



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2018

(Reserved on 22.11.2018)

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (NPD) (MD) Nos.2599 to 2601 of 2018

and

CMP (MD) Nos.11401 to 11403 of 2018

Ansari

... Petitioner in all CRPs

vs.

K.Karuppiah (died)

1) K.Kuppammal

2) K.Jeyaraman

3) K.Jeyasubramanian

... Respondent in CRP.2599/18

Riyas Ahamed

... Respondent in CRP.2600 & 2601/18

Petitions filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated 08.10.2018 in E.A.Nos.276, 303 and 304 of 2018 in E.A.No.657 of 2004 in E.P.No.349 of 2004 in R.C.O.P.No.287 of 2003 on the file of Additional District Munsif Court, Madurai Town.

For Petitioner : Mr.V.Sitharanjandas

COMMON ORDER

The present revision petitions have been filed by the landlord against the dismissal of the impleading petition to implead the legal heirs of K.Karuppiah/tenant and allowing the petitions to amend the petition in E.A.No.657/2004 in E.P.No.349/2004 in R.C.O.P.No.287 of 2003 and to exempt the petitioner in E.A.No.304/2018 from substituting or impleading the legal heirs of the deceased Karuppiah.

2.Learned counsel for the petitioner would submit that delivery of possession has already been taken through court and only recording delivery is pending on the basis of the warrant returned by the court amin and the same could not be done due to pendency of claim application in E.A.No.657/2004 and the tenant Karuppiah died and in such circumstances, the legal heirs are necessary and proper parties to continue the execution proceedings for recording delivery of possession. According to the petitioner, notice was ordered to the proposed parties and they also acknowledged the court notice,



but failed to appear before the court. In such circumstances, the Court below ought to have impleaded the respondents for recording delivery of possession.

3. Learned counsel for the petitioner would also state that the finding of the court below since the deceased Karuppiyah was set *ex parte* throughout the proceedings, the application for impleading his legal heirs is not maintainable is erroneous in view of the pendency of execution petition and completion of the recording of delivery of possession on the basis of *amin* report. The said order was passed ignoring Section 50 and Order 22 Rule 12 CPC. It is also the contention of the petitioner that the court below is erred in holding that this Court has given a finding in CRP(MD)Nos.467 and 468 of 2005 that the tenant Karuppiyah was only a fictitious person and in such circumstances, the legal heirs of the deceased Karuppiyah need not be impleaded, as no such finding was given by this Court in the above revisions.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. Perusal of record shows that one Riyas Ahamed, who claims himself to be the tenant of demised premises under one Abdul Wahab, son of Mohamed Ibrahim, bearing Door No.74, Nethaji Road, Madurai District, contended that he was admitted into the demised premises as a tenant by Abdul Wahab in the year 1991 and he was continuously in the possession carrying on trade in the name and style of 'SALMA' and was paying rent regularly to the landlord Abdul Wahab. His son Ansari has set up one Karuppiyah, Vaithiyananthan Village, Keeranur post, Mudukulathur Taluk, Ramnad District, as a tenant of the demised premises and initiated R.C.O.P.No.287 of 2003 on the ground of wilful default. The said Karuppiyah remained *ex parte* and an *ex parte* decree of eviction was passed on 20.04.2004 and thereafter, E.P.No.349 of 2004 was filed. Again, the said karuppiyah remained *ex parte* and Ameena has gone to the premises to effect delivery. At that point of time, the said Riyas Ahamed came to know about the rent control proceedings initiated against one Karuppiyah showing his residence at Mudukulathur Taluk and it appears that the said Riyas Ahamed has given an objection letter to the Ameena and despite the letter, he was thrown out of his premises and therefore, he has filed a petition before the Rent Control Tribunal under Order 21 Rule 99 of CPC, narrating the entire facts and fraud committed upon the Court by showing a fictitious person as a tenant and effecting eviction in the said petition and the said Riyas Ahamed has sought for re-delivery of the possession of the building. According to Riyas Ahamed, E.P and E.A, both were pending in view of pendency of CRP(MD)Nos.467 and 468 of 2005.

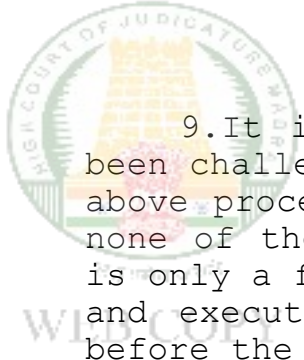
6. The specific finding of the learned Judge in CRP(MD)Nos.467 and 468 of 2005 was that though notice was ordered to the respondents namely, A.Ansari and K.Karuppiyah in the above revisions, they never appeared before the court and it is the specific finding



of the learned Judge that on the face of the record, the cynical design of the said Riyas Ahamed connivance with one Karuppiyah, who was the second respondent therein was well seen. The demised premises is a premises situated in Madurai bearing Door No.74, Nethaji Road, Madurai District. The Eviction Petition was filed on the ground of wilful default in payment of rent in respect of the said premises. It was the case of the said Riyas Ahamed in the above revisions that the demised building is non residential building occupied by him under lease agreement, dated 01.06.2001 for a monthly rent of Rs.8,000/-. While so, the question before the Court was instead of giving the address of the shop, the said Karuppiyah gave the residential address of the tenant which is at Ramnad District and the Court while ordering eviction, failed to look into this patent omission, before setting Karuppiyah ex parte. It was also specifically found that if the Court below was more vigilant, the fraudulent act of the landlord on the very fact that the said fictitious tenant Karuppiyah has never shown his face to resist the Eviction Petition or the Eviction order or the delivery of possession or the application filed seeking police protection, would have been found out. The learned Judge has also found that the said Riyas Ahamed has placed before the Court the receipts issued by the said Abdul Wahab, the original landlord from whom, the said Ansari claims title through a hiba (Gift deed). It was also found that the last rental receipt issued by Abdul Ibrahim was dated 04.07.2004 and if there was really any hiba in favour of Ansari, the Court found that Abdul Wahab would not have received the rent from the said Riyas Ahamed and issued rental receipt and therefore, the learned Judge specifically directed that the Rent Control Tribunal ought to look into the facts while disposing of the application filed under Order 21 Rule 99 and before recording the delivery of the possession.

7.The learned Judge also stated that the said Riyas Ahamed who was the revision petitioner in the above revisions, was an eye opener to the Judicial Officers those who deal with rent control proceedings and before venturing upon the ex parte order, they should ensure whether the respondent is the real contestant and real occupant of the premises and this can be easily ensured, if the notice is served on the occupant in the demised premises. The learned Judge also held that a minimum vigilance in this aspect will avert and prevent the cynical design of unscrupulous litigants.

8.Ultimately, the learned Judge directed the court below to take up E.A.No.656 of 2004 and 657 of 2004 along with E.P.No.349 of 2004 and pass a composite order, taking note of the fact and evidence placed before the Court by both parties, within a period of three months. The learned Judge has also rendered a finding that if the Court below finds that a fraud has been committed upon the Court, by the said Riyas Ahamed, it can initiate criminal proceedings under appropriate provision of law without seeking further guidance from this Court.



9.It is seen from the records that the above order has never been challenged and the said Karuppiyah was impleaded as party to the above proceedings and he never appeared before the court. Even in none of the lower court proceedings, Karuppiyah has appeared and he is only a fictitious person and even in the rent control proceedings and execution proceedings, the said Karuppiyah had never appeared before the court and now after passing of the order by this Court in CRP(MD)Nos.467 and 468 of 2005 dated 23.06.2017, the said Ansari/landlord filed application to implead the legal heirs of the said Karuppiyah which has been dismissed by the Court. It is for the Ansari to prove that K.Karuppiyah alone is the tenant and not Riyas Ahamed. The consistent non appearance of K.Karuppiyah gives clear proof to the contention of Riyas Ahamed that K.Karuppiyah is a fictitious person which was also the finding of the learned Judge. So, the claim of Ansari to implead the legal representatives of K.Karuppiyah is with a hidden agenda and it cannot be entertained.

10.As rightly held by the learned Judge, K.Karuppiyah who was not interested in conducting the case and not claiming his right is not a necessary party to be impleaded. Even in the earlier revision proceedings, neither Ansari nor K.Karuppiyah appeared before the court.

11.In the above stated circumstances, there is no infirmity in the orders passed by the learned Judge. Accordingly, all the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Additional District Munsif,
Madurai Town.

+1 cc to M/s.V.Sitharanjandas,Advocate,SR.No.97010

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SS/PM/SAR 3/13.12.2018/4P/3C