



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) Nos.2533 to 2535 of 2016 (NPD)
and
CMP (MD) No.11943 of 2016

1.M/s.Periyakulam, Nilakottai,
Uthamapalayam, Andipatti Taluk
Gaura Central Society through its
President R.Govindaraj

2.M/s.Periyakulam, Nilakottai,
Uthamapalayam, Andipatti Taluk
Gaura Central Society through its
Secretary R.Rajendran

3.M/s.Periyakulam, Nilakottai,
Uthamapalayam, Andipatti Taluk
Gaura Central Society through its
Treasurer Manoharan @ Sakthivel

... Petitioners/Respondents/
Petitioners/3rd Party
in all the C.R.Ps.,

Vs.

1)M/s.Periyakulam, Nilakottai,
Uthamapalayam, Andipatti Taluk
Gaura Central Society (80/1993)
throu its president. Residing at
N.Radhakrishnan
S/o Nallakamu Chettiar
8/1, Subburaj Nagar,
Bodinayakkanoor,
Theni District.

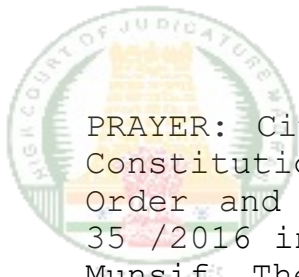
..1st Respondent/Petitioner/1st
Respondent/Petitioner in
all the CRP'S

2. P. Navaneethakrishnan
3. P. Pitchai
4. R. Muthukrishnan
5. V. Subburaman
6. P. Ragunathan

... Respondents 2 to 6/
Respondent 4 to 8/ Respondent 4 to 8/
Respondents in CRP (MD) NOS.2533&2534/2016

7. S. Lakshminarayanan

....7th Respondent/9th Respondent/
propose party/ Third party
in C.R.P (MD) Nos.2533 & 2534 of 2016



PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to call for the records relating with the Ex-Order and fair order, dated 26.10.2016, made in E.A.Nos.32, 33 & 35 /2016 in E.A.No.24/2013 in E.P.No.11/2012 on the file of District Munsif, Theni and set aside the same.

WEB COPY

For Petitioners : Mr. R. Suriyanarayanan

For Caveator/R1 : M.P. Senthil

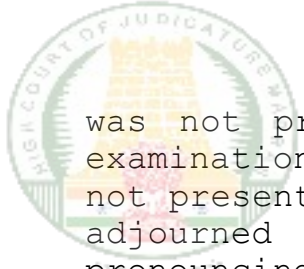
ORDER

The issues involved in all the three Civil Revision Petitions are interlinked. Hence, common order is passed in all the three revision petitions.

2.The petitioners in all the C.R.Ps., are the respondents 1 to 3 in E.A.Nos.32,33 and 35 of 2016 and petitioners in E.A.No.24 of 2013 and third parties in E.P.No.11 of 2012. The first respondent is the petitioner in E.A.No.32,33 & 35 of 2016 and first respondent in E.A.No.24 of 2013 and petitioner in E.P.No.11 of 2012. The respondents in C.P.R.(MD)No.2533 & 2534 of 2016 are ex-parte before the lower court.

3.The petition mentioned property belongs to the M/s.Periyakulam, Nilakottai, Uthamapalayam, Andipatti Taluk Gaura Central Society. The said Society has several buildings and the Society has let out the properties to the third parties and collecting rents. The father of N.Radhakrishnan, the President of first respondent's Society and another person one Parthasarathy filed R.C.O.P.No.25 of 1998 for eviction of tenants. The said RCOP was dismissed. Against the said order of dismissal, the Society filed R.C.A.No.4 of 2002 and the said RCA was also dismissed. Against that, the Society filed C.R.P.No.274 of 2004. This Court, by the order,dated 23.12.2011 allowed the C.R.P.No.274 of 2004 directing the respondents 2 to 6 to vacate and handover the vacant possession. The Society filed E.P.No.11 of 2012, dated 24.02.2012. Against the order of eviction, dated 23.12.2011 the respondents 2 to 6 filed S.L.P.No.13026 of 2012 before the Hon'ble Apex Court. In the SLP, the respondents 2 to 6 filed an affidavit of undertaking that they will vacate and handover the possession within one year. Recording the undertaking, the Hon'ble Apex Court dismissed the S.L.P.No.13026 of 2012 granting one year time to the respondents 2 to 6 to hand over the possession to the Society.

4.The petitioners filed E.A.No.24 of 2013 under Section 47 of Civil Procedure Code to decide the issue with regard to discharge of the decree in the Execution Proceedings stating that nothing survives in the Execution Proceedings. The petitioners herein let in evidence and the first respondent cross-examined the witnesses party. On various dates, the first respondent and his Advocate were ready to further cross-examination of the witness, but the witness



was not present. It was posted to 14.07.2016 for further cross-examination. On that day, the first respondent and his Advocate were not present and therefore, the learned Judge closed the evidence and adjourned the matter to 21.07.2016 for written arguments and for pronouncing orders on 22.07.2016. The petitioner filed E.A.No.26 of 2015 for injunction restraining the first respondent not to alter the physical features of the petition mentioned property. The first respondent filed E.A.No.32 of 2016 to re-open the evidence, E.A.No.33 of 2016 to recall the witnesses and E.A.No.35 of 2016 to receive additional documents. The petitioners filed counter affidavit and opposed all the applications and contended that E.A.No.26 of 2015 is to be decided first and then only E.A.No.24 of 2013 can be taken up for disposal.

5.The learned Judge considering the materials on record, affidavit and counter affidavit allowed all the three applications in E.A.Nos.32,33 & 35 of 2016.

6.Against the said order, the petitioners have come out with the present Civil Revision Petitions.

7.The learned counsel for the petitioners submitted that the learned Judge failed to see that the petitioners are the present Office bearers and the first respondent's father Nallakamu Chettiyar as a Adhoc President of the Society initiated Rent Control Proceedings. The first respondent is only a Court Receiver, pending disposal of the E.A.No.24 2013. While so, he has altered the petition mentioned property. Therefore, the petitioner filed E.A.No.26 of 2015 for injunction restraining the first respondent not to alter the petition mentioned property. In spite of not disposing the E.A.No.26 of 2015, the learned Judge illegally proceeded with the hearing of the E.A.No.24 of 2013. The first respondent was not diligent enough to cross-examine the witness of the petitioner and allowed the evidence of the petitioner to be closed. When the E.A.No.24 of 2013 was posted to 22.07.2016 for orders, the first respondent filed the E.A.Nos.32, 33 and 35 of 2016. The first respondent has not given any valid reason for allowing the E.A. The learned Judge failed to see that the first respondent filed three applications in E.A.Nos.32,33 & 35 of 2016 only to drag-on the proceedings and prayed for allowing the Civil Revision Petitions.

8.The learned counsel for the first respondent submitted that the first respondent is the President of the Society and the petitioners are not the Office bearers and they are expelled from the Society and they are not even members of the Society and they have no locus-standi to file the application under Section 47 of C.P.C. The first respondent and his counsel were not present only for one hearing on 14.07.2016. The learned Judge closed the evidence of the petitioner, without considering the fact that on earlier occasion, the petitioner's witness was not present. The first respondent has given valid reason for re-opening the evidence, recalling the witness and receiving the additional documents. The first respondent submitted that in collusion with the petitioners' the respondents 2 to 6



created a document as if, the defendants/respondents 2 to 6 have surrendered the possession to the petitioners. Therefore, he has filed Contempt Petition No.4 of 2014 in SLP(Civil) No.13026 of 2012 before the Hon'ble Apex Court. The Hon'ble Apex Court directed the respondents 2 to 6 to surrender the possession to the first respondent and appointed the first respondent as Receiver to maintain the property and directed the Execution Court to decide independently the E.A.No.24 of 2013 under Section 47 of CPC., filed by the petitioner.

9.I have heard the learned counsel appearing for the petitioner and the respondents and also perused the materials on record.

10.From the materials, it is seen that the first respondent and his counsel were not present on 14.07.2016 for further cross-examination of the petitioners witness. Due to their absence, evidence of the petitioners was closed. The contention of learned counsel for the first respondent that only for one hearing the first respondent and his counsel were not present while the witness was present on number of hearings and the learned Judge considering the fact properly, allowed the application has considerable force. The first respondent has given valid and sufficient reason for allowing the three applications filed by him. The learned Judge considered all the materials on record in proper perspective and exercised his jurisdiction as per law and allowed all the applications and there is no illegality or irregularity warranting interference by this Court.

11.In view of the above observation, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. The learned District Munsif, Theni is directed to dispose all the applications pending on his file as expeditiously as possible, in any event, not later than three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To
The District Munsif,
Theni.

+1 cc to Mr. M.P.SENTHIL, ADVOCATE, SR NO.81187
+1 CC TO MR. R.SURIYA NARAYANAN, ADVOCATE, SR NO.80998

am
JS/CM-MSA:23.02.2017:4P-4C