

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 28.02.2017****CORAM:****THE HONOURABLE MS.JUSTICE V.M.VELUMANI****C.R.P (MD) No.1936 of 2014**

1.N.K.N.RM.Kumarappa Chettiar (died)

2.K.Ramanathan

... Petitioner/Petitioner/
Petitioner-Landlord

Vs.

1.S.Balakrishnan (died)

2.AR.Meyappan

3.Nallathambi

.. Respondents 1 to 3/Respondents/
Respondents - Tenants

4.AR.Bhuvana

5.Preama

6.Vasuki

7.Ramesh

... Respondents

(2nd petitioner and 4th respondent were impleaded
as Lrs of the deceased 1st petitioner vide
order, dated 28.07.2016)

(RR 5 to 7 were brought on record as Lrs of the
deceased-first respondent vide order,
dated 09.02.2017)

PRAYER: Civil Revision Petition is filed under Section 115 of the
Code of Civil Procedure against the order dated 31.07.2014 passed
in E.P.No.65 of 2011 in R.C.O.P.No.36 of 2001 by the Principal
District Munsif cum Judicial Magistrate, Karaikudi.

For P - 2 : Mr.T.Srinivasaraghavan

For R - 1 : Died
Mr.A.Sivaji

For RR 2 to 4 : No appearance

For R - 5 : Mr.S.T.Sasidharan Tamilkani

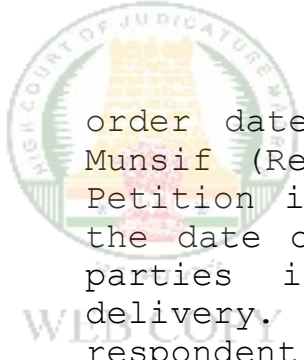
<https://hcservices.ecourts.gov.in/hcservices/>
For RR 6 & 7 : Mr.G.Prabhu Rajadurai

**ORDER**

The petitioners have filed the above Civil Revision Petition against the order, dated 31.07.2014 passed in E.P.No.65 of 2011 in R.C.O.P.No.36 of 2001 by the learned Principal District Munsif cum Judicial Magistrate, Karaikudi.

2.The first petitioner is the landlord of petition premises. He filed a petition in R.C.O.P.No.36 of 2001 under Sections 10(2), 1, 10(2)(2)(A), 10(2)(2) 3 of the Tamil Nadu Buildings (Lease and Rent Control) Act, for eviction against the respondents 1 to 3. In the mean time, the first petitioner filed an application in I.A.No.19 of 2001 for a direction to the first respondent to deposit the arrears of rent. The first respondent took a stand that he spent Rs.80,000/- for re-modelling the building and there is no arrears. The said contention was rejected by the learned Rent Controller (District Musnif cum Judicial Magistrate), Karaikudi and directed the first respondent to deposit the rent. The first respondent filed a Civil Revision Petition in C.R.P.No.397 of 2004 challenging the order passed in I.A.No.19 of 2004 in R.C.O.P.No.36 of 2001. Initially, this Court granted interim stay. Subsequently, by an order, dated 17.06.2005, this Court dismissed C.R.P.No.397 of 2004 holding that the first respondent has to file only appeal and not revision. The first respondent filed an appeal in R.C.A.No.8 of 2005 before the learned Appellate Authority. The said R.C.A.No.8 of 2005 was dismissed on 16.02.2006. Against the dismissal of R.C.A.No.8 of 2005, the first respondent filed a Civil Revision Petition in C.R.P.No.635 of 2006, which was also dismissed by this Court on 26.10.2007. After dismissal of C.R.P.No.635 of 2006, the learned Rent Controller ordered eviction. The first respondent filed an appeal in R.C.A.No.2 of 2009. The said R.C.A.No.2 of 2009 was also dismissed on 21.11.2009. In the mean time, the first respondent along with other plaintiffs filed a suit in unnumbered O.S.No.... of 2011 claiming that the site alone was leased out to the father of the first respondent and he had put up super structure.

3.Against the orders passed in R.C.A.No.2 of 2009 and the order passed in unnumbered O.S.No.... of 2011, the first respondent has filed Civil Revision Petitions in C.R.P(MD)Nos.602 of 2010 and 568 of 2012. This Court by a common order, dated 11.12.2013 dismissed both C.R.P(MD)Nos.602 of 2010 and 568 of 2012. Against the order of dismissal in both the Civil Revision Petitions, the first respondent filed S.L.P.Nos.4195 and 4196 of 2014 before the Honourable Apex Court. The Honourable Apex Court dismissed both the S.L.Ps. The Execution Petition filed by the first petitioner for evicting the first respondent was pending. The first petitioner filed a Civil Revision Petition in C.R.P(MD) No.1118 of 2014 for speedy disposal of E.P.No.65 of 2011 in R.C.O.P.No.36 of 2001 on the file of this Court. This Court, by an

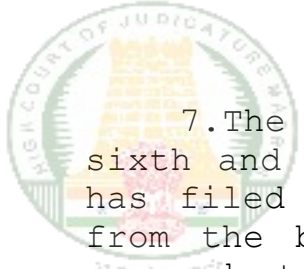


order dated 09.06.2014, directed the learned Principal District Munsif (Rent Controller), Karaikudi to dispose of the Execution Petition in E.P.No.65 of 2011 within a period of six weeks from the date of receipt of a copy of that order. After hearing both parties in E.P.No.65 of 2011, the Rent Controller ordered delivery. At the time of delivery through Court, the first respondent did not allow to take possession and obstructed delivery of vacant site on the ground that as per warrant, only building can be taken possession by the first petitioner. There is no order directing delivery of vacant site. The first petitioner did not take delivery of building alone and filed objection stating that the property includes building and vacant site and therefore, warrant issued is only to portion of the property.

4.The learned Judge rejected the said objection holding that the first petitioner sought for eviction of tenant from the building alone and he has not sought for eviction of tenant for vacant site and closed the Execution Petition. Against that, the present Civil Revision Petition is filed.

5.The learned counsel appearing for the second petitioner submitted that the learned Judge is not correct in closing the Execution Petition when the entire property was not delivered to the first petitioner. The learned Judge failed to note that the building includes appurtenant vacant site also. The learned Judge failed to see that on earlier occasion, the first respondent took a plea that only vacant site was leased out to his father and his father put up superstructure. This plea was rejected by this Court holding that the building and vacant site were leased out to the respondents. This order was confirmed by the Honourable Apex Court by dismissing the S.L.Ps. The learned Judge failed to see that it is the specific case of the respondents that vacant site was leased out by the first petitioner and at no point of time, the respondents claimed title over the appurtenant vacant site or claimed that he is not tenant to appurtenant vacant site. The first respondent settled the property on his wife and daughter. The first petitioner gave a complaint to the police and the settlement deed was cancelled. The learned Judge failed to see the common order passed by this Court in C.R.P(MD)Nos.682 of 2010 and 568 of 2012, wherein it has been held that the respondents are tenants of both the building and vacant site.

6.The learned counsel who entered appearance on behalf of the first respondent submitted that the first respondent died and that he has no particulars of legal heirs of the first respondent. The second petitioner filed a petition in C.M.P(MD)No.466 of 2017 to implead the respondents 5 to 7 as legal heirs of the deceased first respondent. By an order, dated 09.02.2017, the said respondents 5 to 7 were allowed and the respondents 5 to 7 are impleaded as legal heirs of the deceased first respondent.



7. The learned counsels appearing for the fifth respondent and sixth and seventh respondents submitted that the first petitioner has filed R.C.O.P.No.36 of 2001 for eviction of the respondents from the building alone. He has not sought for eviction of the respondents from vacant site. The eviction order passed by the learned Rent Controller and confirmed by the Appellate Authority and this Court relates only to building. The first petitioner did not mention vacant site in any of the proceedings and therefore he is not entitled to claim delivery of vacant site also. The respondents have vacated the building and the building is now vacant. The first petitioner, without any right to take possession of vacant site refused to take vacant possession of the building. The Execution Court considered the order of eviction and objection and rightly rejected the objection and closed the Execution Petition. The order of the Execution Court is valid and legal.

8. Though the names of the respondents 3 and 4 have been printed in the cause-list, none appeared for them either in person or through their counsel.

9. Heard the learned counsel for the second petitioner and the learned counsels for the respondents 2, 5, 6 and 7 and perused the materials available on record.

10. The first petitioner has filed a petition in R.C.O.P.No.36 of 2001 for evicting the respondents from petition building. Eviction was ordered. After two appeals, three Civil Revision Petitions, two S.L.Ps, the order of eviction attained finality. The first petitioner filed E.P.No.65 of 2011 to implement the order of eviction. The learned Judge issued warrant for delivery of petition premises. At that time, when Ameen of Court went to execute the warrant, it was found that the respondents vacated the building, but refused to vacate the vacant site on the ground that warrant mentioned only the building and not the vacant site. The first petitioner did not want to take possession of portion of the property and wanted to take possession as entire property. In the circumstances, Ameen returned the warrant.

11. The first petitioner filed objection stating that warrant must be issued for delivery of entire property including vacant site. The learned Judge rejected the objection and closed the Execution Petition on the ground that R.C.O.P.No.36 of 2001 is only for evicting the respondents from petition building. The said order of the learned Judge is erroneous. The learned Judge failed to consider the definition of the building in Section 2 (2) (a) of the Tamil Nadu Buildings (Lease and Rent Control), Act 1960, which reads as follows:-

"2.(2) (a) the garden, grounds and out-houses, if any, and the building or part of such building, hut or part of such building or hut and let or to be let along with such building or hut,"



12.A reading of this definition clearly shows that when the petitioners seek eviction of the respondents from the building it includes vacant site appurtenant to the building also.

13.A reading of proviso to Section 4(4) of the Tamil Nadu Buildings (Lease and Rent Control), Act 1960, makes this position very clear. The said Section is fixation of fair rent. As per this provision 50% of vacant land has to be included to fix the market value of property and 50% of the vacant land is to be treated as amenities. Therefore when the landlord seeks eviction in respect of the building, he is entitled to evict the tenant from the vacant site appurtenant to the building also. It is not the case of the respondents that the vacant site is not appurtenant to the building and it is a separate building in earlier proceedings.

14.Now, the respondents 5 to 7 have stated that vacant land is a separate property and it has a separate entrance. On the other hand, it is the case of the first respondent throughout that only vacant site was leased out to his father and his father only put up construction of the building in the vacant land. This contention was rejected by this Court and was confirmed by the Honourable Apex Court by dismissing S.L.Ps filed by the first respondent challenging the order of this Court.

15.In view of the definition of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and proviso to Section 4(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the petitioners are entitled to take possession of the building and vacant portion of the appurtenant vacant land also.

16.For the above reason, the order passed in E.P.No.65 of 2011 in R.C.O.P.No.36 of 2001 by the Principal District Munsif cum Judicial Magistrate, Karaikudi is set aside and the Civil Revision Petition is allowed. The learned Judge is directed to issue warrant of delivery to the Ameen of the Court to evict the respondents not only from the building, but also from vacant site appurtenant to the building and deliver vacant possession of the building and appurtenant land within a period of one month from the date of receipt of a copy of this order and file compliance report before this Court. No costs.

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar



To

The Principal District Munsif cum Judicial Magistrate,
Karaikudi.

WEB COPY

+1 cc to Mr.S.MADHAVAN, Advocate, SR No.11066

+1 cc to Mr.S.T.SASIDHARAN, Advocate, SR No.11853

+1 cc to Mr.G.PRABHU RAJADURAI, Advocate, SR No.11528

C.R.P (MD) No.1936 of 2014
28.02.2017

SH-SM/CM-MSA/SAR-J:17.03.2017:6P/5C