

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.03.2019

Delivered on : 14.06.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.841 of 2018

and

C.M.P.No.4643 of 2018

1.K.R. Kirubakaran (died)

2.K. Lakshmi

3.Pushpavalli

4.Jagadeeshwaran

5.Boologammal

...Petitioners/Petitioners/
Judgment Debtors

Vs

G. Lakshmi

...Respondent/Respondent/
Decree Holder

(Petitioners 2 to 5 brought on record as legal representatives of the deceased appellant vide order of this Court dated 10.01.2019 in C.M.P.No.17995 of 2018 in C.R.P.No.841 of 2018 by MSRJ)

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order dated 31.01.2018 made in E.A.SR.No.63391 of 2017 in E.P.No.3461 of 2015 on the file of the learned IX Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.Subbiah,
Senior Counsel
for M/s. A.V. Arun

For Respondent : Mr.M.Aswin

ORDER

The only short issue involved in the above Civil Revision Petition is whether Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, (hereinafter referred to as the Act) would disentitle the decree holder to have a decree executed?.

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2.The revision petition is directed against the dismissal of an application filed under Section 47 of the Code of Civil

Procedure by the 1st defendant in an execution petition in E.P.No.3461 of 2015 without the same being numbered.

3.In order to appreciate the issue involved, it is necessary to briefly narrate the chronology of the dates and events:

23.03.1984 The 2nd defendant has allotted the suit property to the plaintiff under a Lease-cum-Sale Agreement. The property in question is the house and ground bearing Plot No.213, Door No.3, West Namachivayapuram, Nelson Manickam Road, Chennai-94. The plaintiff permits the 1st defendant and her brother to occupy a portion of the property.

2002 The plaintiff forced to leave the suit property as her mother-in-law was unwell. Taking advantage of her absence, the 1st defendant takes possession of the whole building.

April 2002 The plaintiff submits a representation to the 2nd defendant to execute the Sale Deed in her favour as she has paid the entire sale consideration.

- 24.07.2002 The plaintiff once again reiterates the request to the 2nd defendant to remove the 1st defendant from the suit property.
- 25.07.2002 The 2nd defendant replies directing the plaintiff to approach the Police.
- 20.08.2002 The police complaint given. However, the 1st defendant does not vacate and on the contrary attempts to get the allotment in favour of his wife.
- 24.08.2004 Since the 1st defendant did not vacate the suit property O.S.No.4511 of 2004 instituted by the plaintiff on the file of the learned XVIII Assistant Judge, City Civil Court, Chennai. The only defence of the 1st defendant is that the plaintiff has never paid the money and that it was he who had paid the entire dues and the plaintiff is not in possession of the property and it was only he who was in possession. That apart, the suit is barred by limitation.

--- The Slum Clearance Board files a Written Statement stating that the issue being purely a family feud it has nothing to do with the 2nd defendant and it is not the responsibility of the 2nd defendant to evict the 1st defendant.

01.08.2006 The suit O.S.No.4511 of 2004 decreed by the learned XVIII Assistant Judge, City Civil Court, Chennai.

26.02.2007 A.S.No.594 of 2006 filed by the 1st defendant before the learned II Additional Judge, City Civil Court, Chennai, dismissed.

01.07.2015 S.A.No.271 of 2008 filed by the 2nd defendant also dismissed.

23.09.2015 The plaintiff filed E.P.No.3461 of 2015 on the file of the learned IX Assistant Judge, City Civil Court, Chennai, for recovery of possession.

--- In the counter, for the first time, the 1st defendant takes out a defence that the suit is barred by Section 29 of the Act.

30.03.2016 Rev.Appl.No.201 of 2015 filed by the 1st defendant invoking the defence that the Civil Court has no jurisdiction in view of Section 29 of the Act, this contention is buried down and the review dismissed.

11.07.2016 Special Leave Petition filed by the 1st defendant before the Hon'ble Supreme Court in S.L.P.No.12123 of 2016, dismissed stating that there is no ground for interference made out.

26.07.2017 Applications subject matter of the revision is filed.

31.01.2018 Application rejected and Civil Revision Petition is filed.

4.Mr.S.Subbiah, learned Senior Counsel appearing on behalf of Mr.A.V.Arun, would contend that the issue of jurisdiction is one which can be raised at any point of time and that the suit was

decree that is now sought to be executed is one which has been obtained from a Civil Court which have no jurisdiction to entertain the very suit. The learned Senior Counsel would rely on the following Judgments in support of his contention:

(1)1993-7-L.W.143

Parthasarathy and another v. Kuppammal

(2)2015-2-L.W.828

Mrs. Ambika and another v. M.Shamshas and another

(3)2018-4-L.W.554

P. Balakrishnan v. Kailasammal and others

(4)2018(6) CTC 365

A. John v. Vasanthi and others

5.Per contra, Mr.M. Aswin, learned counsel appearing on behalf of the plaintiff would contend that the present revision is nothing but an abuse of process of Court. He would argue that the 1st defendant having lost in all the Courts and particularly, when the Review Application which was filed on the very same

ground that the suit is barred by Section 29 of the Act was dismissed, has filed this application which is now the subject matter of revision. The learned counsel would argue that this act on the part of the defendant would squarely come within the ambit of abuse of process of Court and Forum shopping. He would further argue that the pre-requisite as contemplated under Section 29 of the Act has been complied with by the plaintiff and therefore, the decree cannot be called in question at this late stage.

6. Heard the learned counsels appearing on either side and perused the material available on record.

7. Before proceeding to discuss the issue on hand, it is necessary to extract Section 29 of the Act.

"29. Proceedings for eviction of [occupants] not to be taken without permission of the prescribed authority.- (1) Notwithstanding anything contained in

*any other law for the time being in force, **no person shall, except with the previous permission in writing of the prescribed authority-***

(a) institute, after the commencement of this Act any suit or proceeding for obtaining any decree or order for the eviction of [an occupant] from any building or land in a slum area; or

(b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of [an occupant] from any building or land in such area, execute such decree or order.

(2) Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the prescribed authority in such form and containing such particulars as may be prescribed.

(3) On receipt of such application, the prescribed authority after giving an opportunity to the parties of, being heard and after making such summary enquiry into, the circumstances of the case as it thinks fit, shall order in writing, either grant or refuse to grant such permission.

(4) In granting or refusing to grant permission under sub-section (3), the prescribed authority shall take into account the following factors, namely:-

(a) whether alternative accommodation within the means of [the occupant] would be available to him if he were evicted;

(b) whether the eviction is in the interest of improvement and clearance of the slum area;

(c) such other factors, if any, as may be prescribed,

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(5) Where the prescribed authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant."

8. Section 29 of the Act does not outright bar the proceedings before any other Forum. It would only prescribe that before the institution of any proceeding before another Forum, a permission in writing by the prescribed authority has to be obtained and thereafter, proceedings could be initiated.

9. In the instant case, on 04.07.2012, a written request has been made by the petitioner to the 2nd defendant. In response, to this request, the 2nd defendant had directed the plaintiff to approach the Police to evict the 1st defendant. Therefore, the 2nd defendant had impliedly permitted the petitioner to proceed other than as contemplated by the provisions of Section 29 of the Act. Further, this Court while considering the very same question in

Rev.Appl.No.201 of 2015 has held as follows:

"12.In the case on hand, in para-5 of the written statement itself, the second respondent/Board admitted that the plaintiff/first respondent has given representation to evict the first defendant from the suit property and the same was not considered. Para-5 is extracted hereunder:

"5... .. the plaintiff herself admitted in her plaint that the first defendant who is the brother of the plaintiff and the plaintiff herself permitted first defendant to occupy the suit schedule property. In the above circumstances, it is not the responsibility of this defendant to evict the first defendant from the schedule property and further it is purely a family fraud, between a sister and her brother and this defendant is nothing to do with the family dispute between the

sister and brother. Hence it is a personal problem of the plaintiff to evict the first defendant. " 13 Under such circumstances, since the second defendant has not passed any order on the representation made by the plaintiff, she has filed the suit for the above stated relief. Therefore the argument advanced by the learned counsel for the petitioner that the plaintiff is not entitled to file the suit without obtaining prior permission from the Board as per Section 29 of the Act, does not merit acceptance."

10. This order was taken up on appeal to the Hon'ble Supreme Court in S.L.P.No.12123 of 2016 and by their order dated 11.07.2016 the Bench has clearly held that no ground for interference is made out to exercise the jurisdiction under Article

136 of the Constitution of India. Therefore, the Hon'ble Supreme Court has given a stamp of approval to the finding of this Court in Rev.Appl.No.201 of 2015. After this order, the application in question has been filed by the revision petitioner/1st defendant.

11. There is no quarrel in the proposition that Section 29 of the Act is a fetter to the institution of any proceedings except with a written permission of the prescribed authority. Considering the fact that in the instant case, such a request has been made by the plaintiff and has been impliedly given by the prescribed authority, I do not find any infirmity in the order passed by the learned IX Assistant Judge, City Civil Court, Chennai. Further, in the light of the order passed in Rev.Appl.No.201 of 2015 confirmed by the Hon'ble Supreme Court in S.L.P.No.12123 of 2016, the impugned order cannot be assailed.

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This Civil Revision Petition is therefore dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

14.06.2019

Index : Yes/No
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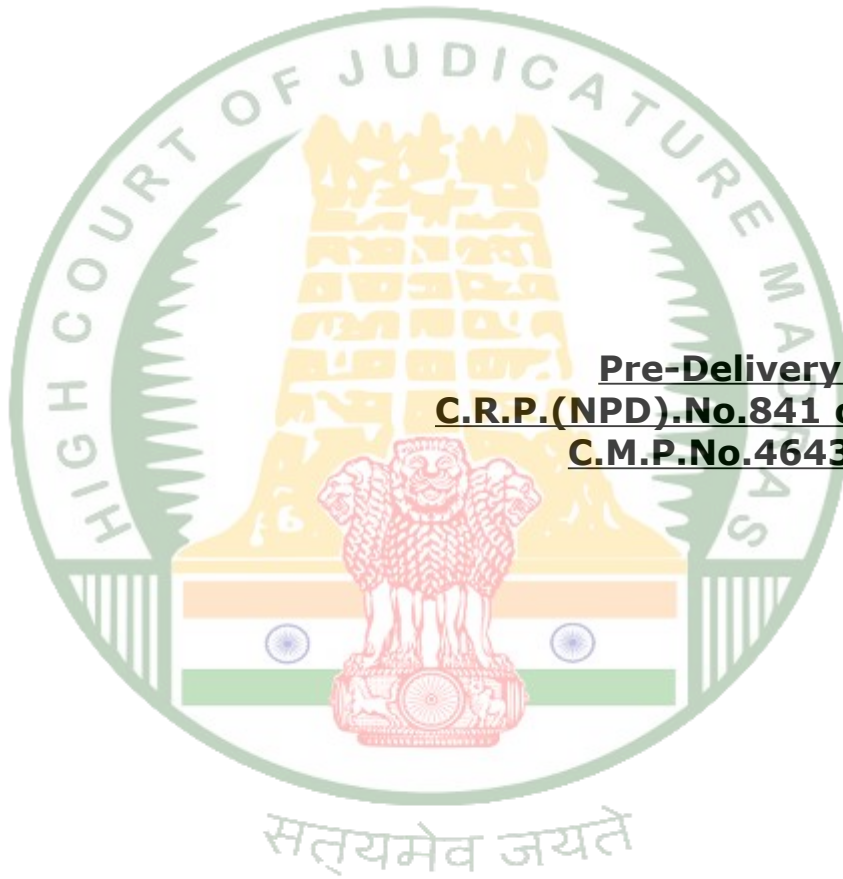
The IX Assistant Judge,
City Civil Court,
Chennai.



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P.T. ASHA, J,

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Pre-Delivery Order in
C.R.P.(NPD).No.841 of 2018&
C.M.P.No.4643 of 2018

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