out the petition premises in the year 1990 and thereafter, the petitioner was recognised and attorned the tenancy in favour of the respondent/landlady and only on the instruction of the respondent/landlady the petitioner had carried out repairs to the premises by incurring huge expenditure. The appellant had filed documents relating the Property tax, Electricity deposit receipt and Consumption charges card and receipt for other incidental expenses for development of the property. He had further submitted that having been recognised by the respondent as her tenant in the petition premises and having permitted the tenant to put up the superstructure and having allowed to pay taxes for the building, now the respondent/landlady, in collusion with the erstwhile tenant, had obtained a false decree and sought for execution of the decree against the lawful tenant, who is the petitioner herein.

11. The Appellate Authority has found that the documents filed by petitioner are not relevant to establish the jural relationship or privity of contract between the landlord and the tenant to prove that the petitioner was the tenant. Further, it was held that there was no documentary evidence such as lease agreement, or rental receipts or letter of permission to carry out repairs to prove himself as a tenant, of the premises under the respondent. Further, no document, has been produced by the petitioner regarding attornment of the tenancy by the respondent nor for payment of rent. He has also found that the original tenant Mr.Devaraj contested in the R.C.O.P. Since his defence was rejected, he had initiated R.C.A. which was also dismissed. Therefore, he had initiated the present revision petition to cause obstruction for delivery of possession of the petition premises to the respondent. It was also found by the Appellate Authority that the R.C.O.P.No.69 of 2002, filed by the petitioner herein under Section 8(5) of the "Act" for deposit of rent for the petition premises in the Court was dismissed on the finding that there was no jural relationship of landlady and tenant between the petitioner and the respondent herein. Against the said order, no appeal had been preferred and therefore, the petitioner had not filed any proof to prove his theory of tenancy as well as his assertion that he is in lawful possession of the petition premises. On that basis, it was held that the petitioner was rightly considered as an obstructor and therefore, the removal of obstruction order was passed.

2012(5) L.W. 556 (M/s.Pappi Chetty Raghaviah Chetty's Charities v. <https://www.mca.gov.in/hisrcs/> in paragraph 29 it has been held as follows:-

"29. In that case, the Tamil Nadu Buildings (Lease and Rent Control) Act was made applicable to the property in



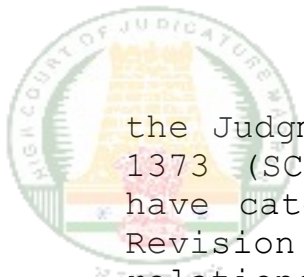
question and while interpreting section 26 of the said Act, the reference was answered holding that the order of eviction obtained against a main tenant can be executed by evicting the sub-tenants, who are not made as parties in the application for eviction. Therefore, as per the judgments cited by the learned Senior counsel appearing for the appellant, as stated above, the law is very clear that the decree obtained against the main tenant is binding on the sub-tenant, even though he was not made as a party to the suit and a sub-tenant cannot contend that the decree obtained was a collusive one, even though the decree was an ex-parte decree or compromise decree."

AIR 1972 MADRAS 305 (K.C.Chandu Kutti v. G.Mohideen), wherein in paragraph 6 it has been held as follows:-

"...6:- The learned Judges held that an order of eviction obtained against the chief tenant can be executed by evicting the sub-tenants who were not made parties in the application for eviction. If the sub-tenants are parties, the order of eviction would be binding on them of its own force and execution could be levied under Order XXI, Rule 35, C.P.C. But if the sub-tenants are not made parties to the eviction application, they will not be entitled to the order and any obstruction of delivery in execution would fall only under Order XXI, Rule 98, C.P.C. The rights of a sub-tenant who has not been made a party, are sufficiently protected by the general provisions contained in Order XXI, Rr.98 to 103, C.P.C. Following the aforesaid decision, I hold that the obstructor's rights in the present case are sufficiently protected and that the order passed to remove the obstruction put forward by the obstructor is correct.

2012(4) CTC 189 (V.Balakrishnan v. R.Sai Kumari), wherein in paragraph 26, it has been held as follows:-

"26. It could be seen from Ex.P3 that the Revision Petitioner (Third Party) was only a sub-tenant for management under the chief Tenant viz., the Judgment-Debtor in the E.P.proceedings. It is a settled law that any order passed against the chief Tenant would bind against the sub-Tenant also. The eviction order passed by the learned Rent Controller was not challenged and no stay has been granted by the Appellate Forum and it became final. It is already found that the Execution proceedings taken against the Judgment-Debtor will not be affected by any subsequent proceedings taken by the Revision Petitioner I.e. In O.S. No.6671 of 2009 on the file of the I Assistant City Civil Court, Chennai. Even though the temporary injunction order was passed by the said Court, <https://hcservices.courts.gov.in/hcservices/> both parties, it is clearly a subsequent proceedings and it would not over ride the Execution proceedings, which was already filed and pending, as per



the Judgment reported in Bhaskaran v. Sheela, 2009 (3) MLJ 1373 (SC). Therefore, I could see that the Courts below have categorically come to a correct conclusion that the Revision Petitioner has not established the jural relationship of Tenant, but on the other hand, he was an obstructor/sub-tenant without any just cause and he was instigated which are found to be in order. Therefore, I find no reasons to interfere with the order of the learned Rent Control Appellate Authority in confirming the order passed in the Petition for removal of obstruction in favour of the Decree Holder and accordingly, I am inclined to dismiss the Revision after confirming the orders passed by the Courts below.

8. I have carefully considered all the materials on record, judgments relied on by the learned counsel for the first respondent and arguments of the learned counsel for the appellants and the first respondent.

9. The points for consideration in this C.M.S.A., are:-

I) whether the appellants became tenants of the first respondent with effect from 01.10.2003.

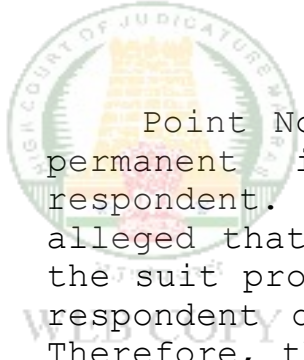
ii) whether the first respondent admitted the possession of appellants in O.S.No.665 of 2003 filed by him, for permanent injunction.

iii) whether the ex-parte decree passed in RCOP No.37 of 2003 against the second respondent can be executed against the appellants.

Point No.I:-The appellants claimed that they entered into joint business agreement on 24.01.1996 with second respondent and contributed Rs.25,000/- and second respondent contributed Rs.25,000/-. The first respondent was the managing partner. On 01.10.2003, the second respondent withdrew from partnership. The appellants from 1.10.2003 were running their business in the name and style Murugan Idli Kadai with the consent of the first respondent and paid Rs.10,000/- as advance and were paying Rs.500/- as rent.

The appellants have not produce any documents to substantiate his claim and they have also not produced any documents to show that they entered into joint business agreement with the second respondent. They have not produced any document or evidence to show that they paid Rs.10,000/- as advance to the first respondent and were paying Rs.500/- per month as rent. The contention of appellants that the first respondent agreed to receive Rs.500/- per month as rent is un-acceptable, as the second respondent was paying Rs.1000/- per month as rent from 1998. There is no evidence to show that the first respondent demanded Rs.15,000/- as further advance and the appellants agreed to pay the same and requested the first respondent to execute the agreement. Further, the appellants have not produced any evidence to show that they were in possession as first respondent.

For the above reasons, I hold that the appellants failed to prove that they become tenants of the first respondent.



Point No.2:- The first respondent filed O.S.No.665 of 2003, for permanent injunction against the appellants and the second respondent. A reading of the plaint shows that the first respondent alleged that the appellants are tress passers, who have no right in the suit property and trying to alter the suit property. The first respondent did not accept that the appellants were in possession. Therefore, this point is answered against the appellants.

Point NO.3:- As held in point No.1, the appellants failed to prove that they become tenant under the first respondent from 01.10.2003, therefore, they can claim rights only through the second respondent, who suffered an order of eviction. The second respondent filed petition to set aside the ex-parte order of eviction with petition to condone the delay. In the said petition, the second respondent did not state about the joint business agreement. Similarly, the appellants also did not state about this agreement in the petition to set aside the ex-parte order in O.S.No.665 of 2003.

10. The learned Principal District Munsif, in the order, dated 07.12.2010, made in E.A.No.112 of 2006, held that the order of eviction obtained against the second respondent cannot be executed against the appellant. This is an erroneous order. As per Section 26 of Tamil Nadu Buildings (Lease and Rent Control) Act 1960, an order of eviction passed against the tenant is binding on the sub-tenant and all the persons claiming through the tenants. The judgments relied on by the learned counsel for the first respondent are squarely applicable to this proposition. The learned Additional Sub-Judge has properly appreciated the facts and law and set aside the order of the learned District Munsif. There is no irregularity or illegality in the order of the learned Sub-Judge.

11. The appellants have filed E.A.No.112 of 2006 under Order 21 Rule 35, 97, 98, 99, 100, 101 and Section 151 CPC. Rule 99 relates to an application by a person other than the judgment debtor, who were dispossessed by decree holder or purchaser. Order 21 Rule 99 reads as follows:-

"99.Dispossession by decree-holder or purchaser:- (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

12. On the application filed by appellants, adjudication was made and the lower appellate court has rightly held that the order of eviction obtained against the second respondent can be executed against the appellants, who can claim right only through the second respondent. The order of learned Principal District Munsif was set aside. There is no reason or circumstance warranting interference by



this Court. No substantial question of law arises in this CMSA.

13. In the result, the CMSA fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

SD

ASST REGISTRAR - P AND A

TRUE COPY

SUB ASST REGISTRAR

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To

1. The Additional Subordinate Judge,
Dindigul.
2. The Principal District Munsif, Dindigul.

1CC TO M/S. UDHAYA LAW ASSOCIATES SR: 31147

1CC TO MR.H. LAKSHMI SHANKAR ADV SR: 31084

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