

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.10.2018

Delivered on : 08.01.2019

Coram

The Honourable Ms. Justice P.T.ASHA

**C.R.P.(PD)Nos.3983,3984 and 3985 of 2007 &
MP.Nos.1,1&1/2007**

Indian Overseas Bank
S.S.I. (North) Branch,
20, Orms Road, Kilpauk,
Chennai-10.

...

Petitioner/2nd defendant
in CRP(PD) Nos.3983,
3984 and 3985 of 2007

Versus

1. R. Thirugnanam

...

1st respondent/plaintiff
in CRP(PD)No.3983/2007

2. M. Imayavaramban

...

2nd respondent/
1st defendant
in all CRP(PD) Nos.3983,
3984 and 3985 of 2007

3. V. Subramanian

...

1st respondent/plaintiff
in CRP(PD)No.3984/2007

4. T. Thiruvarasan

...

1st respondent/plaintiff
in CRP(PD)No.3985/2007

Prayer in all CRP(PD) Nos.3983 to 3985/2007:

These Civil Revision Petitions are filed under Article 227 of the Constitution of India, praying to strike down the plaints in O.S.Nos.7209,7210 & 7211 of 2007 on the file of the VII Assistant City Civil Court at Chennai.

For Petitioner in all 3 CRPs : Mr. F.B. Benjamin George

ORDER

The 2nd defendant/2nd respondent is the revision petitioner in all the three revision petitions which have been filed invoking the provisions of the Article 227 of the Constitution of India. The revisions are directed against an exparte injunction order passed in favour of all the three respective plaintiffs in O.S.Nos.7209, 7210 & 7211 of 2007 by the learned VII Assistant Judge, City Civil Court, Chennai.

2. The following dates and events are necessary for appreciating the case on hand:

29.08.2002

A Recovery Certificate in DRC/140/2002 is passed by Debt Recovery Tribunal II, Chennai, against the 2nd respondent and another, directing the 2nd respondent and one S.Muthaiyan, to pay a sum or Rs. 65,53,128/- (Rupees Sixty Five Lakhs Fifty Three Thousand One Hundred and Twenty Eight only), which has been directed to be paid to the revision petitioner/Bank herein by the Debt Recovery Tribunal II in O.A.No.2021/2001(old No.610/98).

The Recovery Certificate further stated that if the above mentioned sum has not been paid within a period of 15 days from the date of receipt of a copy of this notice, recovery would be effected in keeping with the provisions of Section 25 of the Act and the

other relevant provisions.

25.09.2002

Order of attachment of the property belonging to the 2nd respondent and the said S.Muthaiyan.

18.04.2006

Properties are sold in auction.

05.07.2007

The sale is confirmed.

11.07.2007

The 2nd respondent/1st defendant and Muthaiyan were directed to vacate and hand over the keys of the property to the Bank.

20.07.2007

The 2nd respondent/1st defendant and Muthaiyan requested time till 08.08.2007 to vacate and hand over the possession.

11.08.2007

The Debt Recovery Tribunal I, Chennai grants time till 21.08.2007 to hand over the keys.

24.09.2007

The Debt Recovery Tribunal I, Chennai grants time till 03.10.2007 to the 2nd respondent/1st defendant and Muthaiyan to hand over the keys to the Manager of the Revision Petitioner/Bank under intimation to the Recovery Officer, failing which the forceful possession was to be taken.

22.10.2007

The Debt Recovery Tribunal I, issued a letter to the Deputy Commissioner of Police, K-4 Police Station, Anna Nagar, Chennai informing him that one P.M. Mohan, Recovery Inspector would visit the site

to take possession of the property and was directed to give adequate protection to the Recovery Inspector.

01.11.2007

When the Recovery Inspector visited the property along with the police officials to take possession of the property, the 2nd respondent/1st defendant and his wife submitted a letter to the Recovery Officer stating that they are to be granted time till 07.11.2007 to vacate the premises and that they would hand over to the keys on the same date at 10.30 am.

This letter which was given to the Recovery Inspector was submitted by the Recovery Inspector along with his Report to the Debt Recovery Tribunal I Chennai and he had informed that he had postponed the eviction process.

09.11.2007

Since the respondents had not honoured the undertaken given by them to the Recovery Inspector on 01.11.2007, the Debt Recovery Tribunal had requested the Dy. Commissioner to assist the Recovery Inspector for taking possession of the property.

13.11.2007

The Debt Recovery Tribunal I, Chennai had issued necessary orders to the Recovery Officer to take forceful possession of the premises and to

hand over the possession to the auction purchaser on 14.11.2007. In case the property was found locked, the Recovery Inspector was directed to break open the locks of the premises.

14.11.2007

When the Recovery Inspector along with the said officers from the K-4 Police Station had gone to the property, the property was found locked from the inside and two persons who were inside the premises, refused to open the lock. The said incident has been informed by the Recovery Inspector to the Debt Recovery Tribunal I, Chennai. It is also seen that a request was given by him to the Dy. Commissioner of Police, K-4 Police Station for additional force to take possession.

15.11.2007

The plaintiffs in all the 3 suits had filed an application in unnumbered M.A.No. ----/2007 before the DRT I Chennai, stating that they must be granted an injunction against the revision petitioner /Bank and the 2nd respondent/1st defendant, from disturbing their possession and enjoyment of the tenancy held by them in respect of the said premises.

20.11.2007

Each of the plaintiffs who are the 1st respondent in the three CRP's had filed suits in OS.Nos.7209 to 7211/2007 on the file of the VII

Assistant City Civil Court, Chennai, for an injunction restraining the defendants namely Revision Petitioner/Bank and the 2nd respondent from interfering with their peaceful possession and enjoyment of the premises bearing Door No.3, Bajanaikoil Street, Anna Nagar, Chennai 10.

22.11.2007

An ad-interim injunction granted in the Interlocutory Application filed by all the 3 plaintiffs.

26.11.2007

A detailed counter has filed by the revision petitioner/Bank.

14.12.2007

All the 2 Civil Revision Petitions have filed by the revision petitioner. Challenging the very institution of the suits.

20.03.2008

The Recovery Officer dismissed MA.1/2007 filed by the three plaintiffs and directed the plaintiffs to vacate the premises and to hand over the keys to the Auction purchaser on 20.03.2008. The plaintiffs in O.S.Nos.7210 and 7211 of 2007 filed CRP.NPD. No.1272 of 2008 on 26.03.2008

17.04.2008

Possession was taken by the Recovery Officer and the Branch Manager of the revision petitioner/bank and had handed over the premises to the auction purchaser on the same day at 1.40 p.m.

3. Heard Mr. F.B. Benjamin George, learned counsel for the petitioner. From the above dates and events, it is the case that the bank had obtained the decree from the Debt Recovery Tribunal I, Chennai against the 2nd respondent herein/1st defendant, who is the Proprietor of Varman Carrying Corporation and the Guarantor is S. Muthaiyan. The Bank had obtained necessary Recovery Certificate and it is seen that the properties were attached and sold under auction. A perusal of the records would also clearly indicate that even on 01.11.2007 the Recovery Inspector had gone to the property with the police personnel to take possession. It was the 2nd respondent herein who had been in possession and who had requested time till 07.11.2007 to vacate the premises. At the request of the 2nd respondent, the eviction process was postponed. It was only on 14.11.2007 that there was a resistance to the possession being taken and on 15.11.2007 the plaintiffs in the 3 suits have filed MA.No.1/2007 stating that they have been put in possession as tenants and that the plaintiff in O.S.7210/2007 had been inducted as a Tenant on 28.12.2001, on a monthly rental of Rs.1500/- and he had paid an advance of Rs.2 lakhs on 28.12.2001. The plaintiff in O.S.7211/2007 would state that he has been put in possession of the premises as a tenant on 02.08.2002 and he had paid an advance of Rs.1.50 lakhs on

the monthly rental of Rs.750/-. The plaintiff in the Suit O.S.7209/2007 would also contend that he has been put in possession in the suit premises as a tenant on 15.07.2002 on a monthly rental Rs.1,000/- and he had paid a sum of Rs.2 Lakhs as advance. It is also seen that the Recovery Officer has passed a detailed order in which he has clearly stated that throughout the proceedings, the 2nd respondent herein/2nd defendant was in possession of the suit property and in his order dated 20.03.2008, the Recovery Officer has observed as follows:

"On the other hand, there is enough material in the records of this Tribunal, which established beyond reasonable doubt that the second respondent has been actually residing in the premises sold to the auction purchaser. The second respondent has stated in the sworn affidavit filed before the Tribunal on 14.05.1999 that he was residing at No.3, Bajanaik Koil Street, Anna Nagar, Chennai. The same address has been reflected in the order copy of the Hon'ble High Court in WP.No.6635/99 in WP No.4616/99. In various communications to the respondent bank, the 2nd respondent as Proprietor of M/s.Varman Carrying Corporation has given the above address. The 2nd respondent has also installed a telephone connection in his name at the above address. It is also seen from the Court records that the demand notice dated 29.08.2002 has been received by Shri Imayavarambhan on 05.09.2002 at the above address. Attachment order dated 25.09.2002 has also been received by Mrs. Imayavalli,

mother of the defendant on 25.09.2002 at the same address. In the valuation report filed by the respondent bank on 16.11.2004, the property has been shown as self occupied and no tenancy has been reported. Similarly, the valuation report dated 16.01.2006 filed by the respondent bank also confirms the position. Further, the defendant in a statement recorded before the Recovery Officer, DRT-II on 19.09.2006 has categorically stated that he was in occupation of the property and the property has not been let out on rent. When eviction proceedings were organized on 01.11.2007 with the help of police authorities, this Tribunal has found that only the defendants were present in the premises and they gave an unconditional undertaking to vacate the premises and hand over the keys on 07.11.2007 at 10.30 am. These material on records clearly establishes the fact the premises at No.3 Bajanaï Koil Street, Anna Nagar, Chennai were in actual possession and occupation of the 2nd respondent.

In the circumstances, existence of three different rental agreements in respect of the same property with three different persons casts a serious doubt on the authenticity of the unregistered documents. The rental agreements purported to have been made with the petitioners does not clearly specify the extent of property let out on rent to each of the petitioners. The rent agreements were stated to have been made on 28.12.2001, 15.07.2002 and 02.08.2002 and were renewed from time to time even after the property has

been sold with the full knowledge of the 2nd respondent. As seen from the rent agreements that the premises let out to the petitioner no.3 is for a shop, that to the petitioner no.2 is for residence. Petitioner no.1 is to use the premises as residence cum advocate's office. However, it is seen from the facts narrated above, existence of office and shop were not proved. Only the 2nd respondent was actually present on 01.11.2007 and gave an unconditional undertaking to vacate the premises and hand over the keys by 07.11.2007. It is not known as to how the petitioners claiming to be tenants have suddenly surfaced on 14.11.2007 in the same premises. The petitioners in the circumstances could only be viewed as obstructors created by the 2nd respondent on paper as tenants. The respondent bank has clearly established that the rental agreements were fabricated only to thwart the eviction proceedings in collusion with the defendants."

4. Further, it is seen that even on 17.04.2008 when possession was taken, it was only the 2nd respondent who was present and from whom possession has been taken and not from the plaintiffs in various cases. The injunction has been obtained fraudulently by the plaintiffs and therefore, exercising jurisdiction under Article 227 of Constitution of India, the plaints in O.S.Nos.7209,7210 & 7211 of 2007 on the file of the VII Assistant City Civil Court at Chennai are liable to be struck off. Consequently, connected Miscellaneous Petitions are closed.

5. In the result, these Civil Revision Petitions are allowed, striking down the plaints in OS.Nos.7209 to 7211/2007 on the file of the learned VII Assistant Judge, City Civil Court, Chennai. No costs.

08.01.2019

Index : Yes/No
Internet: Yes/No
jrs

To
The VII Assistant City Civil Court,
Chennai.



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P.T.ASHA, J.,



**Pre-Delivery Order in
CRP(PD)Nos.3983,3984 &3985/2007**

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