



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2017

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) No.2002 of 2017
and
CMP (MD) No.10053 of 2017

C.Murugesan

... Petitioner

vs.

- 1) M. Gandhimathi
- 2) M. Bose @ Pandiduraisamy
- 3) M. Babu @ Rajendran
- 4) M. Muthupandi @ Muthuvelpandian
- 5) M. Thangapandi @ Lakshmanan
- 6) A. R. Alamelu
- 7) P. Thiagarajan
- 8) D. Velusamy
- 9) D. Allirani

... Respondents

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 15.09.2017 in E.A.No.5 of 2016 in E.P.No.5 of 2013 on the file of the District Munsif Court, Theni.

For Petitioner : Mr. B. Rajesh Saravanan
For R1 to R5 : Mr. T. S. R. Venkataramana

ORDER

This revision petition has been filed against the fair and decreetal order dated 15.09.2017 in E.A.No.5 of 2016 in E.P.No.5 of 2013 on the file of the District Munsif Court, Theni.

2. This revision petition is filed by the third party to the proceedings. The history of litigation is that one Gandhimathi who is the original owner of demised premises has filed R.C.O.P.No.3 of 1998 on the file of the Rent Controller, District Munsif, Theni, for eviction against the tenant namely, Saraswathi Ammal. Though now Sarawathi Ammal is no more, the Rent Control Proceedings ended in the favour of landlord. The appeal preferred by the tenant in R.C.A.No.3 of 2005 was dismissed. Aggrieved by that, the tenant filed a revision petition before this Court in C.R.P(MD)No.410 of 2007 which was initially dismissed for non-prosecution and later restored and finally dismissed on 25.01.2010 with certain observation about the conduct of the tenant in dragging the proceedings. Meanwhile, the landlord has preferred E.P.No.5 of 2013.



3.The tenant has not stopped with the dismissal of her revision petition, but again filed a Review Application No.13 of 2015 which happened to be dismissed on 08.06.2015 and also took up the matter to the Hon'ble Supreme Court by way of a Special Leave Petition and the same was also dismissed on 27.10.2015. The landlord has filed an application for police protection to take back the possession of the property. This application was also allowed by the Court below on 20.08.2015. While so, the revision petitioner herein has filed an application to mark the document dated 29.12.2011 alleged to have been executed by Ganthimathi in his favour. The Court below after detailed analysis of the case history as well as the document proposed to be filed by the third party Murugasen, has dismissed the petition. Aggrieved by that, the revision petitioner filed CRP(MD) No.1145 of 2017 contending that the revision petitioner sought to mark the document only to show his possession over the disputed property. This Court dismissed the said revision petition with cost of Rs.3,000/- holding that the conduct of the revision petitioner shows that he attempts to introduce fake documents in judicial proceedings to defeat the order of the Court rendered in RCOP.No.3 of 1998.

4.While so, the revision petitioner has filed the present petition to dismiss the EP and to direct the respondents 1 to 5 to pay cost of the petition, contending that Ganthimathi Ammal borrowed Rs.5,00,000/- from him and she did not able to pay interest for the loan and hence, executed a document dated 29.12.2011 in his favour and on the strength of the said document, he is in occupation of the demised premises as tenant and therefore, he cannot be evicted without due process of law. The Trial Court dismissed the said interlocutory application. Hence, the revision petitioner has come forward with this revision petition.

5.The case of the revision petitioner revolves around the document dated 29.12.2011 alleged to have been executed by Gandhimathi Ammal contending that on the strength of the said document, he is in occupation of the demised premises as tenant and therefore, he should not be evicted without due process of law.

6.It is the contention of the revision petitioner that based on the document dated 29.12.2011, he was running a grocery shop in the demised premises from 2011 and was paying commercial tax and also obtained telephone connection and using it from 2012 to till date. In support of the same, he also marked receipts Exs.P3 to P11-telephone charges. Disproving the said contentions, the respondents 1 to 5 marked Ex.R1 which shows that on 29.09.2005 itself, telephone connection was obtained in the name of the revision petitioner for his business in the demised premises in the name and style of ''Balan Lorry Booking Office''. It was further contended that though the revision petitioner contended that he was running a grocery shop in the demised premises, there were name boards in the petition premises namely, ''Balan Lorry Booking Office'' and



'Saraswathi Travels and Tourists''. Therefore, it was contended by the respondents 1 to 5 that the revision petitioner colluding with respondents 8 and 9 only encroached the demised premises.

7. Upon analysis of oral and documentary evidence, the Trial Court observed that the evidence adduced by the revision petitioner is not cogent and therefore, it has to be presumed that having lost the rights of the tenant, the respondents 8 and 9 being the legal representatives of Saraswathi Ammal have made the revision petitioner to file the present interlocutory application. As rightly held by the Trial Court, even assuming that Ganthimathi Ammal borrowed Rs.5,00,000/- from the revision petitioner and in view of the alleged document dated 29.12.2011, he was in possession of the demised premises as tenant, the revision petitioner has not produced any evidence to show that he took steps for recovery of the alleged loan amount from Ganthimathi Ammal. Just because the revision petitioner squat over the demised premises in lieu of interest for the alleged loan of Rs.5,00,000/- given to Ganthimathi Ammal, it would not create landlord-tenant relationship as between the 1st respondent and the revision petitioner. When the revision petitioner has not proved the landlord-tenant relationship, his possession in the petition premises would only be an encroachment without the knowledge of the respondents 1 to 5.

8. For the foregoing reasons, this Court is of the view that the impugned order does not suffer from infirmity or perversity warranting interference by this Court.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar.

To

The District Munsif
Theni.

+1CC to Mr.TSR.Venkat Ramana, Advocate, SR.No. 85702

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