



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.R.P(MD)No.1385 of 2012

and

M.P(MD)No.1 of 2012

S.Dhandapani ... Petitioner/Petitioner/3rd Party
Vs.
1.V.A.V.Vairavan ... 1st Respondent/1st Respondent/Petitioner
2.S.Arumugam ... 2nd Respondent/2nd Respondent/Respondent

Prayer : Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the order dated 16.06.2012 passed in E.A.No.451 of 2010 in R.C.O.P.No.58 of 2002 on the file of the I Additional District Munsif Court, Tiruchirappalli.

For Petitioner : Mr.T.Vadivelan
For Respondents : Mr.R.Subramanian for R.1
R.2 - Dismissed
[Vide order dated 04.09.2017]

ORDER

This Civil Revision Petition has been filed against the order dated 16.06.2012 passed in E.A.No.451 of 2010 in R.C.O.P.No.58 of 2002 on the file of the I Additional District Munsif Court, Tiruchirappalli.

2. The first respondent herein filed R.C.O.P.No.58 of 2002 on the file of the Rent Controller/Principal District Munsif, Tiruchirappalli, against the second respondent, who is the brother of the petitioner herein, seeking eviction on the ground of wilful default. The Rent Controller ordered for eviction of the second respondent/brother of the petitioner herein. Thereafter, the first respondent filed E.P.No.450 of 2008 on the file of the I Additional District Munsif Court, Tiruchirappalli, for execution of the order of eviction and the delivery was also ordered.

3. Meanwhile, the petitioner filed E.A.No.451 of 2010 stating that he is residing in another portion of the property in question and he also filed O.S.No.906 of 2009 seeking injunction and the same is pending. According to him, the first respondent tried to evict the petitioner without filing any petition and hence, he sought to allow the said E.A.No.451 of 2010 to hear him. Considering the materials available on record, the learned I Additional District Munsif, Tiruchirappalli, found that the said application was filed by the petitioner herein only to drag on the execution proceedings and also to harass the first respondent/landlord who obtained an order of delivery against the second respondent/brother of the petitioner and accordingly, dismissed the same. Challenging the same, the present Civil Revision Petition has been filed.



4. Heard both sides.

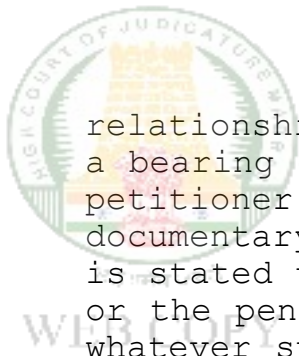
5. It is an admitted case that the second respondent, who is the brother of the petitioner herein, was a tenant of the first respondent and the first respondent initiated Rent Control proceedings before the Rent Controller by filing R.C.O.P.No.58 of 2002 seeking eviction of the second respondent on the ground of wilful default and also obtained an order in his favour. Subsequently, the first respondent had filed an Execution Petition in E.P.No.450 of 2008 before the I Additional District Munsif Court, Tiruchirappalli, for execution of the order of eviction, in which delivery of possession was ordered in favour of the 1st respondent.

6. While so, the petitioner herein filed an appeal in E.A.No.451 of 2010 before the I Additional District Munsif Court, Tiruchirappalli, stating that the petitioner has been residing in another portion of the property in question and he had filed a suit in O.S.No.906 of 2009 against the 1st Respondent for permanent injunction. However, the first respondent/landlord, by means of the favourable order of eviction obtained against the 2nd respondent, has been attempting to evict the petitioner too from the said premises without filing any petition to that effect against the petitioner. Hence, it is prayed that it is absolutely necessary to hear the case of the petitioner before execution of the order of eviction.

7. A circumspection of the entire averments discloses the fact that the second respondent herein has not claimed any title to the property in question and his main intention is to stall the entire eviction proceedings, for which, he has induced his brother / petitioner herein to file an application so as to achieve his object indirectly. In other words, what he was not able to achieve directly / legally is sought to be achieved through a serpent-like character, namely, his brother. The fact that the second respondent has been continuously adopting different ways and means to bring the eviction proceedings to a standstill, is duly established by the discussions made by the Execution Court in the order passed in E.A.No.451 of 2010.

8. Admittedly, the property belongs to the first respondent / landlord, who had let out the same to the second respondent / tenant and the present *lis* emanated on account of the dispute between the first and second respondents in respect of eviction of the 2nd respondent from the property in question. The yet another issue pending between the petitioner and the 1st respondent in O.S.No.906 of 2009 cannot be gone into in the present petition, as the petitioner is a third party to the proceedings in R.C.O.P.No.58 of 2002 and also to the subsequent execution proceedings.

9. At this juncture, a plea was raised by the petitioner that the finding in this case that there is no landlord - tenant



relationship between the petitioner and the 1st respondent will have a bearing on the pending suit, cannot be accepted, as it is for the petitioner to establish his case in the suit through oral and documentary evidence, whether the property in question, in which he is stated to be residing, is the subject matter of the present issue or the pending suit, as this Court cannot decide the said issue and whatever submission made by him in the present petition ought to be raised in the suit.

10. However, it is represented by the learned Counsel for the first respondent/landlord that he had already sold the property to a third party and that he has also taken delivery through Court.

11. Apart from the above, it is seen that on 04.09.2017, this Court had passed the following order:

"The revision petitioner is directed to pay batta / take steps with the petition and comply with the defects pointed out by the Registry on or before 12.09.2017, failing which, the concerned revision shall stand dismissed automatically in respect of the respondent No.2 in whose favour batta / steps is due."

Despite the above direction, there is no iota of evidence adduced to show that the petitioner has complied with the defects as pointed out by the Registry and as such, it could be construed that this revision petition is deemed to have ended in dismissal on 04.09.2017 itself in respect of the second respondent.

12. Considering the totality of the circumstances, this Court finds no perversity, illegality or irregularity in the order dated 16.06.2012 passed in E.A.No.451 of 2010 in R.C.O.P.No.58 of 2002 by the learned I Additional District Munsif, Tiruchirappalli and therefore, the present petition is liable to be dismissed.

13. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rsb

To:

The I Additional District Munsif Court, Tiruchirappalli.

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Madurai Bench of Madras High Court, Madurai - 2 copies

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-98957[F]

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