



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 26.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WEB COPY

C.R.P.(MD)Nos.1985 & 1621 of 2018 (NPD)

and

C.M.P.(MD)Nos.8741 & 7158 of 2018

Devasankar

.. Petitioner in both petitions

vs.

K.Sudhakar (Died)

2.K.Udayasankar

3.S.Nandakumar (Minor)

.. Respondents in both petitions

COMMON PRAYER: Civil Revision Petitions filed under Section 115 of Code of Civil Procedure against the fair order dated 06.06.2018 passed in E.A.Nos.48 & 49 of 2016, respectively, in E.A.No.16 of 2015 in E.P.No.26 of 2014 in R.C.O.P.No.11 of 2010, on the file of the District Munsif Court, Thanjavur.

For Petitioner : Mr.N.Balasubramanian
(In both petitions)

COMMON ORDER

These civil revision petitions have been filed against the order passed by the Execution Court in E.A.Nos.48 & 49 of 2016, respectively, in E.A.No.16 of 2015 in E.P.No.26 of 2014 in R.C.O.P.No.11 of 2010, dated 06.06.2018.

2. The revision petitioner is the tenant and as against him, an order of eviction was passed in R.C.O.P.No.11 of 2010. When the landlord filed an application for execution, it appears that the brother of the landlord, namely K.Sudhakar, filed an obstruction petition. During the pendency of the above petition, the said Sudhakar, who filed the application under Order 21 Rule 97 CPC, died. Thereafter, the judgment debtor / revision petitioner took an application to implead the legal heir of the deceased Sudhakar, namely, (Minor) S.Nandakumar, who is residing at Kerala along with his mother, who was already divorced from the said Sudhakar. The Execution Court dismissed both the applications, as against which, the present revision petitions have been filed.

3. The learned Counsel appearing for the revision petitioner would submit that the legal heir of the deceased obstruction petitioner has to be brought on record and the right of the landlord should be decided as per Order 21 Rule 98 CPC. Without doing so, the Execution Court dismissed both the applications and therefore, the

orders impugned are not in accordance with law and hence, he prays for interference.

4. Heard the learned Counsel appearing for the revision petitioner and perused the documents placed on record.

5. Admittedly, a decree of eviction has been passed as against the revision petitioner, as early as on 12.12.2011, in R.C.O.P.No.11 of 2010, for non-payment of rent, despite the direction given by the Court. No appeal has been filed as against the above order and therefore, the same reached finality. It is not in dispute that the revision petitioner has not taken a stand that he is not a tenant under the second respondent / landlord. All that he seeks to achieve through this revision is that since there is a dispute between the co-owners, one of the co-owner's son, who is residing at Kerala, has to be brought on record, so that the Execution Petition cannot be executed.

6. I am afraid to say that such a contention has no force at all. It is only an eviction proceedings. If at all any right or claim is made by any co-owners, the same can be agitated in a separate partition suit. As per the averments of the revision petition, it is seen that already a partition suit is pending between the co-owners. Such being so, the minor son of one of the co-owner, who is admittedly not residing in the suit property and is residing at Kerala, cannot be called as an obstructor in the present execution petition. The revision petitioner, being the judgment debtor, tried to stall the execution petition on technical grounds. It is for the legal heirs of the so called co-owners to establish their rights in a separate partition suit. Hence, I am of the view that there is no error or illegality in the orders impugned in the civil revision petition.

7. These civil revision petitions are liable to be dismissed and the same are accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-IV)

To
The District Munsif,
Thanjavur.

C.R.P. (MD) Nos.1985 & 1621 of 2018 (NPD)
and

C.M.P. (MD) Nos.8741 & 7158 of 2018
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