



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD) Nos.1571 & 1861 of 2018 (PD)

and

CMP (MD) No.8133 of 2018

J.Sarulatha

... Petitioners in both cases

Vs.

P.R.Ramakrishnan (died)

1.Sabitha

2.R.Krishnamoni

3.J.Rajkannan

... Respondents in both cases

Prayer in CRP (MD) No.1571 of 2018 : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the excutable order and fair order dated 27.06.2018 passed in E.A No.176 of 2018 in E.P No.26 of 2016 in RCOP No.209 of 2015 by the Additional District Munsif, Madurai Town.

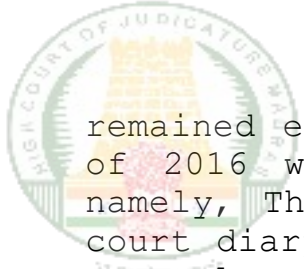
Prayer in CRP (MD) No.1861 of 2018 : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 27.06.2018 passed in E.P No.26 of 2016 in RCOP No.209 of 2015 by the Additional District Munsif, Madurai Town.
In both cases :

For Petitioner : Mrs.Chitra Sampath,
Senior Counsel for Mr.Babu Rajendran
For Respondents : Mrs.N.Krishnaveni, Senior Counsel
for Mr.S.Mahesh Babu for R1&R2

R3- No appearance.

COMMON ORDER

RCOP No.209 of 2015 was filed by one P.R.Ramakrishnan against one J.Rajkannan before the Additional Rent Controller / Additional District Munsif Court, Madurai Town under Section 10(2)(1) of Family Nadu Buildings (Lease and Rent) Control Act for evicting him. It was allowed on 18.10.2016 after the said Rajkannan

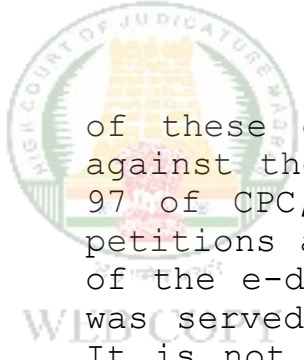


remained exparte. To execute the said eviction order, E.P No.26 of 2016 was filed. The respondent in the execution petition namely, Thiru.J.Rajkannan appeared in person on 20.03.2017. The court diary extract reads that Vakalat was filed on his behalf by counsel. Since there was no representation in the subsequent hearings on behalf of Rajkannan, he was set exparte. In the meanwhile, on 17.09.2016, the said P.R.Ramakrishnan passed away. His legal representatives namely, Ms.Sabitha and Krishnamoni were impleaded and brought on record. Delivery was ordered on 26.04.2018 and it was effected on 06.06.2018 with police aid.

2.At this stage, the revision petitioner herein, namely, Mrs.J.Sarulatha wife of J.Rajkannan filed E.A No.176 of 2018. She put forth the claim that in the property which belonged to Shri.P.R.Ramakrishnan, her father-in-law Mr.Jeyakannan was inducted as a tenant. After his demise, the petitioner's husband J.Rajkannan was doing business in the very same premise and was recognised as a tenant. This was the position that continued upto 2007. After 2007, Thiru.Rajkannan was not doing business in the premises. The revision petitioner was inducted as a tenant by the said P.R.Ramakrishnan. Oral lease was entered into between them. Since a higher rent was demanded in the year 2015, a lease agreement was entered into between the revision petitioner and the said P.R.Ramakrishnan on 29.04.2015. The revision petitioner had agreed to pay enhanced rent of Rs.14,000/- per month. She would also claim that the landlord was not in the habit of issuing receipts and that from the month of March 2018, the landlords refused to receive the rent. This made the revision petitioner to send a letter dated 03.05.2018 enclosing a Demand Draft for a sum of Rs.28,000/-. There was also exchange of notices between the revision petitioner on the one hand and the respondents 1 and 2 herein. The assertion of the revision petitioner is that it is she who was the tenant in occupation of the premise in question and not her husband, namely, the third respondent and that therefore, any exparte order obtained against the third respondent will not bind her. She therefore obstructed the effecting of delivery on 06.06.2018. But, she was forcibly evicted from the premise and therefore, seeking adjudication of her claim over the property in question and for re-delivery, she filed E.A No.176 of 2018. The court below dismissed the said E.A No.176 of 2018 by order dated 27.06.2018. Questioning the same, CRP(MD)No.1571 of 2018 has been filed. Following the dismissal of E.A No.176 of 2018, E.P No.26 of 2016 itself got terminated after recording delivery, on 27.06.2018. Questioning the same, CRP(MD) No.1861 of 2018 has been filed.

3.Heard the learned Senior counsel on either side.

<https://hcservices.courts.gov.in/hcservices/> The learned Senior Counsel appearing for the landlords/respondents 1 and 2 questioned the very maintainability



of these civil revision petitions. The contention is that as against the order dismissing a petition filed under Order 21 Rule 97 of CPC, only an appeal would lie and these civil revision petitions are not maintainable. She took me through the contents of the e-diary extracts and pointed out that the third respondent was served with summons both in the RCOP as well as in the E.P. It is not as if the revision petitioner and the third respondent have separated from each other. They continued to be husband and wife and reside under the same roof. The revision petitioner has not whispered even a bit about the conduct of her husband in her petitions. This shows that she had a clear knowledge of what was happening. She deliberately allowed the proceedings to progress to their logical conclusion and thereafter filed the present applications for vexing and harassing the landlords. The status of tenant claimed by the revision petitioner was also strongly denied. The lease agreement dated 29.04.2015 projected by the revision petitioner was characterized as a fraudulent document. It was also pointed out that the rental arrears have mounted to several lakhs of rupees. The learned Senior Counsel placed strong reliance on the decisions reported in 2001 (2) CTC 535 (Paramasivam vs. Kaliyan and another) and 2003-1-L.W. 475. (Hotel S.S.Pandian Pvt.Ltd v. The Chief Judge, Court of Samll Causes, etc.)

5.The issue of maintainability can be taken up first. It is true that an order passed on a petition field under Order 21 Rule 97 of CPC would amount to a decree and that therefore, only an appeal would lie. But then, as held by the Hon'ble Supreme Court in the decision reported in 2014 (6) CTC 98 (Sameer Singh & another vs. Abdul Rab & others), the order passed by the executing court summarily rejecting application without adjudicating issues on merits cannot be termed as Decree. It would be amenable to the revisional jurisdiction available under Article 227 of the Constitution of India.

6.In the present case, the executing court without going into the merits of the matter, dismissed E.A No.176 of 2018 filed by the revision petitioner herein as not maintainable. The grounds of dismissal are two fold. The Court below formed the conclusion that the revision petitioner and the third respondent herein have colluded with each other and filed the said petition. The second and more important reason is that the revision petitioner did not challenge the eviction order made in RCOP.No.209 of 2015 and since the executing court cannot go beyond the decree, the petition filed by the revision petitioner herein would be not maintainable. This clearly shows that the court below did not go into the merits of the matter.

<https://hcservices.courts.gov.in/hcservices/>, this Court has no hesitation to come to the conclusion that CRP(MD)No.1571 of 2018 is very much maintainable.



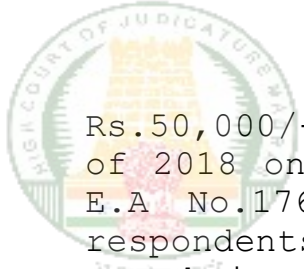
It must be noted that the revision petitioner did not file a bald petition under Order 21 Rule 97 r/w 29 and Section 151 of CPC. She filed a document dated 29.04.2015 which purports to be the original lease agreement between her and Thiru.P.R.Ramakrishnan. Of course, the respondents 1 and 2 herein would label the said document as a rank forgery.

8. That apart, she has also filed E.B receipts and purchase bills. Of course, the purchase bills are of very recent vintage pertaining to the months of May and June, 2018. But, a prima facie case was made out for adjudicating her claim. It is true that her husband Rajkannan was shown as the respondent in the eviction proceedings and that the petitioner as well as the third respondent continue to live under the same roof. But, the question is whether on that sole ground, the revision petitioner is to be thrown out at the very threshold. A fusion of the personality of the wife with that of the husband is a relic pre-modern law. The ideal of Arthanareeswara is not to be involved in this case.

9. Though the revision petitioner as well as the third respondent may live under the same roof as husband and wife, law would recognize them as two individual personalities and separate entities. If really the revision petitioner is the tenant, an eviction order obtained against her husband cannot be put against her. The executing court in view of the material shown by the revision petitioner ought to have conducted an enquiry and disposed of the said E.A on merits and in accordance with law. The executing court clearly fell into error in not doing so.

10. In that view of the matter, the order impugned in CRP(MD) No.1571 of 2018 is set aside. Since the termination of the E.P is a consequence of the order made in E.A No.176 of 2018, the order impugned in CRP(MD) No.1861 is also set aside and CRP(MD) No.1861 of 2018 is also allowed. The matter is remitted to the file of the Rent Controller with a direction to hold an enquiry into E.A No.176 of 2018 filed by the revision petitioner herein.

11. It is made clear that the status quo as date will continue to obtain till the disposal of E.A No.176 of 2018. In other words, this Court is not ordering any re-delivery. It is obvious that delivery was taken and the revision petitioner has been dispossessed. Therefore, to avoid complicating the matter further, the status quo that is existing as on date shall continue to prevail. The respondents 1 and 2 are allowed to hold the premises in question subject to the outcome of the E.A No.176 of 2018. But, they cannot let out the property in favour of third parties. Even according to the revision petitioner, she has to pay monthly rent at Rs.14,000/- and that she was in possession of the premise till 06.06.2018. She is bound to deposit a sum of



Rs.50,000/- before the executing court to the credit of E.A No.176 of 2018 on or before 28.09.2018. If such deposit is not made, E.A No.176 of 2018 shall stand closed. It is open to the respondents 1 and 2 to withdraw the said amount without prejudice to their contentions. All the contentions available to the respective parties are left open. It is made clear that this Court has not pronounced anything on the merits of the matter. The court below shall take up E.A No.176 of 2018 for enquiry and dispose of the same within a period of two months from the date of receipt of a copy of this order.

12.It is made clear that this Court has not gone into the issue of admissibility of the lease agreement dated 29.04.2015. The revision petitioner has filed an affidavit before this Court affirming the genuineness of the document dated 29.04.2015. She had further stated that she would take the consequences if it turns out to be a forged document. If the court below deems it necessary to refer the document in question for expert opinion, the body from which the opinion is sought for, shall treat the matter as one of great urgency and render the findings within a period of two weeks from the date of reference. It is made clear that this Court should not be understood as having indicated that the document in question should be referred for expert opinion. It is reiterated that the court below shall decide E.A No.176 of 2018 entirely uninfluenced by the observations made in this revision proceedings. The only mandate that is issued to the court below is that E.A No.176 of 2018 shall be adjudicated on merits and in accordance with law.

13.Both the civil revision petitions are allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The Additional District Munsif,
Madurai Town.

+2cc to Mr.BABU RAJENDRAN, Advocate, Sr.No.84169 & 84170.

+2cc to Mr.MAHESH BABU, Advocate, Sr.No.84291 & 84291.

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