

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.2061 and 2062 of 2012
and M.P.No.1 of 2012

<i>Orders Reserved on</i>	<i>Orders pronounced on</i>
20.09.2017	05.10.2017

1.Yamuna
2.K.Kumar
3.K.Mohan
4.R.Sumathy

.. Petitioners in
both CRPs.

Vs.

1.Subramani pillai
2.Sarasu
3.Kali
4.S.Krishnamurthy

.. Respondents in
both CRPs.

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PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decretal order dated 19.11.2011 made in I.A.Nos.323 and 324 of 2010 in O.S.No.881 of 1981 on the file of the Principal District Munsif Court, Poonamallee.

For Petitioners : Mr.V.Lakshminarayanan

R1 : died vide order
dated 19.09.2011 made in I.A.No.323
of 2010 in O.S.No.881 of 1998

For R2 : Mr.R.Bharath Kumar

R3 and R4 : Not ready in notice

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 19.11.2011 made in I.A.Nos.323 and 324 of 2010 in O.S.No.881 of 1981 on the file of the Principal District Munsif Court, Poonamallee.

2. The brief facts of the case are as follows:

(i) The petitioners in both the Civil Revision Petitions are the legal heirs of one K.Varalakshmi, who was owner of the suit property. The said Varalakshmi filed O.S.No.881 of 1981 on the file of the District Munsif Court, Poonamallee, against Mangayarkarasi and Subramania Pillai, for ejectment and for delivery of vacant possession and for recovery of damages for use and occupation. The said Mangayarkarasi and Subramania Pillai filed an application in I.A.No.1580 of 1981 under Section 9 of the Tamil Nadu City Tenants

Protection Act, 1921, for purchasing the suit schedule property. By order dated 18.03.1985, the learned District Munsif, allowed the said application and directed the said Mangayarkarasi and Subramania Pillai, who were the applicants in the said I.A. and defendants in O.S.No.881 of 1981 to deposit a sum of Rs.39,000/- in 20 installments.

(ii) Challenging the said order dated 18.03.1985 made in I.A.No.1580 of 1981, both the defendants filed C.M.A.No.10 of 1987 on the file of the Subordinate Court, Poonamallee. The landlord also filed cross-appeal against the order made in I.A.No.1580 of 1981. By the judgment dated 12.04.1988, the learned Judge dismissed both the appeal and cross-appeal.

(iii) The applicants in I.A.No.1580 of 1981/defendants filed I.A.No.2164 of 1989 for extension of time to deposit the amount. The said I.A.No.2164 of 1989 was dismissed.

(iv) The plaintiff K.Varalakshmi filed I.A.No.2541 of 1989 under Section 4 of the Tamil Nadu City Tenants Protection Act, for an order directing the defendants to quit and deliver vacant possession of the suit property after receiving compensation for the superstructure put up by them and I.A.No.2542 of 1989 for appointment of an Advocate Commissioner to ascertain the value of

the superstructure said to have been put up by the tenants.

(v) In the meanwhile, first defendant Mangayarkarasi died and I.A.No.3183 of 1991 was filed for bringing the respondents 2 to 4 on record as the legal heirs of the deceased first defendant Mangayarkarasi.

(vi) The sole plaintiff K.Varalakshmi died on 25.05.1992 and I.A.No.2536 of 1993 was filed to bring the legal heirs of deceased Varalakshmi on record. By order dated 18.02.1993, the petitioners in the present Civil Revision Petition were impleaded as plaintiffs. The petitioners failed to carry out the amendment ordered in I.A.No.2536 of 1993 and in view of the same, I.A.No.2541 of 1989 filed under Section 4 of the Tamil Nadu City Tenants Protection Act and I.A.No.3183 of 1991 were dismissed on 29.10.1993. On the same day, the application in I.A.No.2164 of 1989 for extension of time to deposit the value of the site fixed in I.A.No.1580 of 1981 was dismissed for default.

(vii) The petitioners filed four applications; I.A.No.705 of 2007 to restore I.A.No.3183 of 1991; I.A.No.808 of 2008 to condone the delay in filing restoration application in I.A.No.3183 of 1991; I.A.No.809 of 2008 to condone the delay in filing restoration application in I.A.No.2541 of 1989; and I.A.No.807 of 2008 to

restore I.A.No.2541 of 1989. The learned Judge by order dated 21.07.2009, dismissed all the above four applications holding that the petitioners have right to file fresh application or suit after expiry of five years and it is always open to the petitioners to file fresh application and they need not have waited for 15 years to file the applications to restore the earlier applications.

(viii) After such dismissal, the petitioners filed I.A.No.323 of 2010 under Section 4 of the Tamil Nadu City Tenants Protection Act and I.A.No.324 of 2010 under Order 22 Rule 4 read with Section 151 C.P.C. to recognise the second defendant/second respondent and the respondents 3 to 5 as the legal heirs of the deceased first defendant.

(ix) Pending above applications, the second defendant Subramania Pillai died. A memo was filed by the petitioners in I.A.No.323 of 2010 stating that the second defendant reported dead and the respondents 3 to 5 are his legal heirs and they may be recorded as legal heirs of the second defendant. The said memo was ordered and the respondents 2 to 4 were recognised as legal heirs of the deceased second defendant.

(x) When I.A.Nos.323 and 324 of 2010 were taken up for hearing, the learned Judge has considered I.A.No.324 of 2010 and

dismissed the same on the ground that the earlier application in I.A.No.3183 of 1991 to implead the respondents 2 to 4 herein was dismissed; I.A.Nos.705 of 2007 and 807 of 2008 to restore the applications in I.A.Nos.3183 of 1991 & 2541 of 1989 and I.A.Nos.808 and 809 of 2008 to condone the delay in filing the said applications, were dismissed. In view of the dismissal of I.A.No.324 of 2010, the learned Judge closed I.A.No.323 of 2010.

3. Against the said order dated 19.11.2011 made in I.A.Nos.323 and 324 of 2010 in O.S.No.881 of 1981 on the file of the Principal District Munsif Court, Poonamallee, the present two Civil Revision Petitions are filed.

4. The learned counsel for the petitioners contended that the learned Judge erred in dismissing the application in I.A.No.324 of 2010 in view of the dismissal of the earlier application. The learned Judge failed to see that the application under Section 4(4) of the Tamil Nadu City Tenants Protection Act, is in the nature of final decree proceedings and the said application will not be maintainable and there is no necessity to file any application to condone the delay. The learned Judge also failed to consider that the

respondents 2 to 4 are already recorded as legal heirs of second defendant/second respondent in I.A.No.324 of 2010. The learned Judge also failed to consider the earlier order dated 21.07.2009 made in I.A.Nos.705 of 2007, 807 to 809 of 2008, wherein the Court has held that it is always open to the petitioners to file fresh application under Section 4(4) of the Tamil Nadu City Tenants Protection Act.

5. Per contra, the learned counsel for the second respondent submitted that I.A.No.324 of 2010 is not maintainable in view of the fact that the earlier application filed for impleading respondents 2 to 4 was dismissed and applications to restore the same and to condone the delay were also dismissed. The petitioners are trying to do indirectly what they could not do directly and relied on the judgment of this Court reported in **1996 (1) CTC 603 (Ganesan and others v. Doraisamy and others)**. The learned counsel for the second respondent submitted that the respondents 2 to 4 were recognised as legal heirs of the deceased second defendant on concession and the same is not binding on the petitioners and relied on the judgment of the Hon'ble Apex Court reported in **1998 (6)**

SCC 538 (Uptron India Ltd., v. Shammi bhan and another)
and 1996 (10) SCC 574 (Union of India v. Hiralal);

6. Heard both sides and perused the materials available on record.

7. From the materials on record, it is seen that the respondents 2 to 4 were already recorded as legal heirs of the deceased second defendant/second respondent in I.A.No.323 of 2010. In view of the same, the learned Judge is not correct in dismissing I.A.No.324 of 2010. The reason given by the learned Judge that earlier application for impleading the respondents 2 to 4 as legal heirs was dismissed and the applications to restore the said applications and condonation of delay in filing the said applications were dismissed. The learned Judge failed to consider that the second respondent herein filed application to set aside the order recording the respondents 2 to 4 as legal heirs of the first respondent herein. Without considering the said application and passing orders on merits, the learned Judge committed an irregularity in closing I.A.No.323 of 2010. The learned Judge also failed to consider that the petitioners can file fresh application under

Section 4(4) of the Tamil Nadu City Tenants Protection Act, after expiry of five years from the date of dismissal of earlier application. In the present case, the petitioners filed I.A.No.323 of 2010 long after expiry of five years after dismissal of I.A.No.2541 of 1989. In the circumstances, the judgments relied on by the learned counsel for the second respondent are not applicable to the facts of the present case.

8. For the above reasons, both the Civil Revision Petitions are allowed and the fair and decretal order dated 19.11.2011 made in I.A.Nos.323 and 324 of 2010 in O.S.No.881 of 1981 on the file of the Principal District Munsif Court, Poonamallee, are liable to be set aside and they are hereby set aside. I.A.No.324 of 2010 is allowed and I.A.No.323 of 2010 is restored to file. The learned Judge is directed to dispose the application in I.A.No.323 of 2010 on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

05.10.2017

Index : Yes/No
kj

V.M.VELUMANI, J.

kj

To

The Principal District Munsif Court
Poonamallee.



Pre-delivery order made in
C.R.P.(PD)Nos.2061 and 2062 of 2012
and M.P.No.1 of 2012

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