



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)No.119 of 2017 (NPD)

&

C.M.P.(MD)No.400 of 2017

Santhakumari, W/o.Kamatchi

..Petitioner/Respondent/
Respondent-Tenant.

Vs.

Prithiviraj, S/o.Ramasamy

..Respondent/Petitioner/
Petitioner-Land Lord

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order dated 03.10.2016, passed in E.P.No.62 of 2014 in R.C.O.P.No.12 of 2014, on the file of the District Munsif Court, Pudukkottai.

For Petitioner : Mr.S.Deenadhayalan

ORDER

This Civil Revision Petition has been filed against the order dated 03.10.2016, passed in E.P.No.62 of 2014 in R.C.O.P.No.12 of 2014, on the file of the District Munsif Court, Pudukkottai.

2. Facts of the case:-

(i) The petitioner is the respondent in E.P.No.62 of 2014 and R.C.O.P.No.12 of 2014 and the respondent is the petitioner in both the E.P. and the R.C.O.P. The respondent filed the said R.C.O.P., for eviction against the petitioner and eviction was also ordered on 03.09.2014 by the learned Rent Controller, District Munsif Court, Pudukkottai. Hence, the respondent filed E.P.No.62 of 2014 for execution of the order, dated 03.09.2014. In the E.P., the petitioner filed counter and submitted that the respondent is not the owner of the suit property and he is only a lessee and by sham and nominal sale deed, he has purchased the property and claiming ownership. An ex-parte order was passed in the said R.C.O.P., as the petitioner did not file counter. On the other hand, in the order of eviction, dated 03.09.2014, it has been mentioned as "the order of eviction is passed after hearing the petitioner and the respondent". The petitioner filed an Interlocutory Application to set aside the ex-parte order, dated 03.09.2014. The said I.A. was returned stating that the petitioner is not the owner of the suit property and he is only a lessee and by sham and nominal sale deed, he has purchased the property and claiming ownership. Therefore, the petitioner has filed an appeal in R.C.A.SR.No.259 of 2015 before the Subordinate Court, Pudukkottai, along with I.A.No.103 of 2015 to

condone the delay in filing the said R.C.A. and prayed for dismissal of E.P.

(ii) The learned District Munsif, Pudukkottai, upon considering the materials available on record and the order of eviction and the counter filed by the petitioner and the arguments of the learned counsel for the parties, allowed E.P.No.62 of 2014, vide order dated 03.10.2016, on the ground that the petitioner has not obtained any stay in the appellate Court.

3. Against the said order dated 03.10.2016, the petitioner has come out with the present Civil Revision Petition.

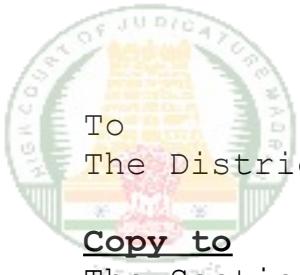
4. The learned counsel for the petitioner submitted that the learned District Munsif, Pudukkottai, did not properly appreciate the fact that the petitioner filed R.C.A.SR.No.259 of 2015 along I.A.No.103 of 2015 to condone the delay in filing the appeal. The order passed in the R.C.O.P., it has been wrongly mentioned that the order of eviction was passed after hearing the parties, whereas it is only an ex-parte order. The learned District Munsif failed to consider that the petitioner is in possession for long years. The learned counsel for the petitioner further submitted that the petitioner has also filed O.S.No.62 of 2014 against one Athimoolam not to evict her without following due process of law.

5. I have heard the learned counsel for the petitioner and perused the materials available on record.

6. From the materials available on record, it is seen that the respondent has filed E.P.No.62 of 2014 for execution of the order dated 03.09.2014, passed in R.C.O.P.No.12 of 2014. The petitioner resisted the said E.P. on the ground that the said order is an ex-parte order, but wrongly mentioned as though the same was passed on merits. The petitioner filed R.C.A.SR.No.259 of 2015 along with I.A.No.103 of 2015 to condone the delay in filing the said R.C.A. The petitioner has not obtained any stay from the appellate Court. In the circumstances, the learned District Munsif, Pudukkottai, has rightly rejected the contention of the learned counsel for the petitioner and ordered the E.P. It is well settled that Execution Court cannot go beyond the decree passed. There is no irregularity or illegality in the order passed by the learned District Munsif, Pudukkottai, warranting interference by this Court. The Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/

Assistant Registrar(AS)



To
The District Munsif, Pudukkottai.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High court,
Madurai.

+1CC to M/S.S.Deenadhayan, Advocate, SR.No. 3371

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