



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (NPD) (MD) No.294 of 2014

and

M.P. (MD) No.1 of 2014

Rengasamy : Petitioner

Vs.

1.Tamil Selvi

2.G.Ramesh

: Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the order and decree passed dated 23.07.2013, made in E.A.No.30 of 2012 in E.P.No.5 of 2012 in R.C.O.P.No.1 of 2011 on the file of the District Munsif cum Judicial Magistrate, Papanasam, Thanjavur.

For Petitioner : Mr.G.Gomathi Shankar

For R1 : Mr.T.Sekar

For R2 : Mr.S.Venkatesan

ORDER

The third party obstructor in execution proceedings, who has filed a petition under Order 21 Rule 97 of CPC, is the revision petitioner in this civil revision petition.

2.The brief facts that are necessary for the purpose of disposing this petition are as follows:

2.1.The first respondent is the owner of the premises bearing D.No.23/01 (Old) / 78 (New) in Ammapettai, Komuttikulam, Neduvasal Village. Stating that the second respondent herein took the property on lease from the first respondent, the first respondent filed R.C.O.P.No.1 of 2011 on the file of Rent Controller cum District Munsif Court - Judicial Magistrate Court, Papanasam for eviction on the ground of wilful default and owner's occupation. The petition for eviction in R.C.O.P.No. 1 of 2011 was allowed by order dated 27.09.2011. Though it was an ex parte order, no petition was filed by the second respondent to set aside the ex parte order.

2.2.Pursuant to the order of eviction, the first respondent filed execution petition in E.P.No.5 of 2012 in R.C.O.P.No.1 of 2011 for delivery of possession through Court. The execution petition was allowed on 27.02.2012 and that the Executing Court directed delivery by 16.03.2012. It is, at this stage, the revision petitioner filed E.A.No.30 of 2013 in E.P.No.5 of 2012 to record his obstruction under Order 21 Rule 97 of CPC r/w Section 151 of CPC and the same was dismissed. Aggrieved by the same, the above Civil Revision Petition has been filed.

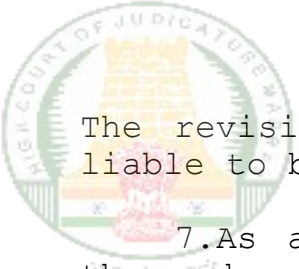


3.It is also the case of the revision petitioner that the first respondent is the owner of the premises. It is the further case of the revision petitioner that the second respondent is not the tenant, but the revision petitioner has taken the property on lease and carrying on business. It is further contended by the revision petitioner that for the purpose of vacating the revision petitioner fraudulently, the petition for eviction was filed by the first respondent against the second respondent, who has no right over the demised property.

4.The petition in E.A.No.30 of 2013, was opposed by the first respondent on the ground that the petition is not sustainable, as the revision petitioner has filed the petition in collusion with the second respondent. It is further contended by the first respondent that the lease was granted only in favour of the second respondent and that only for the purpose of obstructing the delivery, the revision petitioner has come forward with a false case, as if he is a tenant.

5.The revision petitioner in this case has admitted that a suit in O.S.No.15 of 2011 was filed. The Executing Court found that the revision petitioner has not proved his right as a tenant and the tenant-landlord relationship between the revision petitioner and the first respondent and held that the petition filed by the revision petitioner is not maintainable. The trial Court found that the obstructor, namely, the revision petitioner who has examined himself as DW-1 has admitted in his cross examination that the suit in O.S.No.15 of 2011 was in respect of the demised property and that the first respondent, who is the owner, is not a party to the suit. It is further admitted by DW-1 that in the earlier suit, the revision petitioner has taken a stand that the premises belonged to one Gopalakrishnan. The stand taken by the revision petitioner in the obstruction petition claiming tenancy under the first respondent cannot be believed as he claimed tenancy under different person in the suit. The conduct of the revision petitioner is also assessed by the lower Court, while dismissing the petition filed by the revision petitioner under Order 21 Rule 97 of CPC.

6.In an obstruction petition, the burden lies on the obstructor to prove his independent right. The second respondent seems to be the brother of the revision petitioner. By producing some documents to show that the revision petitioner is carrying on business in the demised premises, the revision petitioner has come forward with a petition claiming independent right under the first respondent. However, nothing was produced by the revision petitioner to prove the landlord-tenant relationship between the revision petitioner and the first respondent. The lease agreement entered into between the first respondent as landlord and the second respondent as tenant is produced before the Rent Controller, which is also evident from the petition in R.C.O.P.No.1 of 2011. In such circumstances, this Court do not find any reason to interfere with the order of lower Court.



The revision petitioner has no right and hence, the petition is liable to be dismissed.

7.As a result, this Civil Revision Petition is dismissed and the order passed in E.A.No.13 of 2012 in E.P.No.5 of 2012, dated 27.07.2013, by the Rent Controller cum District Munsif cum Judicial Magistrate, Papanasam is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1.The District Munsif cum Judicial Magistrate,
Papanasam, Thanjavur.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1CC to Mr.G.Gomathi Shankar, Advocate, SR.No.64615

C.R.P. (NPD) (MD) No.294 of 2014
27.04.2018

CMR
ES/SKN/RSK/SAR 4/13.06.2018/3P/5C