



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2017

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(NPD) (MD)No.1978 of 2017

and

C.M.P(MD)No.9994 of 2017

Smt.M.Meenakumari

... Revision Petitioner/Respondent

vs.

1) Smt Gulumayee Ammal

2) Smt Rajalakshmi

3) Sr.Rajapandi

4) Sri.Thangapandi

5) D.Manikandamala

... Respondents 1 to 5/Petitioners

6) P.Krishnamoorthy

... 6th Respondent/3rd Party

Petition filed under Section 115 of the Civil Procedure Code, against the order dated 02.03.2017 passed in E.A.No.69 of 2017 in E.P.No.209 of 2012 in RCOP.No.16 of 2003 on the file of Additional District Munsif Court, Madurai.

For Petitioner : Mr.S.Vijayashanthi

For Respondents 1 to 5 : Mr.R.A.Mohanram

ORDER

The petition property belonged to one Pandi Naidu. He filed RCOP.No.16/2003 for eviction of one Tmt.Sarojini Ammal, mother of the revision petitioner on the ground of wilful default and another RCOP.No.15/2003 for fixation of fair rent. Pending RCOPs, the said Pandi Naidu died and his legal representatives namely, respondents 1 to 5 herein were impleaded in RCOPs. After contest, both RCOPs were allowed, against which, RCA.Nos.29 and 30 of 2010 were filed and the same were dismissed and E.P.No.209/2012 was filed for eviction of Sarojini Ammal as per the order passed in RCOP.No.16/2003 and pending the said EP, Sarojini Ammal filed CRP.Nos.742 and 743 of 2013 against the order of eviction and fixation of fair rent and the same were dismissed. In E.P.No.209 of 2012, delivery was ordered and on the application filed by respondents 1 to 5, police protection was also ordered. At this stage, Sarojini Ammal filed E.A.No.281/2014 to decide whether the 6th respondent herein/Krishnamoorthy, who is the petitioner in RCOP.No.75/2006 is the legal representative of the deceased Pandi Naidu and to determine whether E.P.No.209 of 2012 is maintainable without



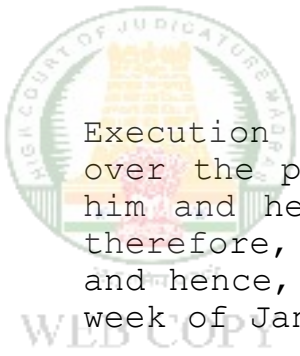
impleading all the legal representatives of the deceased Pandi Naidu. Pending E.P, Sarojini Ammal died on 26.05.2015 and the revision petitioner was impleaded as legal representative of Sarojini Ammal. The application in E.A.No.281/2014 sought to be struck off by the respondents 1 to 5 in CRP(MD)No.2619 of 2015.

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2.The learned Judge allowed CRP(MD)No.2619 of 2015 by order dated 15.04.2016, stating that when this Court in CRP.Nos.742 and 743 of 2013 confirmed the eviction passed by the Rent Control Authority on the dismissal of RCA, the Execution Court cannot decide whether there is any other legal heir of Pandi Naidu having interest, right or title in the petition mentioned property. The learned Judge also found that 6th respondent/Krishnamoorthy who claims title over the property is not the legal heir of Pandi Naidu and he is the husband of one Mariammal who is the Daughter of Pandi Naidu through his first wife. According to said Krishnamoorthy, the petition property was gifted to him by his wife. In the said factual background, this Court observed that this issue cannot be decided by the Execution Court and the Execution Court cannot go beyond the order of eviction passed by the competent Court and further held that it is well settled, all the co-owners or all the legal heirs of the deceased owner need not be necessary parties in eviction proceedings or in rent control proceedings.

3.This Court further held that the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 alone is applicable to rent control proceedings and the Rent Control as well as Appellate Courts are only Tribunals and therefore, provisions of CPC are not applicable to the rent control proceedings. A landlord who is entitled to initiate proceedings under the Rent Control Act has been defined by the Act itself. Therefore, this Court came to the conclusion that E.A.No.281 of 2014 filed by Sarojini Ammal is devoid of merits and is not maintainable. Relying upon the judgment of the Hon'ble Supreme Court in Kasthuri Radhakrishnan and others vs. M.Chinniyan and another reported in I (2016) SLT 585 and by relying upon various judgments, this Court allowed CRP(MD)No.2619 of 2015 striking off the petition in E.A.No.281 of 2014, stating that the petition filed by Sarojini Ammal is a clear abuse of process of law and the Executing Court has no power to decide the issue in E.A.No.281 of 2014.

4.Now, the revision petitioner who is the legal heir of deceased Sarojini Ammal has filed the present E.A.No.69/2017 with the same contention as raised by Sarojini Ammal in CRP(MD) No.2619/2015 contending that the said Krishnamoorthy has filed O.S.No.585/15 impleading the petitioner and respondents for the relief of declaration and eviction, stating that he is owner of the petition mentioned property and the entire episode of the matter goes to show that all these petitions have been filed collusively with the said Krishnamoorthy who claims to be the legal heir of Pandi Naidu, stating that he is husband of one Mariammal who is the daughter of Pandi Naidu. Such factum cannot be decided by the



Execution Court and if the said Krishnamoorthy has got any title over the property that will be decided in the civil suit filed by him and he will get his appropriate remedy if he is entitled and therefore, this Court was not inclined to admit the present revision and hence, by order dated 12.12.2017, adjourned the matter to first week of January 2018.

5. Thereafter, at the mention of the learned counsel for the petitioner when this Court after hearing came forward to pass an order of eviction, learned counsel for the petitioner prayed that since the petitioner as tenant is running a Fancy Store in the petition mentioned property and as the petitioner had spent huge amount of Rs.5 Lakhs for interior decoration more than Rs.2 Lakhs worth articles in the shop, time may be granted for vacating the premises and therefore, this Court directed her to serve notice to the other side and on notice, the counsel for respondents 1 to 5 was also present before this Court who had no objection for allowing time to vacate the premises and accordingly, the petitioner has filed an undertaking affidavit dated 14.12.2017 to the effect that she would vacate the premises and hand over the vacant possession to the respondents 1 to 5 on or before 15.03.2018. Learned counsel for the respondents 1 to 5 has agreed to the said undertaking of the petitioner.

6. Considering the facts and circumstances of the case and considering the affidavit filed by the petitioner, the petitioner is directed to vacate the premises and hand over the vacant possession to the respondents 1 to 5 on or before 15.03.2018 and if the petitioner fails to do so, the respondents 1 to 5 are at liberty to proceed with eviction of the revision petitioner with police protection. The undertaking affidavit dated 14.12.2017 signed by the petitioner shall form part and parcel of this order.

This Civil Revision Petition is accordingly disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSI)

/True Copy/

Sub-Assistant Registrar

**(*) UNDERTAKING AFFIDAVIT DATED 14/12/2017 XEROX COPY ENCLOSED
HEREWITH**

To

The Additional District Munsif, Madurai
+One cc to M/.Vijaya Shanthi, Advocate, SR.No.92891

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RL/3C/3P/KKR/SAR1/8/1/2018

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