

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRP(NPD).No.10 of 2018

S. Selvaraj

... Petitioner/Petitioner/
Judgment Debtor/Respondent

Vs.

Gowri Ammal (Deceased)
Represented by her LR-R. Murugesan

... Respondent/Respondent/
Decree Holder/Petitioner

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside docket order of rejection of the petition in EASR 75273 of 2017 in E.P.No.570 of 2017 in RCOP.No.2906 of 1997 on 22.12.2017 on the ground that the petition filed under Section 47 of Civil Procedure Code is not maintainable.

For Petitioner : Mr.P.K. Sabapathi
For Respondent : Mr.A.V. Arun
for Sole Respondent
For Respondent : Mr. Neethe Perumal
Proposed For Impleading Petitioner

ORDER

Admittedly, the revision petitioner is a tenant and the respondent/landlord is a decree holder. The respondent/landlord filed a petition in R.C.O.P.No.2906 of 1997 on the file of the XIV Small Causes Court, Chennai, dated 28.06.2000 to evict the revision petitioner. The learned Rent Controller passed an order of eviction against the revision petitioner/tenant, against which, the revision petitioner preferred an Appeal before the learned Rent Control Appellate Authority in R.C.A.No.515 of 2000. The learned Rent Control Appellate Authority dismissed the Appeal and confirmed the order passed by the learned Rent Controller. Challenging the same, revision petition in C.R.P.No.1534 of 1999 has been filed by the revision petitioner/tenant and this Court, by order, dated 03.04.2000, confirmed the order passed by the Rent Control Appellate Authority. Pursuant thereto, the respondent/landlord filed an Execution Petition in E.P.No.570 of 2017 to execute the eviction order passed by the learned Rent Controller.

2. During the pendency of the Execution Proceedings, the revision petitioner filed an application in EASR.No.75273 of 2017 before the Execution Court, on the ground that the Execution Proceedings is not maintainable, as the respondent has got only 1/7th share, which is lesser

extent and the Executing Court, after giving an opportunity to the revision petitioner, rejected the Execution Application at the SR stage itself. Being aggrieved against the said dismissal order, the present Civil Revision Petition has been filed by the Tenant.

3. The learned counsel appearing for the petitioner would submit that the respondent/landlord has got only 1/7th share, since he has been allotted 1/7th share in the preliminary decree passed in O.S.No.5834 of 2000, whereas, he is occupying more than 1/7th share. Therefore, he cannot file the Execution Petition for a larger extent of the property. The Executing Court failed to consider this aspect. Therefore, the petitioner has approached this Court by way of this Revision Petition to set aside the order of rejection passed by the Executing Court in EASR No.75273 of 2017 in E.P.No.570 of 2017 in RCOP.No.2906 of 1997, dated 22.12.2017.

4. The learned counsel for the respondent/landlord would submit that though according to the revision petitioner particular portion has not been allotted to the respondent, since final decree is yet to be passed and the respondent, being co-owner of the property in dispute, is entitled to evict the tenant, and hence, filed the RCOP seeking for eviction of the tenant. It is his further contention that once tenancy is admitted, the

revision petitioner cannot say that the respondent is entitled to only to certain extents of the property till the passing of the final decree. Therefore, it is contended that the Execution Application filed by the revision petitioner is not maintainable and the Executing Court took note of all these aspects and rightly rejected the Execution Application even in the SR Stage, and the same does not warrant interference of this Court.

5. It is true that the respondent/landlord and the other persons are the co-owners of the property in dispute. The revision petitioner is a tenant in the petition mentioned premises. The respondent has filed an Eviction Petition in RCOP.No.2906 of 1997 to evict the revision petitioner and subsequently, the learned Rent Controller passed an order of eviction, and the same was also confirmed by the learned Rent Control Appellate Authority and when the order stood affirmed by this Court in Revision Petition. Since the respondent/landlord has obtained decree for eviction in his favour, he initiated execution proceedings. During the pendency of the execution proceedings, revision petitioner has filed an Execution Application under Section 47 of Civil Procedure Code on the ground that the Execution Proceedings is not maintainable, as the respondent has got only 1/7th share, which is a lesser extent. Further he would submit that he already entered into the sale agreement the suit for specific performance in

O.S.No.5834 of 2000 filed against the respondent. The said suit is pending on the file of the Fast Track Court No.I, Chennai. Therefore, if he succeeds in the suit for specific performance, then he has to take separate proceedings for recovery of possession. Hence, in order to avoid the multiplicity of proceedings, his right has to be decided under Section 47 and EP proceedings has to be dismissed.

6. Heard both sides and perused the records.

7. It is not in dispute that the respondent and others are co-owners of the property. The tenant is the petitioner herein. One of the co-owners got a decree for eviction and the Rent Control Appellate Authority confirmed the order of eviction in CRP.No.1534 of 1999. In the suit, till the final decree has not yet been passed and separate portion has not been earmarked to the respondent. Therefore, under these circumstances, the claim made by the revision petitioner is not sustainable. In the final decree only a portion of the respondent and other co-owners will be earmarked. Therefore, there is no illegality or infirmity found in the order passed by the EP Court. There is no merit in the revision petition and confirmed the docket order of rejection of the petition in EASR 75273 of 2017 in E.P.No.570 of 2017 in RCOP.No.2906 of 1997 on 22.12.2017 on the

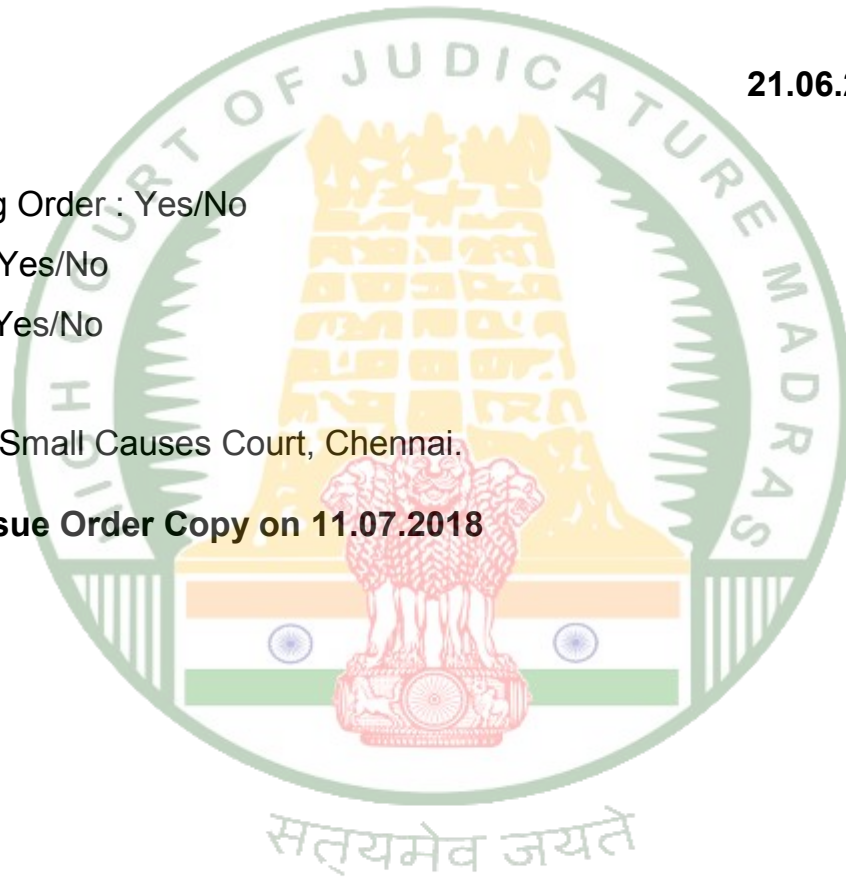
ground that the petition filed under Section 47 of Civil Procedure Code. Therefore, the revision petition is liable to be dismissed.

8. In the result, the Civil Revision Petition is dismissed. No cost.

21.06.2018

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Speaking Order : Yes/No
Index :Yes/No
Internet:Yes/No
To
The XIV Small Causes Court, Chennai.

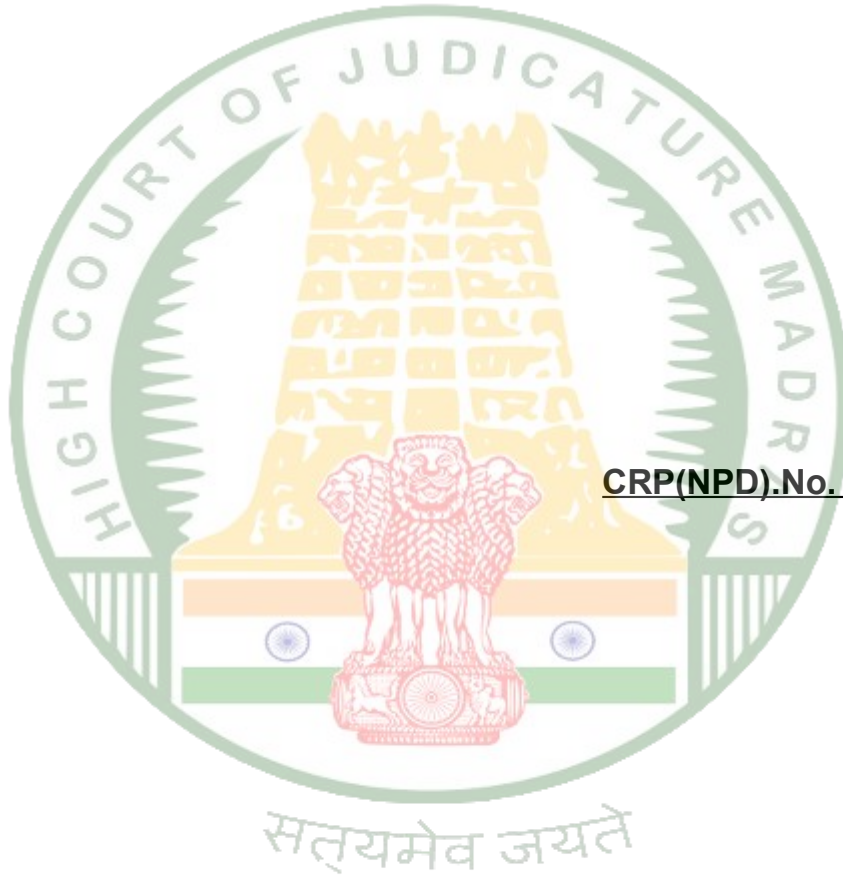
Note: Issue Order Copy on 11.07.2018



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P. VELMURUGAN, J.,

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