

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(P.D).No.642 of 2019

and

C.M.P.No.4276 of 2019

M/s.Megasree Traders,
Represented by its Proprietrix,
Mrs.Mani, W/o.Krishnamoorthy,
No.10, Main Road, Annur,
Coimbatore – 641 653.

... Petitioner

-VS-

1.M/s.TV Bros,
Represented by its Partner
Mr.Kanaklal Abaichand,
Rangai Gowder Street,
Coimbatore.

2.Kanaklal Abaichand
Partner of M/s. TV Bros

Lalitchand Abaichand (Died)

3.Ashok Ramaniklal

4.Arvind Shantilal

5.Suredha Shantilal

6.Vimal Shantilal

7.Ashwin Kanaklal

8.Mrs.Lina L Shah

9.Manish L Shah

10.Jayashree L Shah

11.Manjula Ben

V.S.Krishnan (Died)

Chinnu @ Chinnasamy (Died)

12.K.Varadarajan

13.K.Kannappan

14.K.Gnanasekaran Bagvan Varadaraj

15.Bagyam Varadaraj

16.R.Shanmugam

17.A.S.Karthikeyan

18.S.Pradeep

19.Sumithradevi

20.V.Vanaja

21.Minor Suganya

... Respondents



PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order and decretal order dated 30.01.2018 made in E.A.No.200 of 2018 in E.P.No.79 of 2015 in O.S.No.2351 of 1986, on the file of I Additional District Munsif, Coimbatore.

For Petitioner : Mr.D.Ravichander

For Respondents : Mr.N.Sridhar for
Mr.R.Bharath Kumar

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ORDER

The third party obstructor who is the petitioner in E.A.No.200 of 2018 in E.P.No.79 of 2015 on the file of the First Additional District Munsif, Coimbatore is the revision petitioner before this Court. E.A.No.200 of 2018 has been filed by the revision petitioner/obstructor to record the obstruction in taking delivery of possession by respondents 1 to 12 in the above execution petition and to dismiss the execution proceedings.

2.It is necessary to briefly allude to the facts preceeding the filing of the obstruction petition, Respondents 1 to 11 herein, who are the decree holders had filed a suit in O.S.No.2351 of 1986 on the file of the First Additional District Munsif, Coimbatore against the respondents 12 to 15 herein and one V.S.Krishnan and Chinnu @ Chinnasamy (Both of whom are no more) and whose legal heirs have been impleaded as respondents 16 to 21 herein. Respondents 1 to 11 herein and one Lalit Chand and Abhay Chand sought for the relief of possession besides other reliefs. This suit was decree on 20.01.1995, as against which the defendants had preferred appeal in A.S.No.20 of 1996 on the file of the Sub Court, Thiruppur.

3.The learned Sub-ordinate Judge confirmed the decree of the

Trial Court and as against the said judgment and decree there was no further appeal preferred by the defendants. Thereafter the decree holders had filed E.P.No.16 of 2006, on the file of the Sub Court, Avinasi for delivery of possession. Pending the execution proceedings defendants 2 and 3 had died and their legal heirs were brought on record on the file of the Additional District Munsif, Avinasi. It appears that E.P.No.16 of 2006 pending on the file of the First Additional District Munsif, Avinasi was dismissed on 22.06.2010 and thereafter E.P.No.79 of 2015 was filed by the decree holders on the file of the First Additional District Munsif, Coimbatore.

4.The executing Court had directed the Ameen to take delivery and hand over possession to the decree holders and at that point of time, the 9th respondent in the executing petition namely one S.Pradeep was in possession and enjoyment of the property and carrying on business. He had prevented the Ameen from taking delivery of possession and the fact was reported by the Ameen to the Court and an application seeking possession by breaking open and police aid was filed by the decree holders. The said S.Pradeep is the son of the deceased daughter of Chinna @ Chinnasamy by name Chinnadurai the Sub-lessee. He had set a plea of a lease.

5. Thereafter, when the Ameen had gone to execute the warrant, the revision petitioner herein obstructed the taking of delivery. He would claim that he had entered into tenancy of the suit property under one Thavamani who is one of the legal heir of the fourteenth respondent namely Chinnu @ Chinnasamy the Sub-lessee, who was the second defendant in the suit. The said Chinnu @ Chinnasamy, as already stated was only the sub tenant of the deceased/first defendant Krishnan.

6. The said obstruction petition was resisted by the decree holders by inter alia contending that the said Chinnu @ Chinnasamy had not challenged the decree and therefore the obstructor is bound by the order. The respondents had questioned locus-stand of the revision petitioner to file the said petition. They had also contended that they have been never seen the obstructor and he was not in a possession of property and he has been set up by other judgment debtors/obstructor to ensure that the decree holders did not take possession of the suit property despite a decree.

7. They had further contended that the revision petitioner has been propped up by S. Pradeep the 8th respondent to file the said obstruction petition. The decree holders had further contended that the Ameen report would clarify that the revision petitioner was

nowhere near the suit property when he has gone to execute the warrant and the application is nothing, but an abuse of process of Court.

8.The learned First Additional District Munsif, Coimbatore after a detailed enquiry, proceeded to dismiss the application on the ground that the obstructor was claiming under the title of the Sub-lessee who had already suffered a decree and therefore the order passed against the second defendant would be binding on the obstructor and the learned Judge had also noted that even the claim of lease by the obstructor was only pending the execution petition and therefore the same cannot be sustained. Challenging the said order the revision petitioner is before this Court.

9.Mr.D.Ravichander, learned counsel appearing on behalf of the petitioner would vehemently contend that one of the legal heirs namely Thavamani had not been made a party to the suit and therefore the decree would not bind her. This revision petitioner is claiming right under her as the lessee and therefore his possession had to be protected. The learned counsel would submit that these factors had not been taken out by the execution Court.

10.Heard the learned counsel for both sides and perused the

papers and from the reading of the counter filed by the decree holders, it is clearly evident that when the Ameen had originally visited the property, the obstructor was nowhere in possession of the suit property. The 8th respondent was found to be in a possession of the shop in question and he had obstructed the Ameen from taking delivery. It is also seen that the said S.Pradeep had given a letter dated 20.04.2018 informing the 8th respondent herein that he would handover the vacant possession in six days time. S. Pradeep was claiming right to the property under another legal heir of the Sub-lessee, Chinnu & Chinnasamy. While so it is not known as to how the revision petitioner could claim to be in possession of the property under a lease of the year 2016 when admittedly in 2018 it is the 8th respondent who has been in a possession of the property. That apart the petitioner is claiming right under another legal heir of the second defendant namely one Thavamani. When the sub-lessee has suffered a decree against him, the persons claiming under him are also bound by the said decree. Further it is seen that the obstruction petition has been filed as soon as the 8th respondent has conceded that he would vacate the property and it is clear that the case of the revision petitioner has been set up by the 8th respondent. It is seen that the decree holders had obtained the decree in the year 1995 which was confirmed in an appeal in the year 1998 and to date, he has not

able to take possession of the property, in view of the dilatory tactics that has been adopted by the judgment debtors.

11.I find no infirmity in the order passed by the learned First Additional District Munsif, Coimbatore, in E.A.No.200 of 2018 in E.P.No.79 of 2015. Accordingly, the Civil Revision Petition is dismissed. The connected Civil Miscellaneous Petition is closed. No costs.

19.02.2019

Index : Yes/No

Internet : Yes/No

Speaking/non-speaking order

jrs/arb

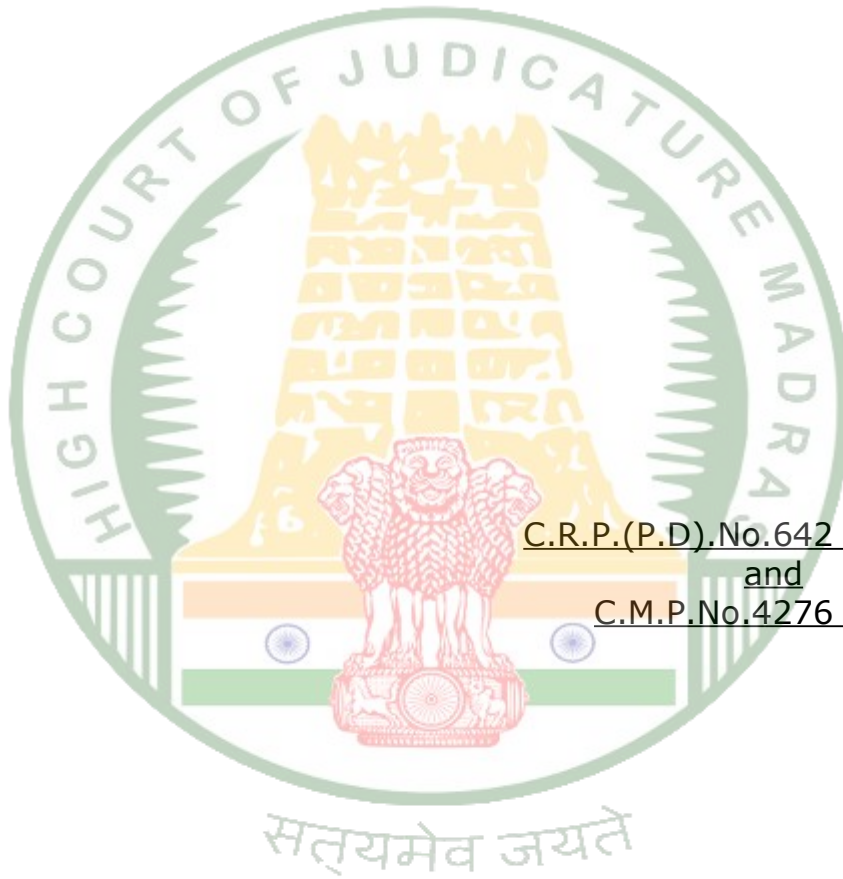
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To

The First Additional District Munsif,
Coimbatore.

P.T. ASHA.J

jrs/arb



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