

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.3.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.745 of 2018 and C.M.P.No.3785 of 2018

C.K.Gnanavel ... Petitioner/Third Party

Vs

1 C.P.Ganapathi Subramanian Respondent/Decree Holder

2 R.Selvi Respondent/Tenant

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order, dated 12.01.2018 made in E.A.CFR.No.330 of 2018 in E.P.No.35 of 2012 in R.C.O.P.No.2 of 2004 on the file of the District Munsif, Dharapuram.

For Petitioner : Mr.R.Selvakumar
For Respondent No.1 : Mr.C.R.Prasanan
For Respondent No.2 : No appearance

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ORDER

According to the petitioner, the petitioner has filed an application in E.A.CFR.No.330 of 2018 in E.P.No.35 of 2012 in R.C.O.P.No.2 of 2004 under Order XXI Rule 97, 101 and 106 & Sec.151 of C.P.C. to set aside the

order passed on 5.7.2016 in E.P.No.35 of 2012 and restore the proceedings. The court below without numbering the application returned the same. Challenging the same, the petitioner has preferred the Civil revision petition before this Court.

2 According to the learned counsel for the petitioner, the petitioner is in possession of the property as subtenant since 2007 on the strength of assignment deed, dated 29.3.2007 and therefore, he is necessary party in R.C.O.P.No.2 of 2004. The court below erroneously returned the application as not maintainable and the same is liable to be set aside.

3 The learned counsel for the respondent would submit that the application filed by the petitioner is not maintainable in the light of the decision of this court as well as Hon'ble Supreme Court. Further, it is submitted that Amin has executed warrant and delivery of possession has also been taken and for recording the delivery of possession, E.P. was posted on 15.3.2018. Therefore, the order passed by the court below is perfectly valid in law and the Civil revision petition is liable to be dismissed.

4 In the facts and circumstances of the case, in the light of the decision of this court in **K.VENKATESAN & OTHERS VS. E.HEMATHARAJ** [CDJ

2016 MHC 5629] the court below has to number the application and thereafter, decide the maintainability of the said application after hearing both side.

5 Therefore, by consent of parties, this Court is inclined to pass the following order:

(i) The order, passed in E.A.CFR.No.330 of 2018 in E.P.No.35 of 2012 in R.C.O.P.No.2 of 2004, dated 12.01.2018 is set aside and remanded to the court below to number the application, if it is otherwise in order.

(ii) The respondent is permitted to file counter affidavit if so advised, within a period of one week thereafter.

(iii) After filing counter affidavit by the respondent, executing court is directed to dispose of E.A. of 2018 in E.P.No.35 of 2012 in R.C.O.P.No.2 of 2004, by considering the maintainability of the application within a period of two months from the date of receipt of copy of this order after providing opportunities to the parties.

6 The Civil revision petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

13.03.2018

D.KRISHNAKUMAR,J.

vaan

Index: Yes/No

vaan

Note: Issue order copy on 15.3.2018

To

The District Munsif, Dharapuram.



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and C.M.P.No.3785 of 2018**

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