

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).Nos.2128 and 2265 of 2015
and M.P.No.1 of 2015

Dominique Marie Regina Lawrence .. Petitioner/Landlord in
C.R.P.No.2128 of 2015

Vs.

1.S.M.Ismail .. 1st Respondent/Tenant
2.P.S.Arumugham .. 2nd Respondent/Proposed party
in C.R.P.No.2128 of 2015
M.Subramanian .. Respondent/Tenant
in C.R.P.No.2265 of 2015

C.R.P.(PD)No.2128 of 2015 is filed under Article 227 of the Constitution of India, against the docket order in I.A.No.1982 of 2014 in H.R.C.O.P. No.87 of 2013, dated 22.12.2014 on the file of the Principal District Munsif Court, Puducherry.

C.R.P.(PD)No.2265 of 2015 is filed under Article 227 of the Constitution of India, against the docket order dated 22.12.2014 in H.R.C.O.P.No.90 of 2013, in view of the memo filed by the petitioner dated 05.07.2014 to not press the H.R.C.O.P.No.90 of 2013 become infructuous and allow the petitioner to withdraw H.R.C.O.P.No.90 of 2013 on the file of the Principal District Munsif Court, Puducherry.

In C.R.P.No.2128 of 2015

For Petitioner : Mr.N.Anand Venkatesh
For R1 : Ms.B.Radhika
For R2 : Mr.R.Thiagarajan

In C.R.P.No.2265 of 2015

For Petitioner : Mr.N.Anand Venkatesh
For Respondent : Ms.B.Radhika

COMMON ORDER

C.R.P.(PD)No.2128 of 2015 is filed against the docket order in I.A.No.1982 of 2014 in H.R.C.O.P.No.87 of 2013, dated 22.12.2014 on the file of the Principal District Munsif Court, Puducherry.

2.C.R.P.(PD)No.2265 of 2015 is filed against the docket order in H.R.C.O.P.No.90 of 2013, dated 22.12.2014 on the file of the Principal District Munsif Court, Puducherry.

H.R.C.O.P.No.87 of 2013 (C.R.P.(PD)No.2128 of 2015):

3.The revision petitioner herein as a landlord filed a petition in H.R.C.O.P.No.87 of 2013 for eviction of the respondent namely, S.M.Ismail on the ground of wilful default, demolition and reconsideration on the basis of the lease deed dated 01.04.1999. He also filed rental receipts.

H.R.C.O.P.No.90 of 2013 (C.R.P.(PD)No.2265 of 2015):

4.The revision petitioner herein as a landlord filed a petition in H.R.C.O.P.No.90 of 2013 for eviction of the respondent namely, M.Subramanian on the ground of wilful default, demolition and reconsideration on the basis of the lease deed dated 01.04.1997.

5.During pendency of the said petitions, learned counsel

appearing for both the respondents have made endorsements stating that they had handed over the keys and possession of the premises to the petitioner/landlord and hence, they have no objection to pass appropriate order.

6.On 05.07.2014, the petitioner/landlord filed memos in H.R.C.O.P.Nos.87 and 90 of 2013 stating that she has taken possession of the premises on 14.05.2014 and 30.05.2014 respectively. Hence, the said H.R.C.O.Ps. have become infructuous and they are liable to be dismissed as not pressed.

7.But on 19.06.2014, the second respondent namely, P.S.Arumugam has filed applications in I.A.Nos.1982 and 1983 of 2014 to implead himself as a party to the proceedings. On 19.06.2014, the trial Court has passed the following order:

“Petitioner present. The matter was taken up by 10 'O' clock in the morning by that time the learned counsel for petitioner Mr.Mohandoss represented that the matter between the parties was settled and hence the petitioner is ready to withdraw the case. The learned counsel for respondent Mr.Savariram represented that the

respondent is having serious objection from withdrawing the case. The real person who is in possession of the property was not impleaded as a party and requested to pass over the matter. Again the case was taken up by 12 'O' clock. Again the learned counsel for petitioner Mr.Mohandoss represented that the petitioner is withdrawing the petition as the matter was settled between the parties and ready to make endorsement to that effect. While it is so, the learned counsel for respondent Mr.Savariram has represented that the petitioner cannot withdraw the petition according to her whims and fancies. Further the learned counsel for respondent represented that without filing necessary application under Order 23 the petitioner cannot withdraw the case. Moreover, the learned counsel for respondent Mr.Savariram has filed an application to impleaded one P.S.Arumugam as a party to the proceedings and insisted the Court to take up the impleading application as the proposed party is having serious objection in this matter and hence the petitioner cannot withdraw the petition. In these circumstances, this Court has raised a question as to whether the application under Order 23 is mandatory for withdrawal of the petition and requested the learned counsel for respondent Mr.Savariram at first to advance the arguments on

that point in the afternoon. Since this Court raised the said question to the learned counsel for respondent has represented in a different way with high decibel that “ eP';f ,e;j bgl;ocoida[k; lhf;Fbkz;l;fisa[k; ghh;f;fhknyna ,g;go ngrwP';fd;dh ehd; vd;dj;j brhy;wJ ” for the reason best known to him. In these circumstances, it is not appropriate for this Court to adjudicate the matter further. Hence address to Hon'ble Chief Judge, for transfer of this case to any other civil Court of Pondicherry. Call on 05.07.2014”.

8.As per the order of the Honourable Chief Judge, on 26.08.2014, H.R.C.O.P.Nos.87 and 90 of 2013 are transferred to the file of the Principal District Munsif Court, Puducherry and the matter was adjourned periodically. On 22.12.2014, the following endorsement has been made in I.A.No.1982 of 2014:

“Endorsement made by the respondent that the has no objection in allowing this petition. I.A.No.1982 of 2014 is pending. Call on 19.01.2015.”

9.Challenging the above said docket order, these revisions

have been preferred by the revision petitioner/landlord. He submits that once the landlord, who is the revision petitioner herein has filed memos to not press the H.R.C.O.P.Nos.87 and 90 of 2013 and the respondents have also made endorsements that they have no objection to pass appropriate order, the trial Court ought to have dismissed the petitions in H.R.C.O.P.Nos.87 and 90 of 2013 as withdrawn. But the trial Court without considering the same, had taken up the impleading applications filed by the proposed party. To substantiate his arguments, he relied upon para-7 of the decision of this Court reported in 2011 (2) M.L.J. 441 (E.D.Charles and others v. G.Selvaraj and another) and submits that once the landlord/petitioner has filed memos for withdrawal of the eviction petitions, the Court has no other option except to permit the petitioner/landlord to withdraw the rent control proceedings and the trial Court cannot adjourn the case. Thus, he prayed for allowing the revisions.

10.Learned counsel for the respondents/tenants submits that the tenants have already handed over the possession of the premises to the petitioner/landlord. The second respondent/proposed party is neither a sub-tenant nor a partner

doing business along with the respondents/tenants. He has no locus standi to file the impleading applications and hand over the keys to the landlord. So nothing survives in the impleading applications. Therefore, she has no objection to allow the revisions and for dismissal of H.R.C.O.P.Nos.87 and 90 of 2013 pending on the file of the Principal District Munsif Court, Puducherry.

11.Resisting the same, learned counsel appearing for the proposed party/second respondent submits that he is a partner of the firm and he is doing business along with the tenants and that he is in possession of the premises. Hence, he is a necessary party to the rent control proceedings and in his presence, the case has to be conducted. He further submits that in the counter filed by the landlord, in para-9, it was stated that on the complaint lodged by him on 27.05.2014, the proposed party was arrested on 29.05.2014 and keys are recovered from him and handed over the same before the learned Chief Judicial Magistrate, Puducherry on the same day. It clearly shows that the proposed party is in possession of the premises. Hence, he prayed for dismissal of the revisions.

12.Considered the rival submissions made on both sides and

perused the materials available on record.

13.The revision petitioner herein as a landlord filed petitions in H.R.C.O.P.Nos.87 and 90 of 2013 for eviction against the tenants on the ground of wilful default, demolition and reconsideration. He entered into lease agreement with both the tenants on 01.04.1999 and 01.04.1997 respectively. According to the tenant in H.R.C.O.P.No.87 of 2013, he handed over the possession of the premises to the landlord on 14.05.2014. Thereafter only, the landlord/revision petitioner herein has lodged a complaint against the proposed party on 27.05.2014.

14.On 05.07.2014, the landlord/petitioner filed memos for withdrawal of the H.R.C.O.P.Nos.87 and 90 of 2013. In the memos, it was stated that the possession has been handed over to the landlord by the tenants on 14.05.2014 and 30.05.2014 respectively.

15.According to the proposed party, he is in possession of the premises and that he is necessary party to the rent control proceedings and therefore, he filed impleading applications. But he has not filed any scrap of papers to show that there is a privity of contract between himself and landlord. He has also not filed any

documents to show that he is a sub-tenant under the original tenants. Further, he did not file any scrap of papers to show that he is a partner doing business along with the tenants. So it is clear that the proposed party/second respondent herein has filed impleading applications without any whims and reasons.

16. At this juncture, it is appropriate to consider the decision of this Court relied upon by the learned counsel for the petitioner/landlord reported in **2011 (2) M.L.J. 441 (E.D. Charles and others v. G.Selvaraj and another)**, wherein para-6 and 7 are extracted hereunder:

"6. Further, in this case, admittedly, the plaintiff/first respondent herein filed a memo seeking permission to withdraw the suit before this Court and also there is no appearance for the plaintiff/first respondent even though he had filed caveat. The learned advocate, who filed caveat on behalf of the plaintiff/first respondent also withdrew the vakalat and even after the name of the plaintiff/first respondent was printed in the cause list, there is no appearance for the plaintiff/first respondent. Therefore, it can be presumed that the plaintiff/first respondent is not interested in prosecuting the case as he has also filed the memo

seeking permission of the Court to withdraw the suit. In this connection, the observation of the Supreme Court made in *Hulas Rai Baij Nath v. Firm K.B. Bass and Co.* (supra) is relevant. The Honourable Supreme Court, in the above judgment held as follows:

"The language of Order 23 Rule 3 sub-rule (1) C.P.C., gives an right to a plaintiff to withdraw from a suit and, if no permission to file a fresh suit is sought under sub-rule (2) of that Rule, the plaintiff becomes liable for such costs as the Court may award and becomes precluded from instituting any fresh suit in respect of that subject-matter under sub-rule (3) of that Rule. There is no provision in the Code of Civil Procedure which requires the Court to refuse permission to withdraw the suit in such circumstances and to compel the plaintiff to proceed with it. "

7. Therefore, when a memo is filed by the plaintiff for withdrawal of the suit, no option is left to the Court except to record the memo and dismiss the suit as withdrawn and when the suit is withdrawn, the Court has no jurisdiction to extend the injunction already granted in favour of the plaintiff. Therefore, the order of the Court below in extending the injunction granted in I.A.No.186 of

2010 in O.S.No.130 of 2010 is also set aside.”

17.Learned counsel for the landlord/petitioner would draw attention of this Court through the typed set of papers stating that the counsel who appears on behalf of the tenants, also appears on behalf of the proposed party in the impleading application only with a view to drag on the proceedings for extraneous consideration. Therefore, on 05.07.2014, the tenants have filed applications to revoke the vakalat executed by them in favour of the said counsel, in which, the counsel has made an endorsement as “without prejudice and denying the allegations of the affidavit, I have no objection to change.” It shows that the said counsel is ready to give a consent for change of vakalat. In my view, the conduct of the counsel, who once appeared for the original tenants and handed over the possession of premises to the landlord and then turned down and filed applications on behalf of the proposed party, is not appreciable.

18.Considering the aforestated circumstances of the case along with the above decision, once the petitioner/landlord filed memos stating that he has not pressed the petitions as he has already taken the possession of the premises, it is left open to the

landlord/revision petitioner herein either to proceed with the trial or to withdraw H.R.C.O.P.Nos.87 and 90 of 2013. If the petitioner/landlord seeks to withdraw H.R.C.O.P.Nos.87 and 90 of 2013, the Rent Controller is directed to dismiss the same, after recording the memos filed by the landlord/petitioner. If the petitioner/landlord seeks time to proceed with the trial, the Rent Controller can adjourn the matter and post the applications in I.A.Nos.1982 and 1983 of 2014 for adjudication. Since the applications filed by the second respondent are untenable, the second respondent/proposed party is directed to pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the Chief Minister's Flood Relief Fund.

19.With the above direction, the Civil Revision Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

07.01.2016

Index:Yes/No

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To

The Principal District Munsif Court, Puducherry.

R.MALA,J.

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and M.P.No.1 of 2015

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