

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.04.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(PD)No.640 of 2019
and C.M.P.Nos.4262 and 4263 of 2019

M.Sathyan Sundararajan
S/o.Sundararajan,
Managing Partner,
M/s.Athreyaa & Co.,
Prestige Smart Kitchen,
1979 V, Trichy Road,
Opp. to Old Central Studio,
Coimbatore - 641 015.

Petitioner

versus

1.K.R.S.Janakiraman
(A.K.A.Johnny Shanmugam)
2.Nithya Janakiraman
3.R.Aravindan

Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the order dated 30.07.2018 made in unnumbered E.A. on the file of the learned IV Additional District Judge, Coimbatore.

For Petitioner

: Mr.P.R.Thiruneelakandan
for M/s.Shabana

For Respondent Nos.1 & 2 : Mr.R.Ashrafkhan
for M/s.R.Asokan

ORDER

This Civil Revision Petition has been filed against the order of the Executing Court in returning the Application filed under Order XXI, Rule 99 r/w Section 151 of the Code of Civil Procedure by the revision petitioner for certain defects.

2. The brief facts leading to this Execution Petition is as follows:

2.1. The decree holders were originally filed the suit for specific performance as against the judgment debtor in O.S.No.148 of 2005. The suit was filed in the year 2005. The suit was decreed in favour of the third respondent herein for specific performance on 15.09.2012. The appeal filed as against the decree holders reached finality. The Special Leave Petition in SLP No.3820 of 2016 was also dismissed. The above decree was put in Execution in E.P.No.5 of 2013. It appears that during the pendency of the appeal in C.M.P.No.7528 of 2006 in A.S.No.243 of 2006, this Court, by order, dated 16.05.2006 granted interim injunction against the judgment debtor not to alienate or encumber the property till 15.06.2006. Subsequently, the above injunction order was made absolute, by order, dated 16.06.2006. After such injunction order it appears that the judgment debtor has entered into a Lease Agreement in favour of the revision petitioner for a period of 9 years from

20.12.2010. The revision petitioner now claims to be a tenant on the basis of the unregistered Agreement exceeding one year. He has also filed an application under Order XXI Rule 97 for obstructing the delivery, the above Application is returned for certain defects, however, he has not complied with. As against such return, the present revision is filed.

3. The learned counsel appearing for the revision petitioner submitted that the decree is only for execution of the document is not relating to the delivery of possession, therefore, the delivery cannot be ordered. The second submission was that the revision petitioner is the lawful tenant, he cannot be evicted, his objection has to be heard and the delivery cannot be affected. Further, his contention is that the Execution Court ought not to have returned the application for certain defects. It is his contention that the revision has to be allowed and the revision petitioner should be given an opportunity to resist the delivery since he is a lawful tenant. In support of his submissions, he relied upon the order of this Court in ***C.R.P.(PD)No.2660 of 2017 dated 01.11.2017 [KRITHIGA vs. U.PRAVEEN KUMAR]*** and the judgment of the Honourable Supreme Court in ***SHREENATH vs. RAJESH*** reported in ***1998 AIR (SC) 1827***.

4. It is the contention of the learned counsel appearing for the respondents 1 and 2 that, the tenant, who has been inducted into possession pending the suit has no right to obstruct the delivery. Further, it is his contention that the Application for objection cannot be maintained. It is further contention that even delivery can be sought in executing the specific performance and hence submitted that the revision lacks merits, the Application filed only to delay the execution. In support of his submissions, he has also relied upon the judgments of this Court in **VENKATESAN vs. E.DHAVAMANI AND OTHERS** reported in **2010 Law Suit (Mad) 1839** and **CHELLADURAI vs. AVUDAIPPAN KONAR** reported in **2015 (2) LW 1991**.

5. I have perused the entire materials. The facts as narrated above makes it clear that, the revision petitioner was inducted as a tenant on the basis of unregistered lease agreement for a period of 9 years. During the pendency of the suit, this Court has injunctioned the judgment debtor not to alienate or create any encumbrance in C.M.P.No.7528 of 2006 in A.S.No.243 of 2006 as referred above.

6. Despite the order of injunction that the judgment debtor during the pendency of the suit has inducted third party as a tenant for a

period of 9 years that too in a unregistered lease agreement. It is well settled that the lease exceeding one year requires compulsory registration. Therefore, the unregistered document sought to be relied on the revision petitioner has no legal sanity. Be that as it may, he was inducted into possession during the pendency of the proceedings that too after violation of the injunction order granted by this Court in C.M.P.No.7528 of 2006 in A.S.No.243 of 2006. The transfer of right to enjoy such property as a lessee has been made during the pendency of the proceedings and in violation of the injunction order passed by this Court in C.M.P.No.7528 of 2006 in A.S.No.243 of 2006. Therefore, the contention of the revision petitioner that he is a *bona fide* tenant cannot be countenanced. When any person seeks to establish the right he said to have been acquired during the pendency of the proceedings. They cannot contend that there are *bona fide* Tenants.

7. It is curious to note that the Execution Petition has filed after the suit between the judgment debtor and the respondents reached finality. When the Execution Petition was filed initially for delivery of possession, the objection was taken by the judgment debtor to the effect that since no relief or possession claimed in the suit for specific performance the delivery cannot be affected. However, the trial Court has overruled such objections and

ordered delivery of possession when the Amin went to affect the deliver, the same was resisted, consequently the police aid was also ordered by the lower Court. At this stage, the Application has been filed by the present revision petitioner under Order XXI Rule 97 r/w 151 of the Code of Civil Procedure stating that he has right to be heard his objections, the above Application was returned by the Court below for rectifying certain defects.

8. In fact, on 28.01.2019, the above Application has been returned for production of original certified copies and correct provisions of law should be stated and a fly sheet to be affixed. The above Application was represented on 28.01.2019 and again it was returned on the ground that previous returns has not been complied with properly. At this stage without complying the returns noted by the Executing Court, the revision petition has invoked jurisdiction of this Court as against such returns.

9. The above conduct of the revision petitioner makes it very clear that he has filed Revision only to protract the proceedings, particularly to the execution of the decree. It is also to be noted that the contention of the revision petitioner that since no relief or possession was sought in the suit for specific performance, the decree cannot be executed. Such contention is no

longer valid in view of the judgment of the Hon'ble Supreme Court in **BABU LAL vs. HAZARI LAL KISHORI LAL AND OTHERS** reported in **AIR 1982 SC 818** and this Court in the case of **G.SELVAMOORTHY vs. HEERACHAND JAIN** reported in **2018 (4) CTC 40**, in which, it has been held as follows:

"16. It may be pointed out that the Additional Civil Judge had decreed the suit for specific performance of the contract. The High Court modified decree to the extent that the sale deed was to be executed by respondents Nos. 6 to 9 together with the petitioner. In short, the decree was passed by the High Court not only against respondents Nos. 6 to 9 but also against the subsequent purchaser i.e., the petitioner and thus the petitioner was himself the judgment debtor and it cannot be said that he was a third person in possession and, therefore, relief for possession must be claimed. The contention on behalf of the petitioner is that the relief for possession must be claimed in a suit for specific performance of a contract in all cases'. This argument ignores the significance of the words 'in an appropriate case'. The expression only indicates that it is not always incumbent on the plaintiff to claim possession or partition or separate possession in a suit for specific performance of a contract for the transfer of the immovable property. That has to be done

where the circumstances demanding the relief for specific performance of the contract of sale embraced within its ambit not only the execution of the sale deed but also possession over the property conveyed under the sale deed. It may not always be necessary for the plaintiff to specifically claim possession over the property, the relief of possession being inherent in the relief for specific performance of the contract of sale. Besides, the proviso to sub-section (2) of section 22 provides for amendment of the plaint on such terms as may be just for including a claim for such relief 'at any stage of the proceedings'.

17. The word 'proceeding' is not defined in the Act. Shorter Oxford Dictionary defines it as "carrying on of an action at law, a legal action or process, any act done by authority of a court of law; any step taken in a cause by either party". The term 'proceeding' is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted. The word 'proceeding' in section 22

includes execution proceedings also. In Rameshwar Nath v. Uttar Pradesh Union Bank such a view was taken. It is a term giving the widest freedom to a court of law so that it may do justice to the parties in the case. Execution is a stage in the legal proceedings. It is a step in the judicial process. It makes a stage in litigation. It is a step in the ladder. In the journey of litigation there are various stages. One of them is execution.

29. Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree-holder starts in getting possession in pursuance of the decree obtained by him. The judgment-debtor tries to thwart the execution by all possible objections. In the circumstances narrated above, we do not find any fault with the order passed by the High Court."

10. In a judgment cited by the revision petitioner in C.R.P.(PD)No.2660 of 2017, this Court has directed the trial Court to number the unnumbered E.A. The above Application related to the return of the counter claim in that this Court has directed to number the unnumbered E.A.

11. In the case of **SHREENATH vs. RAJESH** reported in **1998 AIR (SC) 1827**, the Honourable Supreme Court has held that the third person in possession of the property and claiming independent right as tenant, such a person can resist the decree by seeking adjudication of his objections under Order XXI Rule 97 of the Code of Civil Procedure. Absolutely, there is no dispute with regard to the above judgment. In a given case, the revision petitioner has inducted as tenant in pending proceedings, when the injunction is very much in force. It is also curious to note that Order XXI Rule 102 of the Code of Civil Procedure clearly bars such transferee pendente lite from obstructing or resisting the execution of the decree possession of immovable property. Order 21 Rule 102 of the Code of Civil Procedure reads as follows;

"Rules not applicable to transferee pendente lite.-
Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person."

12. The above Rule makes it very clear that a person was inducted by the judgment debtor during the pendency of the proceedings in respect of the immovable property, in which, the decree was passed, he has no right to obstruct the delivery. Therefore, the contention of the revision petitioner that he is a *bona fide* tenant, he has right to be heard before the Execution Court. Such contention nothing but delay in tactics to delay the execution of the valid decree passed by the competent Court and reached finality. Hence, I do not find merits in the revision petition and the same is liable to be dismissed. The Execution Court is directed to proceed with the Execution proceedings and issue necessary police aid for effecting the delivery of the property. Such exercise shall be made within a period of three months from the date of receipt of a copy of this order.

13. With these observations, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

WEB COPY

24.04.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

sri

N.SATHISH KUMAR, J.,
sri

To

The IV Additional District Judge,
Coimbatore.



C.R.P.(PD)No.640 of 2019
and C.M.P.Nos.4262 and 4263 of 2019

WEB COPY

24.04.2019