

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Civil Revision Petition No.3749 of 2019
& CMP No.24627 of 2019

John Jebaraj

... Petitioner

-Vs-

1.Sukeshini George
2.Sujaritha Rajkumar
3.Kulothungal Lazarus George
4.Thilak Kotnes George

... Respondents

Prayer : Civil Revision Petition under Section 115 of Civil Procedure Code against the fair and decreetal order dated 18.10.2019 passed in E.A.No.84 of 2017 in E.P.No.30/2012 in O.S.No.227/2003 pending on the file of the Principal District Munsif Court, Alandur.

For Petitioner : Mr.T.Eswara Dhas

ORDER

This revision has been filed against the fair and decreetal order dated 18.10.2019 passed in E.A.No.84 of 2017 in E.P.No.30/2012 in O.S.No.227/2003 pending on the file of the Principal District Munsif Court, Alandur.

2. The revision petitioner was the defendant in the suit in O.S.No.227 of 2003, where the suit was laid for recovery of possession of the suit schedule property, which is a building / shed with thatched roof to the extent of 20 X 40 ie., 800 Sq.ft at the land belonging to the plaintiffs / respondents / decree holders in

Pymash No.1119, Survey No.214/3, Madipakkam Village, Kanchipuram District.

3. The said suit was decreed by the trial Court by the judgment and decree dated 10.11.2011, as against which it seems that first appeal had been preferred before the Sub Court concerned, where also decree was confirmed.

4. Subsequently, the respondents / decree holders filed E.P.No.30 of 2012 to execute the decree, where the present application E.A.No.84 of 2017 has been filed by the judgment debtor / revision petitioner under Section 47 of C.P.C.

5. The said application since has been rejected through the impugned order, aggrieved over the same, the present revision has been filed by the judgment debtor / revision petitioner.

5. Heard Mr.Eswara Dhas, learned counsel for the revision petitioner, who would submit that actually the said suit property ie., the 800 Sq.ft shed was let out for lease to the present revision petitioner / judgment debtor by the plaintiffs by a rental agreement dated 15.10.1993. Thereafter, the said building, which was a thatched shed went gutted because of a fire accident and thereafter on 06.11.2002, the revision petitioner / judgment debtor re-constructed the building and this factor has been admitted at paragraph No.10 of the amended plaint of the respondents / plaintiffs. When that being so, the decree passed against the revision petitioner in respect of the property mentioned above may be a wrong decree, as the said

building or shed, which was constructed originally and leased out to the revision petitioner was already gutted in fire and subsequently, on his own the revision petitioner / judgment debtor constructed the building and this aspect has not been considered by the execution court when that issue was raised in the petition filed under Section 47 of C.P.C., and hence the said order is erroneous and it is liable to be interfered with.

6. I have considered the said submissions made by the learned counsel for the petitioner and have perused the materials placed on record.

7. The suit was laid and it was contested. A decree was passed in the year 2011 itself. Thereafter, it is to be noted that, as against the decree passed by the trial Court, the defendant / revision petitioner / judgment debtor preferred first appeal before the first appellate Court and that was also dismissed, thereby the trial Court decree was confirmed.

8. If at all there are defects in the decree, according to the revision petitioner, with regard to the identity of the boundary or the property itself, the same could have been agitated before the first appellate Court at least. However, it seems that the same has not been agitated.

9. This has been specifically mentioned by the learned Judge in the

impugned order, who stated that, when the trial Court decree having been confirmed by the first appellate Court, as against which admittedly there was no second appeal, the decree passed by the trial Court and confirmed by the first appellate Court cannot be said to be inexecutable and therefore, the said issue cannot be raised herein ie., in the execution proceedings by way of filing Section 47 application.

10. The said view taken by the Execution Court, in the considered opinion of this Court, is perfectly in order and that does not require any interference from this Court. Moreover, the Civil Court decree cannot be said to be inexecutable, as admittedly the land belongs to the plaintiffs / decree holders / respondents and admittedly the revision petitioner has been a lessee. Therefore, the case cannot be improved any further by merely stating an averment that, after gutting of the building it was further constructed by the judgment debtor / revision petitioner. That will no way help the revision petitioner to advance his case further and that too in the execution stage.

11. In that view of the matter also, this Court is not inclined to accept the case projected by the learned counsel for the revision petitioner. Accordingly, this Court feels that, the impugned order is not liable to be interfered with. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

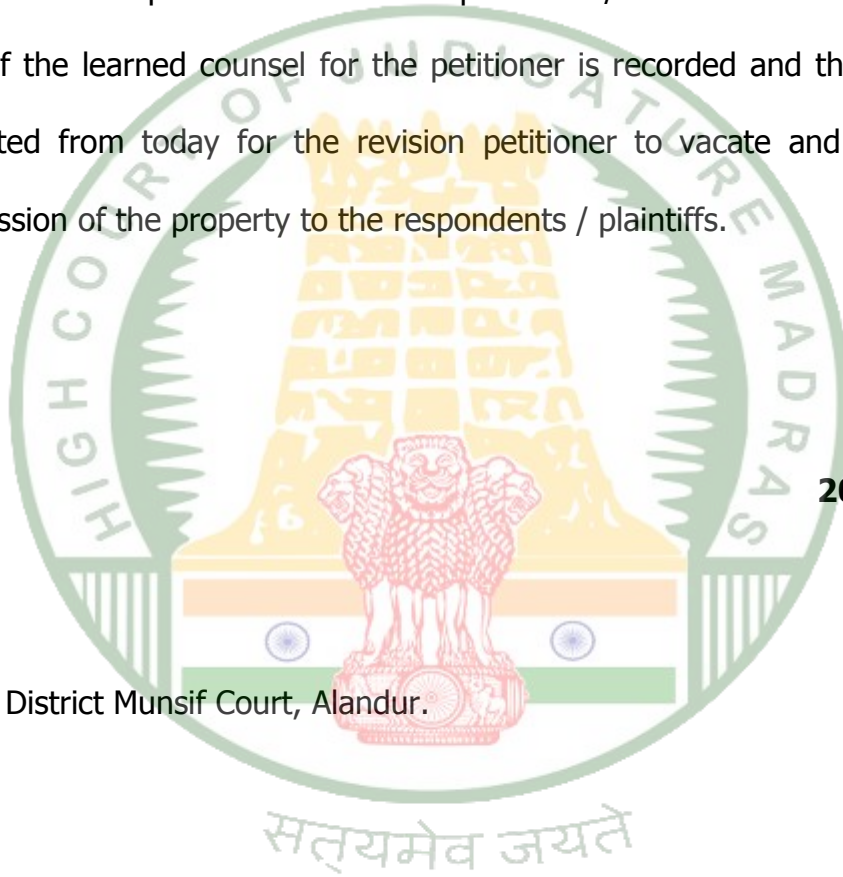
12. After dictating the order, the learned counsel for the petitioner made a request before this Court that, the revision petitioner needs three months time to vacate and hand over possession to the respondents / decree holders. The said submission of the learned counsel for the petitioner is recorded and three months time is granted from today for the revision petitioner to vacate and hand over vacant possession of the property to the respondents / plaintiffs.

KST

To

The Principal District Munsif Court, Alandur.

20-11-2019



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R.SURESH KUMAR, J.

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