



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (MD) .Nos.2728 and 2729 of 2014

and

M.P. (MD) .No.1 of 2015 and MP (MD) No. 1 of 2014

in

C.R.P. (MD) .No.2728 of 2014

Ramu

... Petitioner/1st respondent/1st
Respondent/1st Defendant/
Petitioner in both C.R.Ps

vs.

Kumar

... Respondent/Petitioner/
Petitioner/plaintiff Respondent
in both C.R.Ps

COMMON PRAYER: The Civil Revision Petitions filed under Article 227 of the Constitution of India, against unnumbered E.A.No...2014 in E.A.NoS.108 and 109 of 2014 in E.P.No.10 of 2014 in O.S.No.6 of 2009 on the file of the District Munsif Court, Paramakudi order dated 15.12.2014.

For Petitioner in
both C.R.Ps : Mr.PT.S.Narendra Vasan
For Respondents in
both C.R.Ps : Mr.D.Senthil

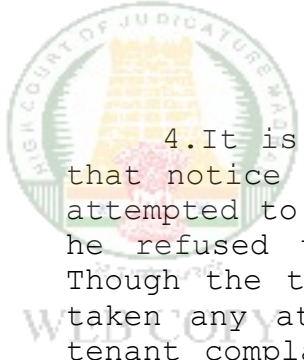
COMMON ORDER

The tenant in O.S.No.6 of 2009 on the file of the District Munsif Court, Paramakudi, had filed the above revisions.

2.The suit was decreed on 01.12.2011. The decree holder had levied execution petition in E.P.No.10 of 2014, which was allowed on 29.10.2014. In the mean while, the tenant had filed A.S.No.34 of 2014 on the file of the Subordinate Court, Paramakudi. But the decree of trial Court was not stayed. As the execution petition was allowed, the decree holder filed E.A.No.108 of 2014 seeking for police protection and E.P.No.109 of 2014 seeking for assistance of the surveyor. In the said applications, no notice was ordered to the tenant. Therefore, the tenant filed unnumbered E.As to set aside the exparte order of breaking-open and for seeking assistance of surveyor. The said applications were returned by the learned District Munsif, Paramakudi with an endorsement that 'the order was passed on merits. Hence, the E.As were returned as not maintainable'.

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

3.Heard the learned counsel for the petitioner and the learned counsel for the respondents.



4.It is admitted by the learned counsel for the respondents/landlords that notice was not served on the tenant. He also contended that when he attempted to serve the papers on the counsel, who appeared for the tenant, he refused to receive it. However, there is no evidence to the same. Though the tenant had filed an appeal suit in A.S.No.34 of 2014, has not taken any attempts to get an order of stay of the eviction order. The tenant complains that there is no presiding officer in the jurisdictional Court and only the Presiding Officer, who is in-charge comes once in a week. However, the tenant cannot be permitted to take advantage of his own wrong, as he has filed the Appeal itself with delay.

5.The only point that has to be seen is whether the tenant has to be given a chance in the execution proceedings.

6.Admittedly, the landlords had not given notice to the tenant in E.A.Nos.108 and 109 of 2014, which were filed for breaking open and for seeking assistance of surveyor, to take delivery of possession. Though the order passed in E.A.Nos.108 and 109 of 2014 may be on merits, without giving notice to the other side it loses its sanctity. Therefore, the order passed in E.A.Nos.108 and 109 of 2014 by the District Munsif, Paramakudi are set aside. The civil revision petitions are allowed. No costs. The landlords are directed to take notice to the tenant in the said applications. On service of notice, the tenant is directed to file his counter within a week. The District Munsif Court, Paramakudi is directed to dispose of the E.A on or before 15th April 2015. It is unnecessary for the tenant to re-present the unnumbered E.A. Consequently, the connected miscellaneous petitions are closed.

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To
The District Munsif , Paramakudi.
+1cc to M/S. PT.S.Narendra Vasan, Advocate in SR.No. 10297
+1cc to M/S. D.Senthil, Advocate in SR.No. 10277

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