

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).No.4078 of 2015

and

M.P.No.1 of 2015

Brothers of St.Gabriel,
rep. By its Power Agent,
Mr.Y.Joseph,
St.Louis Institute for the
Deaf and the Bling,
Plot No.25, Canal Bank Road,
Gandhi Nagar, Adayar,
Chennai – 600 020.

... Petitioner

Vs.

1.Mont Fort Trust
rep. By its Director
Gracy Mathew,
Old No.3A, New No.5,
Second Street, Parameswari Nagar,
Adyar – 600 020.

2.Br.N.Manoharan,
Brothers of St.Gabriel of Madras,
Director of Mont Fort Trust and
Mont Fort Youth Research and
Development Centre,
Old No.3A, New No.5,
Second Street, Parameswari Nagar,
Adayar – 600 020.

3.Br.D.Benjamin,
Brothers of St.Gabriel of Madras,
Director of Mont Fort Trust and
Mont Fort Youth Research and
Development Centre,

Old No.3A, New No.5,
Second Street, Parameswari Nagar,
Adayar – 600 020.

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 23.07.2015 made in E.A.No.40 of 2015 in E.A.No.4 of 2015 in E.P.No.98 of 2010 in R.C.O.P.No.2124 of 2005 pending on the file of XI Small Causes Court, Chennai.

For Petitioner : Mr.R.N.Amarnath

For Respondents : No appearance

ORDER

The present Civil Revision Petition is directed against fair and decretal order in E.A.No.40 of 2015 dated 23.7.2015 passed by the XI Small Causes Court .

2.By the impugned order in E.A.No.40 of 2015, the XI Small Causes Court has allowed the application filed by the first respondent to implead the 2nd and the 3rd respondents herein as 2nd and 3rd respondents in E.A No.4 of 2015.

3.E.A No.4 of 2015 was filed by the petitioner under Order 21, Rule 97 (i) of CPC read with Section 18 of the Tamil Nadu Buildings (Lease Rent Control) Act, 1960 to remove the 1st respondent from the property and to put possession of the same in E.P.No.98 of 2010 in R.C.O.P.No. 2124 of 2005 (wrongly mentioned as R.C.O.P.No. 2125 of 2005).

4.The petitioner had originally filed R.C.O.P. No. 2124 of 2005 against one M.T.Thomas the husband of Gracy Mathew. Gracy Mathew represents the 1st respondent Mont Fort Trust (the petitioner in E.A.No.40 of 2015 and respondent in E.A.No.4 of 2015).

5.R.C.O.P.No.2124 of 2005 was contested by M.T.Thomas. After trial and detailed enquiry, the said R.C.O.P.No.2124 of 2005 was allowed 04.07.2007 in favour of the petitioner. Thereafter, the said M.T. Thomas filed R.C.A.No.529 of 2007 in R.C.O.P.No.2124 of 2005. The Rent Control Appellate Court had originally granted interim stay subject to the said M.T.Thomas paying the arrears of rent amounting to Rs.4,30,000/- on or before 03.09.2007. The said M.T.Thomas preferred C.R.P.No. 3089 of 2007. This Court was pleased to direct the said M.T.Thomas to pay the arrears and

subsequent rent at Rs.10,000/- per month from October 2005 till that date, failing which liberty was given to the petitioner to initiate appropriate eviction proceeding.

6.In the said proceeding, M.T.Thomas filed an application for extension of time for compliance of order. Since there was no compliance of the order passed by this court despite extension of time, all further proceedings in RCA.No.529 of 2007 was stopped by an order dated 14.07.2009 and the said M.T.Thomas was directed to be evicted from the schedule property and to hand over the vacant possession to the petitioner within one month.

7.It was thereafter the petitioner filed E.P.No.98 of 2010. In the aforesaid proceeding, the said M.T.Thomas raised obstruction under Section 47 of this Civil Procedure Code. The petitioner also filed their counter. Thereafter, in the said proceeding evidence also was recorded. Thereafter, the said M.T.Thomas also filed E.A.No.58 of 2011 for the Court to issue subpoena to Y. Joseph who represents the respondent in E.A.No.58 of 2011 was dismissed on 13.09.2013. Thereafter, the said M.T.Thomas filed yet another E.A.No.1 of 2014 in E.A.No. 49 of 2010 in E.P.No.98 of 2010 in R.C.O.P. No. 2124 of 2005 to issue subpoena to another person. E.A.No.1 of 2014 in

E.A.No.49 of 2010 in E.P.No.98 of 2010 in R.C.O.P.No.2124 of 2005 was also dismissed by the Court by its order dated 14.02.2014. Against order dated 14.02.2014, the said M.T. Thomas filed C.R.P(NPD)No.2673 of 2014. C.R.P(NPD)No.2673 of 2014 was however dismissed as withdrawn on 31.07.2014.

8. Thereafter, the said M.T. Thomas filed E.A.No.45 of 2014 in E.A.No.49 of 2010 to amend paragraph 4 in E.A.No. 49 of 2010. By an order dated 27.06.2014, E.A.No. 45 of 2014 in E.A.No. 49 of 2010 was also dismissed.

9. Thereafter, the court bailiff proceeded to execute the order in E.P.No.98 of 2010 in R.C.O.P.No.2124 of 2005. It is at that stage, the 1st respondent objected by stating that Mr.M.T.Thomas was no longer the Director of the 1st respondent and it was unanimously resolved to remove him from the post of the Director of Mont Fort Youth Research and Development Centre and since he has gone away from the said centre, the 1st respondent was raising objection.

10. It is under these circumstances, the petitioner filed E.A.No.4 of 2015 under Order 21, Rule 97 (i) of CPC read with

Section 18 of the Act. The 1st respondent filed a counter objecting to removal of obstruction and stated that the petitioner was not entitled to vacate the 1st respondent property particularly when the bailiff has reported that an institute is being run by the 1st respondent.

11. In the aforesaid proceeding, the 1st respondent filed E.A.No.40 of 2015 to implead the 2nd and 3rd respondents as the respondents. The affidavit was filed by Gracy Mathew on behalf of the 1st respondent wherein she has stated that her husband M.T.Thomas ought to have been impleaded and the exercise in the said application in E.A.No.4 of 2015 under Order 21, Rule 97 (i) of CPC read with Section 18 of the Act was futile in his absence.

12. By the impugned order, the court has allowed the petition filed by the 1st respondent. It is under these circumstances, the present Civil Revision Petition has been filed.

13. I have considered the rival submissions made on behalf of either parties. Neither the 1st respondent nor the 2nd and 3rd

<http://www.judis.nic.in> respondents who were subsequently impleaded vide the impugned

order were party to R.C.O.P.No.2124 of 2005. They were also strangers all through the proceedings in the earlier rounds in 2 CRP's that were filed by M.T.Thomas and in the Execution Court and before the Rent Control Appellate Court. The deponent of the affidavit filed in support of the 1st respondent in E.A.No.4 of 2015 is the wife of the said M.T.Thomas.

14.The said M.T.Thomas had taken every possible steps to frustrate the Rent Control Proceedings and dragged the proceedings till 2014. He not only filed R.C.A.No.529 of 2007 but also filed C.R.P.No.3089 of 2007 against interim Order Passed by the Rent Control Appellate Court and C.R.P(NPD)No 2673 of 2014 apart from innumerable miscellaneous applications referred to *Supra*.

15.After the bailiff visited the property pursuant to order of the execution court, for the 1st time the 1st respondent represented by Gracy Mathew wife of the said M.T.Thomas obstructed the execution of the order stating that the property was owned by Mont Fort Youth Research and Development Centre, an autonomous body of Brothers of St.Gabriel of St.Louies Village Yekaud of South India having its headquarters in Italy.

16.It has been further stated that her husband M.T.Thomas had been removed as a director of the said Mont Fort Youth Research and Development Centre though originally M.T.Thomas acted as an interference had opposed the rent control proceeding before the Rent Controller on the ground that the property belonged to Mr.Camillus who died in the year 1998. The said M.T.Thomas also agreed to pay the arrears of rent but failed to pay despite giving an undertaking and extension of time.

17.The 2nd and the 3rd respondent herein who were impleaded by the impugned order were also examined. They are stated to be the directors of Mont fort Youth Research and Development Centre. Even though the court held that the decree is executable, the court has allowed impleading of these 2 persons after disposal of E.A.No.49 of 2010. It is clear that the 1st respondent represented by the said Gracy Mathew and her husband M.T.Thomas have abused the court proceeding to frustrate the petitioner from enjoying the fruits of the decree by filing repeated frivolous applications. The deponent has herself admitted that she is a permissive occupant.

18.The court ought not to have allowed the application for impleading the 2nd and the 3rd respondent in E.A.No.40 of 2015 and thereby delay and frustrate the order passed for evicting M.T.Thomas and any person claiming through him. It is evident that repeated proceedings had been allowed to be filed to frustrate and delay delivery of the property ordered pursuant to order dated 04.07.2007 in R.C.O.P.No.2124 of 2005. The respondents have also not filed any document to substantiate their rights over the property. They have been squatting over the property without any legal basis. In my view, there was no necessity to implead 2nd and 3rd respondents in the said proceeding for removal of obstruction.

19.Therefore, the impugned order dated 23.07.2015 passed by the learned XI Small Causes Court Chennai in E.A.No.40 of 2015 in E.A.No.4 of 2015 in E.P.No.98 of 2010 in R.C.O.P.No.2124 of 2005 deserves to be interfered.

20.The XI Small Causes Court, Chennai is therefore directed to pass order in E.A.No.4 of 2015 in E.P.No.98 of 2010 in R.C.O.P.No.2124 of 2005 within a period of three months from the

C.SARAVANAN, J.

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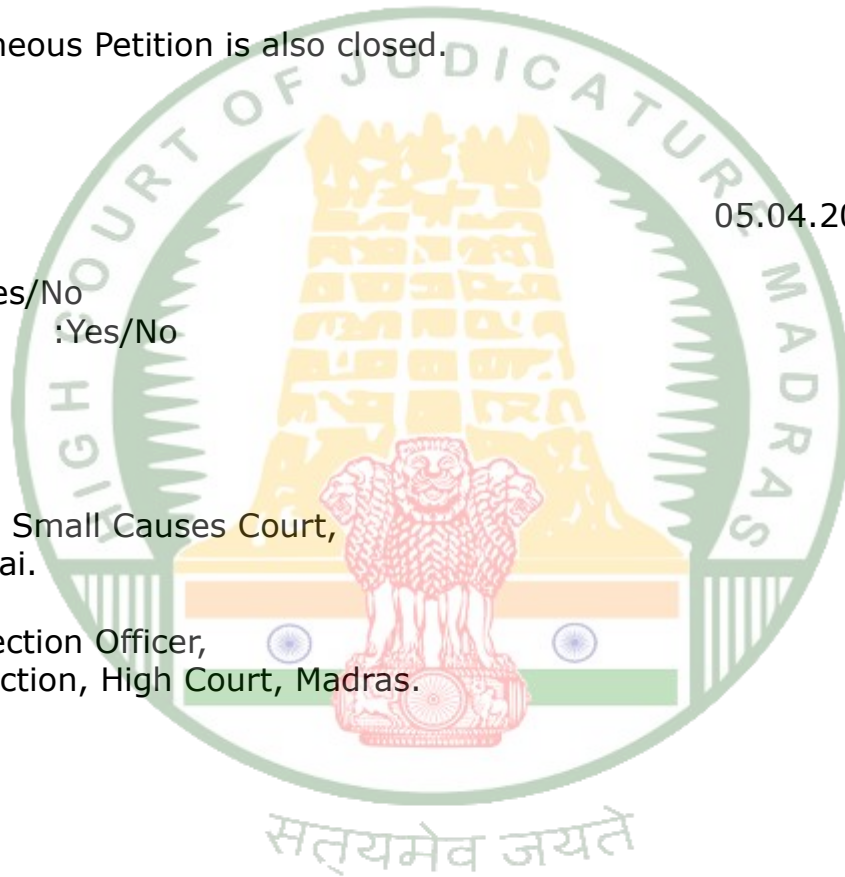
21.The present Civil Revision Petition is allowed with consequential relief above. No costs. Consequently, connected Miscellaneous Petition is also closed.

05.04.2019

Index : Yes/No
Internet : Yes/No
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To

- 1.The XI Small Causes Court,
Chennai.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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