



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD) No.1501 of 2016 and
CMP(MD).No.7346 of 2016

K.S.Sekar

:Revision Petitioner/3rd Party/
3rd Party

Vs.

1.Shri Santhana Gopala Krishnasamy
Bajanai Madam,
rep by its Secretary
V.Krishnasamy

2.K.Jothiram

: Respondents/Respondents/
Plaintiff

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set a side the order of notice dated 15.10.2014 made in E.A.No.225 of 2014 in E.P.No.78 of 2003 in RCOP.No.27 of 1992 on the file of the Principal District Munsif Court, Kumbakonam.

For Petitioner	:Mr.K.Mahendiran
For respondent No.I	:Mr.P.Arun Jayatram
R2	:Dispense with.

O R D E R

This Civil Revision Petition is filed to to set a side the order of notice dated 15.10.2014 made in E.A.No.225 of 2014 in E.P.No.78 of 2003 in RCOP.No.27 of 1992 on the file of the Principal District Munsif Court, Kumbakonam.

2. The petitioner, third party filed this revision challenging the notice ordered to the second respondent in E.A.No.225 of 2014 filed by the petitioner for stay. The first respondent is the owner of the suit property. The second respondent is tenant. The first respondent filed suit and obtained an order of eviction against the second respondent. The petitioner filed Civil Revision Petition in CRP(MD).No.1613 of 2004 stating that he is sub tenant and he is in possession of the service court and this Court, by an order dated 24.08.2004 granted interim stay in CMP.No.12735 of 2004. The first respondent filed vacate stay petition and represented that on 4.06.2004 itself



possession was taken through Court. Based on the said representation, CMP.No.12735 of 2004 was dismissed and stay was vacated. Subsequently, CRP.No.1613 of 2004 was dismissed on 10.09.2004. According to the first respondent, the petitioner illegally encroached the suit property on 03.09.2004. The petitioner filed E.A.No.124 of 2004 not to record delivery of possession. The first respondent filed a memo for re-delivery. The learned Judge considering the order of this Court and the fact that possession was taken by the first respondent on 04.06.2004 recorded the said delivery and dismissed E.A.No.124 of 2004 and returned the memo filed by the first respondent and terminated the execution petition.

3. The first respondent filed E.A.Nos.193 and 194 of 2014 to review the order dated 14.02.2014 and to restore the Execution Petition in E.P.No.78 of 2003, for ordering re-delivery. Both the applications were ordered. The petitioner filed E.A.Nos.226 and 225 of 2004 to recall the re delivery order and to stay the said order. The learned Judge by an order dated 10.10.2014 ordered notice to the respondents returnable by 15.10.2014. On 15.10.2014, the learned Judge recorded the fact that notice was served on the first respondent and notice to the second respondent was not served, ordered fresh notice to the second respondent returnable by 20.10.2014.

4. Against the said order, present Civil Revision Petition has been filed.

5. The learned counsel appearing for the petitioner submitted that unless the stay is granted, petitioner will be dis-possessed. The learned Judge erred in ordering notice instead of granting interim stay and prayed for allowing the Civil Revision Petition.

6. The learned counsel appearing for the first respondent submitted that first respondent obtained an order of eviction against the tenant / second respondent. The petitioner is not entitled to interim stay as a matter of right. The second respondent took possession as per the eviction order. The petitioner filed execution petition and also filed E.A.No.320 of 2003 claiming to be sub tenant under first respondent. The petitioner filed CRP.(MD).No.1613 of 2004 before this Court and the said Civil Revision Petition was dismissed by this Court on 10.09.2004. In view of the various objections filed by the petitioner, the first respondent could not take re-delivery. Subsequently, on petition filed by the first respondent re-delivery was ordered. The petitioner is challenging the order of notice. The petition for stay is pending enquiry. The Civil Revision Petition challenging the notice being ordered is not maintainable and prayed for dismissal of the Civil Revision Petition.



7. I have heard the learned counsel appearing for the petitioner and the first respondent and perused the materials available on record.

8. In the petition in E.A.No.225 of 20014, the learned Judge on 10.10.2014 ordered notice to the respondents returnable by 15.10.2014. On 15.10.2004 fresh notice was ordered to the second respondent as the notice sent to the second respondent was returned un served. The petitioner is challenging the said order. The learned counsel appearing for the petitioner is contending that the learned Judge ought to have granted stay instead of ordering notice. The said contention is untenable. It is discretionary powers of the Court to grant stay or order notice. In the present case, the learned Judge exercised his discretionary power and ordered only notice. From the notes paper it is seen that on 20.10.2014 the learned Judge has dispensed with the notice to second respondent as he remained ex parte in RCOP and posted E.A.No.225 of 2014 for enquiry on 28.10.2014. From that date onwards, the petition is pending for enquiry. In the circumstances, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

9. The learned Judge is directed to dispose of the E.A.No.225 of 2014 as expeditiously as possible in any event not later than 30th April. 2017.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif Court, Kumbakonam.

+1CC to M/S.P.Arun Jayatram, Advocate, SR.No. 10275

+1CC to M/S.K.Mahendran, Advocate, SR.No. 9967

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CMP(MD).No.7346 of 2016
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trp

AM/MR/SAR-2/13.04.2017/3P/4C