

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.08.2017

Coram:

The Honourable Ms.**Justice V.M.VELUMANI**

C.R.P.(PD)No.2105 of 2012
and M.P.No.1 of 2012

1.Nirmala
2.Ganesan

.... Petitioners

Vs.

Mary Stella

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.09.2011 made in M.P.No.97 of 2011 in R.C.O.P.No.2082 of 2010 on the file of the XV Small Causes Court, Chennai.

For Petitioners : Mr.S.Ravi

For Respondent : Mr.T.Easwaradhas

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 09.09.2011 made in M.P.No.97 of 2011 in R.C.O.P.No.2082 of 2010 on the file of the XV Small Causes Court, Chennai.

2. The petitioners are the respondents and respondent is the petitioner in R.C.O.P.No.2082 of 2010 on the file of the XV Small Causes Court, Chennai. The respondent filed R.C.O.P.No.2082 of 2010 for eviction of the petitioners on the ground of wilful default, denial of title and owner's occupation. According to the respondent, plot No.233 was allotted to her by the Tamil Nadu Slum Clearance Board under the World Bank Scheme by its proceedings No.Se.Mu.No:16201/95/E-5, dated 20.05.1997. As per the lease-cum-sale agreement, the respondent has to pay a sum of Rs.35,000/- for 20 years from 01.05.1997. Though the total period 20 years is not over, the respondent paid entire balance amount on 05.05.2005 itself and got receipt from the Slum Clearance Board. The respondent has constructed a small building with brick wall and asbestos sheet and rented the same to the petitioners in the year 1998 and the monthly rent at the time of filing R.C.O.P. was Rs.900/-. The petitioners are close relatives of respondent. Taking advantage of the relationship, the petitioners took electricity connection in their name and respondent did not make any objection taking into consideration of the relationship of the parties. The respondent is residing in plot No.228.

3. The petitioners were paying the rent regularly till October 2005. In the month of October, 2005, the respondent requested the petitioners to vacate the premises for her own occupation. According to the respondent, the hut, in which, she is residing in plot No.228 is very small. The said hut is in dilapidated condition. It is unfit for residential purpose and therefore, requested the building for her own use and occupation. The petitioners refused to vacate the premises. In the circumstances, the respondent filed the R.C.O.P.

4. The petitioners filed M.P.No.97 of 2011 under Section 151 of C.P.C. for a direction to decide the issue of maintainability of the eviction petition as preliminary issue. According to the petitioners, the Slum Clearance Board acquired the land in R.S.No.512/05 and adjacent properties and allotted the plots to the persons, who were in occupation at that time. The petitioners' brother took advantage of the petitioners' absence, got allotment in the name of his wife/respondent herein for the plot No.233 and another allotment for the plot No.228 in the name of one Suseela, a non existence person.

5. The respondent filed O.S.No.3588 of 2006 on the file of the

XVI Assistant City Civil Court, Chennai, seeking permanent injunction restraining the petitioners from putting up fence or making any construction in plot No.233. The said suit was decreed on the ground that the allotment made in favour of the respondent was not cancelled by the authorities.

6. The petitioners having come to know about the allotment in favour of the respondent, sent various representations to the authorities for cancellation of the allotment made in favour of the respondent and allot the said plot in their favour. The authority did not take any action. Finally, the petitioners gave a representation to the Managing Director of Tamil Nadu Slum Clearance Board on 07.07.2009. The said representation was forwarded to the estate officer by his proceedings dated 07.07.2009 and directed the estate officer to conduct the enquiry and send report to the Managing Director. By the proceedings dated 09.10.2009, the petitioners were informed as there was a Court proceedings between the petitioners and respondent, they can take action only after the decision rendered by the Court.

7. The petitioners filed W.P.No.7699 of 2010 before this Court

for a direction to the authority to conduct enquiry on his representation dated 07.07.2009 seeking cancellation of allotment in favour of the respondent in respect of Plot No.233 in R.S.No.512/05 and allot the same in his favour. By the order dated 10.01.2011, in the said writ petition, authorities were directed to complete the same within a period of eight weeks from the date of receipt of a copy of that order. The suit filed by the respondent is not maintainable in respect of the property in notified area. Similarly, as per Section 29 of the Tamil Nadu Slum Clearance Board Act, no eviction proceedings can be initiated without prior permission of the authority. R.C.O.P. can be filed only after obtaining permission from the authority in the present case. No such permission was obtained from the respondent.

8. The respondent failed to file counter and was set exparte.

9. The learned Rent Controller dismissed the said petition on the ground that the proceedings in R.C.O.P. is a summary proceedings and no issue can be decided as a preliminary issue. Whether permission from the Slum Clearance Board is necessary before filing RCOP can be decided only after full fledged trial.

10. Against the order dated 09.09.2011, the present civil revision petition is filed by the petitioners.

11. The learned counsel for the petitioners reiterated the averments made in the affidavit filed in MP No.97 of 2011 and contentions raised in the grounds filed in support of the present civil revision petition. In support of his contention, he relied on the judgment reported in **CDJ 1979 MHC 294 (Parthasarathy v. Kuppammal)** wherein it has been held as follows -

7. In this case, it is not in dispute that no permission has been obtained from the competent authority under S.29 of the Act by the respondent, the owner of the slum area. The eviction proceedings taken by him against the occupant, the petitioner herein, cannot, therefore, be sustained in view of the prohibition contained therein.

12. The learned counsel for the respondent submitted that in a summary proceedings, no issue can be decided as a preliminary issue. The petition filed under Section 151 C.P.C. is not maintainable to decide the issue. While there is specific provision of law, the petitioners

have not invoked the said provision and not filed any application under Order XIV Rule 1 of C.P.C. The learned counsel for the respondent submitted that judgment relied on by the learned counsel for the petitioner is not applicable to the facts of the present case.

13. Heard the learned counsel for the petitioners as well as respondent and perused the materials available on record.

14. The point to be decided in this Civil Revision Petition is whether the question of maintainability can be decided as a preliminary issue or not.

15. This issue is no longer *res integra*. This issue has been decided by this Court in **1997 LW 100 (V.S.Devados v. S.Velu and another)** wherein it has been held that in RCOP, no issue can be decided as a preliminary issue. In view of the well settled judicial pronouncement, this Civil Revision Petition is liable to be dismissed as devoid of merits. The judgment relied on by the learned counsel for the petitioners was in respect of RCOP being decided finally. In the said judgment, it was not decided whether the issue of maintainability has to be decided as preliminary issue when no permission was

obtained under Section 29 of Slum Clearance Board Act. The said issue was rendered when final judgment challenging the eviction was passed.

16. From the materials available on record, it is seen that the petitioners have not filed any counter statement. It is open to the petitioners to file counter statement raising all the objections. If such objections are raised, the learned Rent Controller shall frame necessary points and decide the same on merits and in accordance with law.

17. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

09.08.2017

Index : Yes/No
rgr

To

The XV Judge,
Small Causes Court,
Chennai.

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V.M.VELUMANI, J.

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