



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2019

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

WEB COPY

C.R.P(MD) No.404 of 2008
and C.M.P(MD)No.1 of 2008
& C.M.P(MD)No.3761 of 2019

1.M.Padmavathi (Died)
2.Krishnaveni (Died)
3.A.Vasanthi

... Petitioners

(2nd petitioner is already recorded as the lr of the deceased 1st petitioner vide court order dated 6.1.2017 made in M.P(MD)No. 1 of 2012)

(3rd petitioner was brought on record as the lr of the deceased 2nd petitioners vide order dated 6.1.2017 made in M.P.(MD)No. 1 of 2013)

Vs.

1.N.Pitchai Udayar(Died)
2.P.Kumaravel
3.S.Alamelu Mangai
4.P.Sornambika

... Respondents

(R2 and R4 were brought on records as lr of the deceased sole respondent vide court order dated 26.07.2019 made in CMP. No.5455 of 2019)

(R3 was brought on record as the lr of the deceased 1st petitioner vide court order dated 6.1.2017 made in M.P(MD)No.2 of 2012)

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 14.02.2008 passed in E.A.No.292 of 2002 in E.P.No.592 of 2000 in R.C.O.P.No.206 of 1998 on the file of the District Munsif Court, Thiruchirappalli.

For Petitioners : Mr.Subramanian
For Respondents : Mr.Lakshmi Shankar

O R D E R

The legal heirs of the tenant are the revision petitioners before this Court. Originally, the deceased tenant had unsuccessfully prosecuted an application under Section 47 of the



Code of Civil Procedure.

2. The facts in brief, which are necessary for disposing of this Civil Revision Petition, are as follows:

2.i) The deceased first respondent herein as a power agent of one Backiyalakshmi ammal, has filed R.C.O.P.No.206 of 1998 on the file of the Rent Controller(District Munsif) Trichirappalli seeking to evict the tenants on the ground of wilfull default and acts of nuisance. Though the tenant was served with summons in the above proceedings, she did not choose to participate in the proceedings. Ultimately, an ex-parte order of eviction was passed by an order dated 25.11.1998. The said order was sought to be executed by the deceased first respondent herein in E.P.No.592 of 2000. In the interregnum between the filing rent control proceedings and the filing of the execution petition, the original landlady namely Backiyalakshmi ammal had died and she had executed a Will dated 09.08.1991 bequeathing the property on the first respondent herein and therefore, he instituted the execution proceedings in his capacity as owner of the property claiming under the Will dated 09.08.1991.

2.ii) The tenant after entering appearance had filed a counter *inter alia* contending that the original R.C.O.P petition was filed in the capacity as power agent and therefore, the execution petition could not be instituted by him as owner. The tenant would further contend that the original owner of the property was one Shanmuga Udayar and on his demise his wife Backiyalakshmi ammal has entered into the property. The said Backiyalakshmi ammal and Shanmuga Udayar when he was alive had executed a power deed in favour of one Ramalinga Mudaliyar to look after the property and it appears that the previous to this, the said Backiyalakshmi ammal had executed a Will dated 20.07.1998 bequeathing the property to Arulmighu Sri Sarva Sithi Selva Vinayagar Sri Selva Murugan and Sri Selva Mariammal Temple at Beema Nagar, Heber Road, Tiruchirappalli.

2.iii) The contention was that once dedication has been made in favour of the idol, the testatrix did not have right to execute a Will thereafter. The tenant had also raised a plea that the deceased first respondent had not proved that he is owner of the Will. Therefore, she had sought for dismissal of the execution petition. The said counter had been filed on 11.08.2001.

3. Thereafter, in the year 2012, the petitioners herein had filed E.A.No.292 of 2002 invoking the provisions of Section 47 of the Code of Civil Procedure to declare the decretal order in R.C.O.P.No.206 of 1998 as unacceptable on the ground that the title to the property had not been proved. The basis on which Section 47 application has been filed is contained in paragraph No.4 of the petition, which reads as follows:

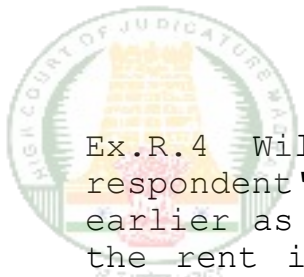


"The signature of the executant in Will dated 20.07.1988 namely Backiyalakshmi ammal is entirely different in the Will dated 09.08.2001. The signature in the stamp paer is different. In the signature signed at the time of registration before exconcerned Registrar is different. The respondent herein hs to prove the Will beyond reasonable doubt. When two wills within short span of time, the court has to justify the Will. The executant at the time of excuting the Will 09.08.1991 was not in sound state of mind. She totally lost the vision. The respondent herein has to prove all the facts before taking the delivery''.

3.i) The first respondent had filed a counter *inter alia* contending that the petitioners having not contested the rent control petition and having remained ex-parte cannot now question the decree. Further, the executing court is bound by the decree and cannot go beyond it. The first respondent would contend that he is the absolute owner of the property and the tenant should be directed to vacate the premises.

4. It is necessary to mention at this juncture that the revision petitioners were in arrears of rent as early as 1996 onwards and had been squatting on the property without paying any rent.

5. The learned District Munsif, Trichy after detailed consideration of oral and documentary evidence let in by the parties dismissed the application filed under Section 47 C.P.C. The tenant during the argument had raised a new plea that the property had been settled in favour of the Trust by the said Backiyalakshmiammal as early as in the year 1974 under Ex.P.1 settlement deed and since the property belong to the Trust, the Tamilnadu Building (lease and Rent Control) Act would not be applicable. The learned District Munsif has considered the above argument and held that under the settlement deed Ex.B.1 the property was not vested with the Trust and the Trust was only authorized to collect the rent. That apart, the Trust in question was not a Public Trust and therefore, the provisions of the 29 of the Rent Control Act would not be applicable to the said Trust and rent control petition filed was very much maintainable. The learned District Munsif had also observed that the petitioners without contesting the rent control petition has proceeded to file an application under Section 47 C.P.C. Even with reference to the ground on which the tenant had filed Section 47 C.P.C application, observed that the Will executed by Backiyalakshmiammal which was marked as Ex.R.4 had been produced in the other connected proceedings and all the original documents were marked in E.A. No. 39 of 1998. The learned District Munsif has also observed that



Ex.R.4 Will has been attested by none else than the first respondent's husband, namely Manicka Udayar, who was also appointed earlier as a power agent by the said Backiyalakshmiammal to collect the rent in respect of the property. The learned District Munsif also took note of the admission of P.W.1 the first petitioner after the death of Backiyalakshmiammal it was only the respondent who demanded the rents from all the tenants on the basis of Ex.R.4 Will.

6. Challenging the said order, the revision petitioners are before this Court.

7. Mr.R.Subramanian, who entered appearance on behalf of the revision petitioners would contend that by a judgment in O.S.No.187 of 1997 the Principal Subordinate Judge, Trichy has held that 8th defendant is not entitled to the suit property as per the Will dated 20.08.1991. The said finding has been rendered on the ground that the property had been originally settled under Ex.A.1 settlement deed and thereafter Backiyalakshmi ammam could not have executed the Will in favour of the plaintiff. The learned Subordinate Judge is also arrived at this finding on account of the fact that the original of the Will was not produced by the first respondent herein, who has arrayed as 8th defendant. The learned Subordinate Judge ultimately decreed the suit stating that the scheme had to be framed in respect of the Trust. The learned counsel for the petitioners would submit that the said judgment has been taken up on appeal by the respondent and the appeal is pending in condone delay stage. In the light of the above judgment, it is the contention of the learned counsel for the petitioner that the decree has become unsuccessful by the respondent herein.

8. Per contra, Mr.Lakshmi Shankar, learned counsel appearing on behalf of the respondent would submit that the petitioners originally who had come forward with the case that the Will was not proved and thereafter raised the additional pleas during the enquiry and now before this Court. He would further question maintainability of Section 47 C.P.C application and would rely on the judgment of the Hon'ble Supreme Court of India in **M/s Brakewell Automotive Components (India) Pvt. Ltd., Vs. P.R.Selvam Alagappan** reported in **2017 (3) LW page No.751**. He would draw attention of this Court to paragraph Nos.21 and 22 of the said judgment.

9. He would further submit that the executing court cannot go beyond the decree. The husband of the first petitioner had also discharged the role of a power of attorney of the said Backiyalakshmi ammam and had collected the rents and for and on her behalf. He would further argue that the rent control petition had been filed by the first petitioner as power agent of the deceased Backiyalakshmiammam. The rent control petition itself was filed by the respondent herein as absolute owner and the petitioners herein did not



choose to contest the said rent control proceedings and so having not filed an appeal, they cannot be allowed to canvas the defenses by way of Section 47 C.P.C application.

10. Heard the learned counsels and perused the papers.

11. Admittedly, the petitioners had entered into tenancy of the property under Backiyalakshmi Ammal's husband Shanmuga Udayar and they are in arrears of rent from the year 1996. The learned counsel for the petitioner would submit that they have now paid the arrears to the Executive Officer of the temple proof of which was not available for the scrutiny of the court. Even assuming that the arrears have been paid, it only goes to show that the tenant has been in wilful default right from the year 1996. The petitioners cannot take advantage of the *inter se* dispute that has arisen between the Trust and the respondents herein with reference to title. The petitioners who are tenants cannot question the title of their landlord, however defective it is. In the counter to the execution petition the petitioners have in clear terms stated that they had entered into possession of the property as a tenant of Shanmuga Udayar. Section 116 of the Evidence Act estoppes the tenant from denying the title of the landlord who inducted them as a tenant and put them in possession.

12. Further, the judgment in O.S.No.187 of 1997 passed by the learned Principal Subordinate Judge, Trichy has been challenged by the respondent by way of an appeal. The learned District Munsif, Trichy has in his order in E.A.No.292 of 2002 discussed the conduct of the petitioners which clearly shows that the only intent of the petitioners was to continue to squat on the property. It was well within the right of the petitioners to have filed an appeal challenging the ex-parte order of eviction. However, without doing so and allowing the order to attain finality the petitioners cannot now question the exparte order by filing an application under Section 47 of the code of Criminal Procedure Code. The petitioners have not made out a case that the decree which has been obtained by the respondent is a nullity and therefore cannot be executed. The Hon'ble Supreme Court of India in the judgment reported in **2017 (3) LW page 751** has held as follows:

'It was reiterated that the exercise of power under Section 47 of the Code is microscopic and lies in a very narrow inspection hole and an executing court can allow objection to the executability of the decree if it is found that the same is void ab initio and is a nullity, apart from the ground that it is not capable of execution under the law, either because the same was passed in ignorance of such provision of law or the law was promulgated making a decree inexecutable after its passing'



13. None of these eventualities exist in the case on hand. Therefore, I do not find any infirmity in the order passed by the learned District Munsif, Trichy.

14. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

CM

To,

1. The District Munsif Court, Thiruchirappalli.

2. The Section Officer,

V.R.Section, Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CC TO MR.N.C.ASHOK KUMAR, Advocate Sr. No.93161

+1CC TO MR.H.LAKSHMI SHANKAR, Advocate Sr. No. 93253

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KG(CO)

TR(19.11.2019) 6P 6C