

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.11.2018

Pronounced on : 22.11.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

CRP.(NPD).Nos.2291 & 2292 of 2018

and

C.M.P.Nos.14338 & 14339 of 2018

1.Parvathi

2.S.Kannagi

3.D.Murugesan

.. Petitioners in both CRPs.

V.

1.Gowri Ammal

2.S.Selvaraj

.. Respondents in both CRPs.

COMMON PRAYER : Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 01.08.2018 made in E.A.Sr.Nos.41387 & 42862 of 2018 in E.P.No.570 of 2017 in RCOP No.2906 of 1997 on the file of the learned XIV Small Causes Court, Chennai respectively.

For Petitioners : Mr.R.Neethiperumal
For Respondent-1 : Mr.A.V.Arun

COMMON ORDER

The present revision petitions arise out of a common order passed in an application under Order 1 Rule 10 (2) of the Civil Procedure Code to implead the petitioners herein as necessary

parties in the execution proceedings in E.P.No.570 of 2017 and in another order under Order 21 Rule 26 to stay of further proceedings of the execution proceedings in E.P.No.570 of 2017. Since the aforesaid two applications were disposed of through a common order by the Execution Court, a common order is also passed in the present civil revision petitions.

2.Heard Mr.R.Neethiperumal, learned counsel for the petitioners and Mr.A.V.Arun, learned counsel appearing on behalf of the first respondent.

3.The brief facts of the case is that the original eviction petition in R.C.O.P. No.2906 of 1997 was filed by one Gowri Ammal against the second respondent herein. The eviction order passed therein was challenged by the second respondent herein in RCA.No.515 of 2000 and the same was allowed. As against the same, the CRP. (NPD) No.2962 of 2008 was filed and allowed on 05.10.2017. During the pendency of the Civil Revision Petition, the said Gowri Ammal died and one Murugesan and the daughters of Gowri Ammal were brought on record as second petitioner and respondents 10 & 11, respectively.

4.When the aforesaid Murugesan had filed an interim

application in E.A.No.121 of 2017 before the Execution Court, to permit him to file the execution proceedings against the second respondent herein, the same was allowed and consequently, the Execution proceedings in E.P.No.570 of 2017 came to be filed by the said Murugesan, in which the second respondent herein was shown as the respondent therein.

5.It is the contention of the petitioners herein that since they were impleaded as party respondents in CRP.No.2962 of 2008, they are also necessary parties in the Civil Revision Petition. It is also submitted that the right of the petitioners herein over the demised premises has been determined in a partition suit and a preliminary decree came to be passed. During the pendency of the present civil revision petition, a final decree has also been passed on 20.09.2018 and as against the same, the respondents herein claim to have filed an appeal, which is said to be pending.

6.The learned counsel for the petitioners submitted that since their right and title over the "demised premises" has already been determined by a way of a preliminary decree and a final decree, they are necessary and proper parties to the execution proceedings and therefore, the Execution Court was not justified in rejecting their claim to be impleaded as necessary parties in the execution

proceedings. In support of his contention, the learned counsel for the petitioners relied upon the decision of the Hon'ble Apex Court in ***M.M.Quasim V. Manohar Lal Sharma & Others*** reported in ***1981 SCR (3) 367*** and submitted that the subsequent event, which resulted in the change of ownership of the demised premises, ought to have been taken note of by the Execution Court.

7.The learned counsel for the first respondent on the other hand controverted the same and submitted that the question of title between the parties cannot be determined in a rent control proceedings and the option open to them is through independent proceedings and no rent control proceedings can be maintained on the strength of the final decree in the partition suit. In support of his submission, the learned counsel relied upon the decisions of the Hon'ble Apex Court in ***2002 (3) SCC 98 [J.J. Lal Pvt. Ltd., and others V. M.R.Murali and another]*** and ***2018 (4) CTC 547 [Kanaklata Das and others V. Naba Kumar Das and others]***.

8.Per contra, the learned counsel for the petitioners submitted that the aforesaid two judgments relied upon by the respondents are not applicable to the legal proposition in the present case, since the trial Court had already declared the title in final decree in favour of the petitioners, which would only go to show that the dispute

over the title was already established by the competent civil Court.

9.I have given careful considerations to the submissions made by the respective counsels.

10.The main ground on which the petitioners canvass their proposition is that they are necessary parties to the eviction proceedings as they were already made as party respondents before this Court in the proceedings in CRP.No.2692 of 2008 and that in view of the final decree passed in their favour determining their title over the demised premises, they can only be deemed to be necessary parties to the execution proceedings. In support of such submissions, the decision of the Hon'ble Apex Court reported in **1981 SCR (3) 367** was relied upon. In the aforesaid decision before the Hon'ble Apex Court, the case therein arose in an eviction proceedings under the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act of 1947 [herein after referred to as Bihar Rent Control Act]. While, discussing the scope and meaning of term "landlord" for the purpose of the eviction proceedings, the Hon'ble Apex Court held that the person in whose favour the subject properties were allotted would be deemed to be the "landlord" for the purpose of conducting the eviction proceedings. Section 11 of the Bihar Rent Control Act deals with the procedure for eviction of

tenants and the explanation to Section 11 excludes an agent from the definition of landlord. When the term "landlord" was sought to be explained in reference to the procedure for eviction of tenants, the Hon'ble Apex Court had taken into consideration the explanation to Section 11, which curtails the wide amplitude of the expression "landlord" and thereby held that when the property in question is allotted to a sharer upon a partition amongst co-sharers, as an exclusive owner, such a co-sharer would be entitled to evict the tenant through an eviction proceedings. The relevant portion of the said order reads as follows:-

"Have the first appellate court and the High Court acted in accordance with law in ignoring this subsequent event of vital importance ? The first appellate court, as pointed out earlier, proceeded to examine the contention on merits and rejected it on the ground that this being an event subsequent to the passing of the decree by the trial court, no notice could be taken of it, a view contrary to the law laid down by this Court. Same is true of the High Court when it said that even if the landlord who commenced action lost all interest in the property subsequent to the passing of the decree, the decree does not become a nullity and at any rate no note of the subsequent events can be taken in the absence of a proper application under order 41, rule 27, C.P.C. But the next observation of the High Court

that where the plaintiff landlord's interest in the property is extinguished subsequent to the decree by the trial court, he does not lose his right to maintain and continue the action, is opposed to the very scheme of the [Rent Act](#) and the provisions contained in [ss. 11\(1\)\(c\)](#) and [12](#). Both the courts were, therefore, clearly in error in ignoring this vital piece of evidence which goes to the root of the matter and would surely non-suit the plaintiffs.

Once this subsequent event of landlord's interest in the property getting extinguished as the property in question is allotted as an exclusive owner to a sharer upon a partition amongst co-sharers, is properly evaluated, unless some proper explanation is offered by the landlords who are parties to the proceedings, the plaintiffs are liable to be non-suited. This does not require much of a discussion because plaintiffs sought possession for personal requirement of respondent 1 Manohar Lal Sharma. Manohar Lal Sharma wanted to start his clinic, as he is a qualified medical practitioner, in the suit premises. Manohar Lal Sharma is neither an owner nor a co-owner nor he has any interest in the suit property since the date of partition effected by compromise between the co-sharers in Suit No. 4/75. If action were to start today a or day after the decree for partition, could

Manohar Lal Sharma ever file a suit for evicting the present appellant from the suit shop on the ground that he wanted to start his clinic in the suit shop ? If Manoharlal Sharma can bring such an action he can as well evict any tenant from any premises with which he has no connection. Even if at the commencement of the action Manoharlal Sharma was a co-owner alongwith his brother and uncle and, therefore, he had a semblance of title to commence action for eviction, once the co-owner parted company, partitioned property by metes and bounds and the suit property came to be allotted to Pyarelal as an exclusive owner. Manoharlal Sharma cannot claim eviction of the tenant from such property in which he has no subsisting interest. And even if this event occurred subsequent to the passing of the decree by the trial court, this subsequent event should have been noticed at the appellate stage because the appeal is nothing else but a continuation of the suit and in a proceeding under the [Rent Act](#) the relief has to be moulded according to the situation on the date of the decree; the decree would mean the decree which is final and not correctible by any judicial proceeding. Manoharlal Sharma, therefore, cannot seek to evict the tenant for his personal requirement. Therefore, the suit for eviction under s.11(1)(c) would ordinarily fail on this ground. However, as the fresh evidence is being

taken into consideration and as both the appellate courts and the High Court, have erred in approaching the matter by ignoring the subsequent event, it would be presently pointed out that in order to do justice between the parties the matter will have to be remanded to the first appellate court.

11. But, as pointed out by the learned counsel for the first respondent, the explanation to the provision for eviction of tenants under Section 11 of the Bihar Rent Control Act is conspicuously absent in the provision for eviction under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The observation of the Hon'ble Apex Court in the aforesaid decision came to be made in lieu of the explanation clause in Section 11 of the Bihar Rent Control Act. If such an explanation has not been incorporated in Section 11 of the Bihar Rent Control Act, the Hon'ble Apex Court would not have rendered such a finding to include the subsequent allottees of the subject properties as a party entitled to initiate eviction proceedings. The justification of such a finding by the Hon'ble Apex Court by laying emphasis on the explanation clause in Section 11 could be comprehended through the following observations in the same decision:

"The inclusive definition is couched in very wide language. However this wide amplitude of

the expression has been cut down by the explanation appended to sub-clause (c) of sub-section (1) of s. 11 which reads as under:

"11. Eviction of tenants:

(a) Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Dispute Act, 1947 and to those of section 12, where a tenant is in possession of any building, he shall not be liable to eviction there-from except in execution of a decree passed by the Court on one or more of the following grounds:-

.....

(c) Where the building is reasonably and in good faith required by the landlord for his own occupation or for the occupation of any person for whose benefit the building is held by the landlord;

Provided that where the Court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the building and allowing the tenant to continue occupation of the rest and the tenant agrees to such occupation the Court shall pass a decree accordingly, and fix proportionately fair rent for the portion in occupation of the tenant, which portion

shall thenceforth constitute the building within the meaning of clause (aa) of [section 2](#), and the rent so fixed shall be deemed to be the fair rent fixed under [section 5](#);

Explanation: In this clause the word "landlord" shall not include an agent referred to in clause (d) of [section 2](#)."

Therefore, while taking advantage of the enabling provision enacted in s.11 (1) (c), the person claiming possession on the ground of his reasonable requirement of the leased building must show that he is a landlord in the sense that he is owner of the building and has a right to occupy the same in his own right. A mere rent collector, though may be included in the expression landlord in its wide amplitude cannot be treated as a landlord for the purposes of [s. 11 \(1\) \(c\)](#). This becomes manifestly clear from the explanation appended to the sub-section. By restricting the meaning of expression landlord for the purpose of [section 11\(1\)\(c\)](#), the legislature manifested its intention namely that landlord alone can seek eviction on the ground of his personal requirement if he is one who has a right against the whole world to occupy the building himself and exclude any one holding a title lesser than his own. Such landlord who is an owner and who would have a right to occupy the building in his own right, can seek possession for his own

use. The latter part of the section envisages a situation where the landlord is holding the buildings for the benefit of some other person but in that case landlord can seek to evict tenant not for his personal use but for the personal requirement of that person for whose benefit he holds the building. The second clause contemplates a situation of trustees and cesti que trust but when the case is governed by the first part of sub clause (c) of sub-section (1) of s.11, the person claiming possession for personal requirement must be such a landlord who wants possession for his own occupation and this would imply that he must be a person who has a right to remain in occupation against the whole world and not someone who has no subsisting interest in the property and is merely a rent collector such as an agent, executor, administrator or a receiver of the property. For the purposes of s. 11(1)(c) the expression landlord could, therefore, mean a person who is the owner of the building and who has a right to remain in occupation and actual possession of the building to the exclusion of everyone else. It is such a person who can seek to evict the tenant on the ground that he requires possession in good faith for his own occupation. A rent collector or an agent is not entitled to occupy the house in his own right. Even if such a person be a lessor and, therefore, a landlord within the expanded inclusive definition of the expression

landlord, nonetheless he cannot seek to evict the tenant on the ground that he wants to personally occupy the house. He cannot claim such a right against the real owner and as a necessary corollary he cannot seek to evict the tenant on the ground that he wants possession of the premises for his own occupation. That can be the only reasonable interpretation one can put on the ingredients of sub-clause (c) of s. 11(1) which reads:

"Where building is reasonably and in good faith required by the landlord for his own occupation.. "

Assuming that the expression 'landlord' has to be understood with the same connotation as is spelt out by the definition clause, even a rent collector or a receiver of the property appointed by the Court in bankruptcy proceedings would be able to evict the tenant alleging that wants the building for his own occupation, a right which he could not have claimed against the real owner. Therefore, the explanation to clause (d) which cuts down the wide amplitude of the expression 'landlord' would unmistakably show that for the purposes of clause (c) such landlord who in the sense in which the word 'owner' is understood can claim as of right to the exclusion of everyone, to occupy the house, would be entitled to evict the tenant for his own occupation."

Thus, it is seen that it is only because of the explanation clause in

Bihar Rent Control Act that the Hon'ble Apex Court had held as above, which explanation is not available under the Tamil Nadu Buildings (Lease and Rent Control) Act and as such, the aforesaid decision may not be applicable to the facts of the petitioner's case.

12.This leads us to the next question as to, what could be the remedy available to the petitioners herein, who have the benefit of a decree establishing their title over the said properties.

13.It is seen that as against the final decree passed in the partition suit, the respondents herein has also filed an appeal which is said to be pending. The dispute with regard to the allotment of share is now the subject matter of the Appeal Suit and the demur between the parties therein requires to be determined. In the decision cited by the learned counsel for the first respondent in **2018 (4) CTC 547 [Kanaklata Das and others V. Naba Kumar Das and others]**, the Hon'ble Apex Court had held that such a inter-se dispute between the parties of the civil suit cannot be decided in a rent control proceedings and that, such claims can only be made through an independent civil suit. The relevant portion of the decision reads as hereunder:

"11. There are some well-settled principles of law on the question involved in this appeal,

which need to be taken into consideration while deciding the question arose in this appeal. These principles are mentioned infra.

12. First, in an eviction suit filed by the plaintiff (Landlord) against the defendant(Tenant) under the State Rent Act, the landlord and tenant are the only necessary parties.

13. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.

14. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff-landlord has sought defendant's-tenant's eviction under the Rent Act exists. When these two things are proved, eviction suit succeeds.

15. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any

ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds.

16. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (*See-Dr. Ranbir Singh vs. Asharfi Lal*, 1995(6) SCC 580).

17. Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively.

18. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. (*See-Ruma Chakraborty vs. Sudha Rani Banerjee & Anr.*, 2005(8) SCC 140)

19. Fifth, a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is

necessary for a complete and final decision on the question involved in the proceeding. (See- Udit Narain Singh Malpaharia vs. Additional Member Board of Revenue, Bihar & Anr., AIR 1963 786)

20. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, it is not necessary that all the owners/landlords should join in filing the eviction suit against the tenant. (See-Kasthuri Radhakrishnan & Ors. vs. M. Chinnayan & Anr., 2016(3) SCC 296)

21. Keeping in mind the aforementioned well settled principles of law and on examining the legality of the impugned order, we find that the impugned order is not legally sustainable and hence deserves to be set aside.

22. In our considered opinion, respondent No. 1, who claims to be the co-sharer or/and co-owner with the plaintiffs (appellants herein) of the suit property is neither a necessary and nor a proper party in the eviction suit of the appellants against respondent Nos. 2 to 5. In other words, such eviction suit can be decreed or dismissed on merits even without the impleadment of respondent No.1.

23. In the eviction suit, the question of title or the extent of the shares held by the appellants and respondent No. 1 against each other in the

suit premises cannot be decided and nor can be made the subject matter for its determination.

24. The reason being that this is not a suit between the appellants (plaintiffs) and respondent No.1 where their inter se rights relating to the suit premises can be gone into but rather is an ejection suit filed by the appellants against respondent Nos. 2 to 5 for their eviction from the suit premises.

25. Therefore, the Lis in the suit is between the appellants on the one hand and respondent Nos. 2 to 5 on the other hand and the decision in the suit would depend upon the question as to whether there exists any relationship of landlord and tenant between the appellants and respondent Nos. 2 to 5 in relation to the suit premises and, if so, whether the grounds pleaded in the plaint for claiming eviction of respondent Nos. 2 to 5 are established or not. For deciding these two main questions, the presence of respondent No. 1 is not necessary.

26. For these reasons, we are of the considered opinion that respondent No. 1 is neither a necessary and nor a proper party in the suit.

27. We, however, make it clear that any finding whether directly or indirectly, if recorded by the Trial Court touching the question of title over the suit property, would not be binding on respondent No.1 regardless of the outcome of the

suit and respondent No. 1 would be free to file an independent civil suit against the appellants for a declaration of his right, title and interest in the suit premises and in any other properties, if so, and claim partition and separate possession of his share by metes and bounds in all such properties."

14. Likewise, in the decision reported in **2002 (3) SCC 98 [J.J. Lal Pvt. Ltd., and others V. M.R.Murali and another]**, a similar proposition was also held as follows:

"I.A. Nos.33-36 of 2001

26.Hemlata Mohan, the applicant in these IAs seeks her impleadment in these proceedings submitting that on the basis of the Will dated 30.1.1935 executed by her grand-father she is one of the landlords entitled to apportionment of rent. A suit for establishment of her title and share in the property is pending in Madras High Court registered as Civil Suit No.452 of 1988.

I.A. Nos. 41 to 44 of 2001

27.These applications are filed by Municipal Corporation of Chennai seeking its impleadment in the proceedings alleging that the two premises, Door Nos.244 and 264, subject-matter of litigation in these proceedings are owned by it

and therefore it needs to be impleaded as party in these appeals.

28.Both the sets of applications raise such controversies as are beyond the scope of these proceedings. This is a simple landlord- tenant suit. The relationship of Municipal Corporation with the respondents and their mutual rights and obligations are not germane to the present proceedings. Similarly, the question of title between Hemlata Mohan and the respondents cannot be decided in these proceedings. The impleadment of any of the two applicants would change the complexion of litigation and raise such controversies as are beyond the scope of this litigation. The presence of either of the applicants is neither necessary for the decision of the question involved in these proceedings nor their presence is necessary to enable the court effectually and completely to adjudicate upon and settle the questions involved in these proceedings. They are neither necessary nor proper parties. Any decision in these proceedings would govern and bind the parties herein. Each of the two applicants is free to establish its own claims and title whatever it may be in any independent proceedings before a competent forum. The applications for impleadment are dismissed.”

15.In the light of the above decisions and the findings of this

Court, it can only be observed that the rights of the petitioners herein over the suit property are protected, since such a right to seek for possession of the demised premises is always available to them by a separate independent proceedings and as such, their impleadment in the present execution proceedings is not warranted. While that being so, I do not find any infirmity in the order of the Execution Court, rejecting the prayers for impleading the petitioners herein as necessary parties in the execution proceedings and for staying the execution proceedings. In result of such a finding, both the Civil Revision Petitions stand dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

22.11.2018

Index : Yes
Order :Speaking

DP

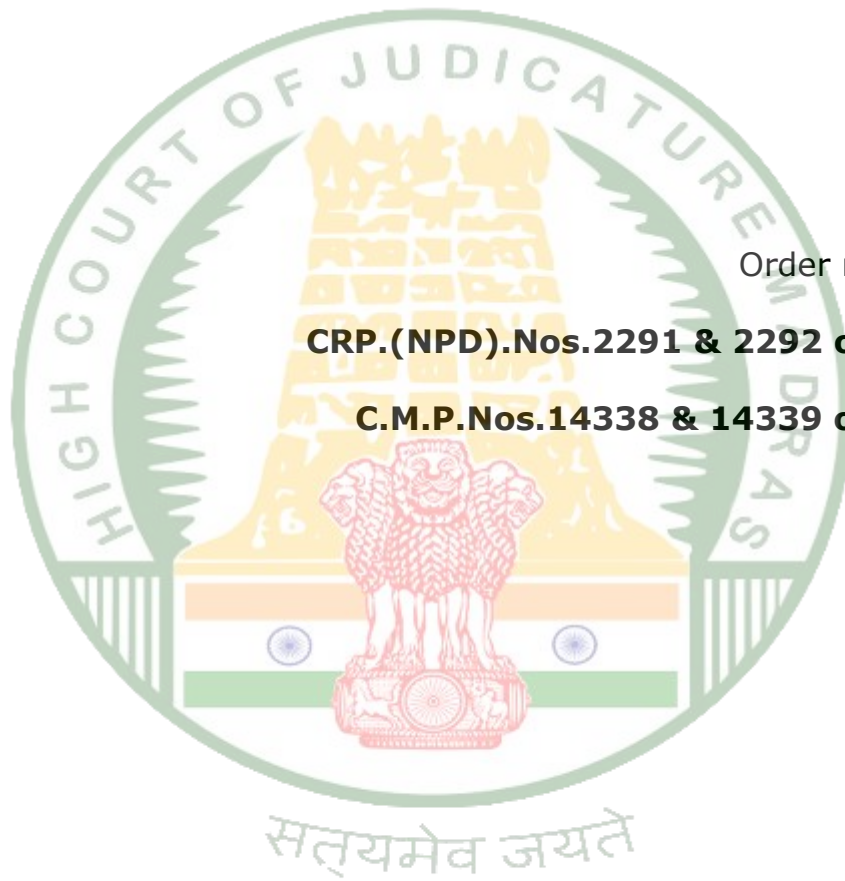
To

The XIV Small Causes Court,
Chennai.

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M.S.RAMESH, J.

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Order made in

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