

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated: 04.07.2017****CORAM****THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN****CRP(NPD)No.4273 of 2009 and
M.P.No.1 of 2009 and
Caveat No.4678 of 2009**

Chelladurai

.. Petitioner

Vs.

Kannappan (died)

1.Victoria

2.Kotti

3.Kottiammal

4.Kottiraj

5.Ravi

6.Sekar

7.Vivekanandan

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order dated 15.06.2009 made in E.A.No.26 of 2008 in E.P.No.17 of 2006 in RCOP.No.36 of 1985, on the

file of the District Munsif Court, Thiruvottriyur.

For Petitioner : Mr.S.Senthilnathan

For Respondents : Mr.M.Thamizhavel

ORDER

The judgment debtor in E.P.No.17 of 2006 is the civil revision petitioner before this Court, challenging the order passed in E.A.No.26 of 2008 in E.P.No.17 of 2006 in RCOP.No.36 of 1985, dated 15.06.2009, on the file of the District Munsif Court, Tiruvottriyur.

2.The case of the petitioner is that he is the tenant under the respondent/decreed holder. In the year 1985, the petition for eviction in RCOP.No.36 of 1985 was filed against this petitioner/judgment debtor and the same was decreed in favour of the respondent/decreed holder. Thereafter an appeal was filed in RCA.No.1 of 1995 and the same was dismissed by confirming the order passed in RCOP.No.36 of 1985. Challenging the said order, this petitioner/judgment debtor has filed the civil revision petition before this Court in CRP(NPD)No.3321 of 1997.

3.Considering the case of the petitioner, this Court by order dated 02.07.2004 was pleased to dismiss the civil revision petition confirming the judgment and decretal order passed by the Rent Control Appellate Authority. While dismissing the order in the civil revision petition, this Court passed an order as follows:

"11.In view of the factual position that the demised premises forms part of the building subsequently put up in the vacant site covered by the rental agreement Ex.R7, inasmuch as in order to render a complete adjudication of the dispute between the parties, necessary directions have to be issued to the Rent Controller as well as the Execution Court to identify the demised premises by appointing a Commissioner before ever execution of the order of the Rent Controller is effected. With this observation, this Court is of the considered view that the revision deserves no merits and is liable to be dismissed.

12.For the reasons stated above, the Civil Revision Petition is dismissed confirming the judgment and decretal rendered by the Rent Control Appellate Authority. However, there will be no order as to costs. The Execution Court is directed to appoint a Commissioner to identify the

demised premises and demarcate the same before delivery is effected in accordance with the decretal order passed by the Rent Control Appellate Authority.”

4.While dismissing the civil revision petition, this Court directed the Execution Court to appoint a Commissioner to identify the demised premises and demarcate the same before delivery is effected in accordance with the decretal order passed by the Rent Control Appellate Authority. Pursuant to the order passed by this Court in the above civil revision petition, the learned Executing Court viz., District Munsif Court, Tiruvotriyur was pleased to appoint an Advocate Commissioner to identify the petitioner's property in respect of superstructure and file a report before the First Appellate Court in RCA.No.1 of 1995, dated 28.08.1996.

5.Considering their case, the Executing Court viz., Principal District Munsif, Tiruvotriyur, appointed an Advocate Commissioner and the Advocate Commissioner is yet to file his report.

6.While pendency of the Advocate Commissioner's inspection report, this petitioner, who is the judgment debtor in the Execution

Petition in E.P.No.17 of 2006 has filed an application under Order 26 Rule 9 of CPC for the appointment of Taluk Surveyor, Ambathur to assist the Advocate Commissioner for fixing the boundaries and identifying the property in respect of superstructure and file the report with the sketch.

7.A counter affidavit has been filed by the respondent/decreed holder denying the allegations and stated that the Advocate Commissioner yet to identify to petition property as per the direction of this Court in C.R.P.No.3321 of 1997.

8.Considering both side arguments, the learned District Munsif-cum-Judicial Magistrate, Tiruvotriyur was pleased to dismiss the application in E.A.No.26 of 2008 in E.P.No.17 of 2006, dated 15.06.2009 by stating that there is no necessity to appoint the Taluk Surveyor to assist the Advocate Commissioner to fix the boundary. The learned Judge also stated it is not at all necessary at this stage, since the Advocate Commissioner has not reported the Executing Court about his incapability in identifying or demarcating the demised premises. Challenging the said order, this civil revision petition has filed before this Court.

9.I heard Mr.S.Senthilnathan, learned counsel appearing for the petitioner and Mr.M.Thamizhavel, learned counsel appearing for the respondents and perused all the materials available on record.

10.It is the case of the judgment debtor that successfully drag on the proceedings for the past 24 years till the disposal of E.A.No.26 of 2008 and even after that this civil revision petition is pending from 2009, i.e. for more than 8 years, the respondent/decreed holder, who is the landlord is unable to take possession of the petition mentioned property. The petitioner, who is the judgment debtor under the tenant of the decreed holder of the landlord had filed Order 26 Rule 9 of CPC for appointing Taluk Surveyor to assist the Advocate Commissioner, which was already appointed by the Executing Court as per order passed by this Court. The provision under Order 26 Rule 9 of C.P.C., does not say that the Taluk surveyor to be appointed to assist the Advocate Commissioner, whereas the Order 26 Rule 9 of CPC says only to appoint the Advocate Commissioner.

11.It is made clear that the learned Executing Court very clearly stated that the Advocate Commissioner, who appoint as per the order

passed by the said Court in the above civil revision petition has not reported to the Executing Court about his incapability in identifying or demarcating the demised premises. It is the duty of the Advocate Commissioner seeking for assisting the Taluk Surveyor, if he unable to identify or demarcating the demised premises. Only for the purpose of dragging the proceedings, this petitioner/judgment debtor has filed the present application and he successfully dragged the proceedings for more than 32 years.

12. During the pendency of the civil revision petition, a memo has been filed by the petitioner stating that already all the legal heirs of the deceased 1st respondent Late. Kannappan are shown as respondents 2 to 8 in the above civil revision petition. Hence, no further steps are required to be carried out. Hence, this civil revision petition may be listed for hearing before the concerned Court and the said memo may be recorded in the civil revision petition and accordingly the same was recorded.

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13. It is very unfortunate case that when the petitioner, who is the tenant has failed all his attempt before learned the Rent Controller, the Rent Control Appellate Authority and by way of this civil revision

petition before this Court has successfully drag on the proceedings and unnecessarily filed the application under Order 26 Rule 9 of CPC, which enable the Court to appoint only Advocate Commissioner and no Taluk surveyor can be appointed. Therefore, I am of the firm view that this civil revision petition is not at all maintainable and it is liable to be dismissed with exemplary cost, since the petitioner, who is the tenant and the Judgment Debtor in the E.P. has totally abuse the process of law. He has filed this petition unnecessarily and it is pending for more than 7 years and the respondent/decreed holder, who is unable to take the possession of the petition mentioned property, which was let out to this petitioner.

14. In the result:

(a) this civil revision petition is dismissed by confirming the order passed in E.A.No.26 of 2008 in E.P.No.17 of 2006 in RCOP.No.36 of 1985, dated 15.06.2009, on the file of the District Munsif Court, Thiruvottriyur;

(b) the Executing Court viz., the Principal District Munsif-cum-Judicial Magistrate, Tiruvottriyur, is hereby directed to issue suitable direction to the Advocate

Commissioner immediately on receipt of the order of this Court within one month by directing the Advocate Commissioner to file his report within 15 days without any further delay.

(c) on receipt of the Advocate Commissioner's report, the learned Executing Court viz., the District Munsif-cum-Judicial Magistrate, Tiruvotriyur, is directed to take up the E.P.No.17 of 2006, on day to day basis, without giving any adjournment to either parties and to dispose of the E.P.No.17 of 2006 within a period of 15 days thereafter.

(d) the petitioner/judgment debtor is hereby directed to pay the cost of Rs.25,000/- to the respondent within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

04.07.2017

Speaking Order
Index:Yes

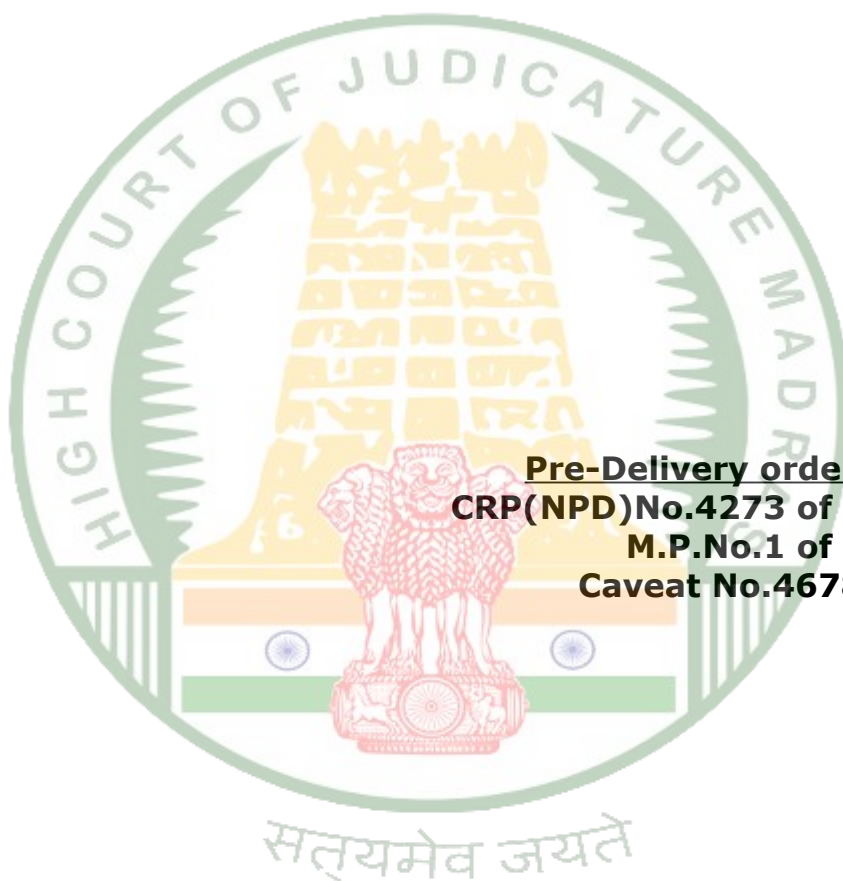
To

The District Munsif-cum-Judicial Magistrate Court,
Thiruvotriyur.

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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.4273 of 2009 and
M.P.No.1 of 2009 and
Caveat No.4678 of 2009

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