

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3069 of 2015
and M.P.No.1 of 2015

V.Selvaraj

.. Petitioner

Vs.

Variakannu Thevar (deceased)

- 1.Palanivel
- 2.V.Krishnamoorthy
- 3.Kannagi
- 4.Kalaiselvi
- 5.Lalitha
- 6.Hemavathy
- 7.S.Ramya
- 8.Devadoss
- 9.Nandakumar
- 10.Latha
- 11.Ramesh Chand
- 12.Moolchand Jain
- 13.Devichand
- 14.Devaki
- 15.Karthikeyan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated

16.04.2015 made in I.A.No.16949 of 2014 in O.S.No.3358 of 2001 on the file of the VII Assistant City Civil Court, Chennai.

For Petitioner : Mr.G.Thangavel

For R1 to R10 : No appearance

For R11 to R13 : Mr.Vikram V.Jain

R14 and R15 : Not ready in notice

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 16.04.2015 made in I.A.No.16949 of 2014 in O.S.No.3358 of 2001 on the file of the VII Assistant City Civil Court, Chennai.

2. The petitioner is third defendant, respondents 1 to 10 are the defendants 5 to 14, respondents 11 to 13 are the plaintiffs and respondents 14 & 15 are the defendants 1 & 2 in O.S.No.3358 of 2001 on the file of the VII Assistant City Civil Court, Chennai. The respondents 11 to 13 filed the said suit for a direction to the petitioner and respondents 1 to 10 to handover the vacant possession of the lands in their possession to the respondents 11 to 13.

3. The petitioner filed I.A.No.14502 of 2012 under Section 9 of the Tamil Nadu City Tenants Protection Act. The said application was taken up along with other three I.A.Nos.14499 to 14501 of 2001 filed by the respondents 14, 15 and the deceased Vairakkannuthevar, who is the 4th defendant in the suit. The learned Judge by common order dated 12.10.2004, held that the petitioner and other tenants are entitled to benefits under the Tamil Nadu City Tenants Protection Act and fixed the market value at Rs.690/- per sq.ft. in respect of the portions under the occupation of the respective tenants and they were directed to pay the amount so fixed without interest in ten equal quarterly instalments commencing from 1.1.2005. The value of the land measuring 869 sq.ft. in possession of the petitioner was fixed at Rs.5,79,480/-. The petitioner challenged the said order by filing C.M.A.No.149 of 2005. The said C.M.A. was dismissed on 18.03.2008. Against the said judgment, the petitioner filed C.R.P.No.970 of 2009 before this Court. This Court by order dated 29.09.2009 remitted the C.M.A. to III Additional City Civil Court, Chennai. The said C.M.A. was restored and argued by both the parties.

4. The learned Appellate Judge by judgment dated 30.03.2010 dismissed C.M.A.No.149 of 2005 filed by the petitioner. The petitioner did not challenge the said judgment dated 30.03.2010. The petitioner, who is one of the legal heirs of Vairakkannu Thevar/4th defendant along with his other legal heirs filed the present I.A.No.16949 of 2014 for permission to deposit the amount being the value of land as per the order made in I.A.No.14501 of 2001 for Rs.7,32,090/- and I.A.No.14502 of 2001 for Rs.5,79,480/-, dated 12.10.2004.

5. The respondents 11 to 13 filed counter affidavit and opposed the said application. The respondents 11 to 13 relied on the order of this Court dated 24.09.2014 made in C.M.P.No.1 of 2012 in C.R.P.(PD)No.3274 of 2009 and contended that the petitioner and other legal heirs of the 4th defendant were not vigilant enough in complying with the order passed in the applications under Section 9 of the Tamil Nadu City Tenants Protection Act. They failed to deposit the amount and their intention is only to drag on the proceedings.

6. The learned Judge considering the averments made in the affidavit, counter affidavit, materials available on record and the judgment reported in 2006 (12) SCC 390 (Thirunavukkarasu Mudaliar vs. Gopal Naidu) relied on by the learned counsel for the respondents 11 to 13, dismissed the application.

7. Against the said order of dismissal dated 16.04.2015 made in I.A.No.16949 of 2014 in O.S.No.3358 of 2001, the present Civil Revision Petition is filed by the petitioner.

8. The learned counsel for the petitioner submitted that the learned Judge has not properly appreciated the facts of the case. The petitioner has filed the present application only to comply with the order dated 12.10.2004 directing him to deposit the value of the land. The respondents 11 to 13 filed counter in C.R.P.No.3274 of 2009 on 15.09.2014 and the final order was passed in the said Civil Revision Petition only on 24.09.2014 and a copy of the order in the Civil Revision Petition was made ready on 30.10.2014. The petitioner filed the present application along with the legal heirs of the deceased 4th defendant on 21.11.2014 within 30 days.

9. Per contra, the learned counsel for the respondents 11 to 13 submitted that the petitioner was directed to deposit a sum of Rs.5,79,480/- in ten equal quarterly instalments starting from 01.01.2005. C.M.A.No.149 of 2005 filed by the petitioner was dismissed on 30.03.2010. The petitioner did not file any appeal challenging the said judgment. The petitioner has failed to pay the amount so fixed by the trial Court even after dismissal of C.M.A. and it has become final. C.R.P.No.3274 of 2009 filed by the petitioner and the legal heirs of Vairakkannu Thevar/4th defendant was dismissed for default. The petitioner and other legal heirs of the said Vairakkannu Thevar filed C.M.P.No.1 of 2012 for restoration of C.R.P.No.3274 of 2009. The respondents 11 to 13 filed counter in the said C.M.P. for restoration of C.R.P. This Court by order dated 24.09.2014 considering the materials available on record, dismissed the C.M.P. holding that the legal heirs of the deceased Vairakkannu Thevar including the petitioner were not vigilant enough to deposit the amount fixed by the trial Court. In view of the said finding, the contention of the learned counsel for the petitioner that the petitioner was waiting for the final order is not valid and prayed for dismissal of the Civil Revision Petition.

10. Heard the learned counsel for the petitioner as well as the respondents 11 to 13 and perused the materials available on record.

11. It is an admitted fact that the petitioner was a tenant in respect of the vacant land belonging to the respondents 11 to 13 and petitioner's father Vairakkannu Thevar/4th defendant and others were tenants in respect of other portions. The petitioner was directed to pay the market value as fixed by the trial Court. Challenging the order of the learned Judge fixing the amount, the petitioner filed C.M.A.No.149 of 2005 and the same was dismissed on 30.03.2010. Even after the dismissal of the said C.M.A., the petitioner did not deposit the amount so fixed by the trial Court. There is no material produced by the petitioner to show that the learned Appellate Judge or this Court granted interim stay pending C.M.A. and C.R.P. In view of the above facts, the petitioner is not entitled to deposit the amount fixed by the Court in respect of the portion under his occupation.

12. From the materials available on record, it is seen that the petitioner has filed C.R.P.No.3274 of 2009 as one of the legal heirs of Vairakkannu Thevar/4th defendant along with other legal heirs

challenging the amount fixed by the trial Court directing the 4th defendant to deposit the amount. Challenging the said order, 4th defendant/Vairakkannu Thevar filed C.M.A.No.148 of 2005 and the same was dismissed. In C.R.P.No.3274 of 2009, an objection was raised by the respondents 11 to 13 that the said Civil Revision Petition is not maintainable and only C.M.S.A. is proper remedy. The petition filed to convert C.M.A. to C.M.S.A. was dismissed. C.R.P.No.3274 of 2009 itself was dismissed for default. The petitioner and other legal heirs of 4th defendant/Vairakkannu Thevar filed C.M.P.No.1 of 2012 to restore C.R.P.No.3274 of 2009. This Court by order dated 24.09.2014 dismissed C.M.P.No.1 of 2012 and by elaborate order, this Court held that the petitioner and other legal heirs of Vairakkannu Thevar/4th defendant were not vigilant enough to deposit the amount fixed by the trial Court.

13. It is not the case of the petitioner that the Appellate Court or this Court granted stay of order fixing the market value and directing the petitioner and other tenants to deposit the amount. The trial Court has fixed market value on 12.10.2004. Considering that fact also the petitioner is not entitled to permission to deposit the amount. The contention of the learned counsel for the petitioner

that petitioner was waiting for final order in C.R.P.No.3274 of 2009 and immediately after final order passed in the said C.R.P., filed present application, is without merits. This Court dismissed the Civil Revision Petition on 01.12.2011 for non prosecution. C.M.P.No.1 of 2012 filed by the petitioner and other legal heirs of the 4th defendant/Vairakkannu Thevar, for restoration of C.R.P.No.3274 of 2009, was dismissed by this Court holding that the petitioner and other tenants were not vigilant enough in complying with the order of the trial Court within the time limit. This Court has further held that the intention of the petitioner and other legal heirs is only to drag on the proceedings.

14. Considering the above facts, it is clear that the intention of the petitioner and other legal heirs of Vairakkannu Thevar in not complying with the order of the trial Court directing them to deposit the amount fixed, is only to drag on the proceedings. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 16.04.2015.

15. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.02.2018

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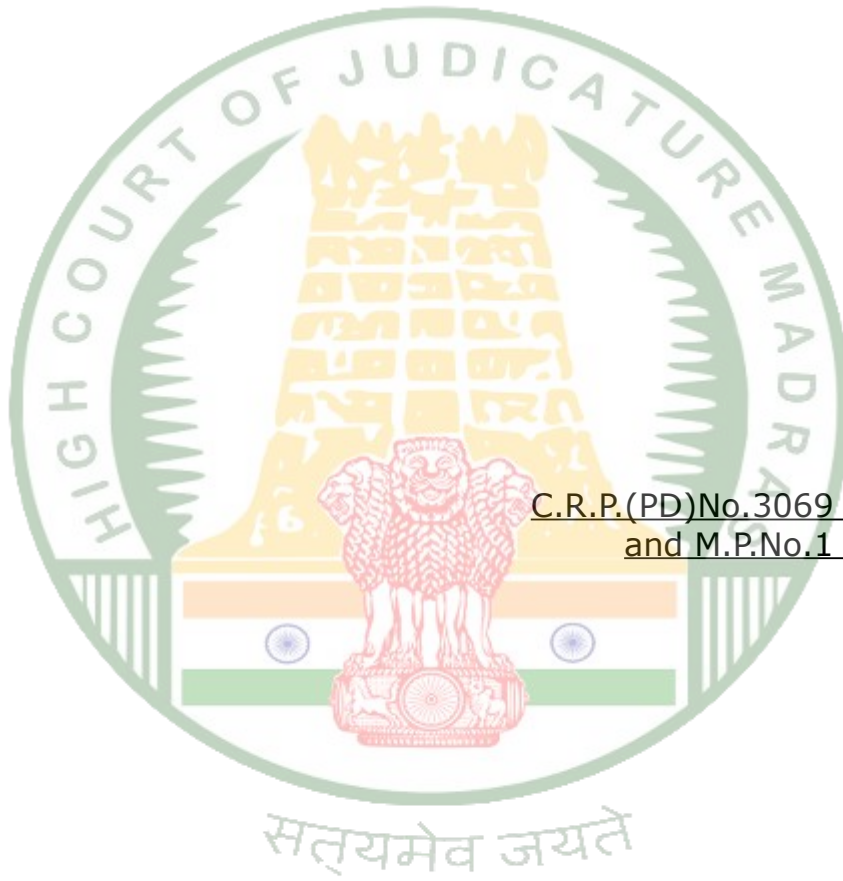
To
The Additional Special Judge, Krishnagiri.



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V.M.VELUMANI,J.

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