



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.12.2018

PRONOUNCED ON : 04.06.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) (MD) No.2427 of 2018

and

C.M.P. (MD) .No.10826 of 2018

N.Shanmuganathan

.. Petitioner/Respondent/
Respondent /Respondent/Tenant

vs.

1.Bheeman

.. 1st respondent / Petitioner/
Petitioner/Petitioner/ Original Landlord

2.P.Perumpadayar

.. 2nd respondent/ 2nd petitioner/
2nd proposed Petitioner / 3rd party/
Subsequent purchaser

PRAYER : Civil Revision Petition filed under Section 115 of C.P.C., against the judgment and decree, dated 14.09.2018 passed in E.A.No.579 of 2017 in E.P.No.152 of 2010 in R.C.O.P.No.39 of 2008 by the Principal District Munsif, Tirunelveli.

For Petitioner : Mr.V.Meenakshisundaram
for Mr.D.Nallathambi

For respondents : Mr.F.X.Eugene

ORDER

This Civil Revision Petition has been filed by the petitioner / tenant challenging the order, dated 14.09.2018, passed in E.A.No.579 of 2017 in E.P.No.152 of 2010 in R.C.O.P.No.39 of 2008 by the Principal District Munsif, Tirunelveli, whereby and whereunder the Court below allowed the petition filed by the first respondent / landlord, thereby impleaded the 2nd respondent / subsequent purchaser.

2. The first respondent / landlord had filed R.C.O.P.No.39 of 2008 for eviction against the petitioner / tenant on the ground of wilful default and own use and occupation. The learned Rent Controller had allowed the petition, against which the



petitioner/tenant filed R.C.A.No.1 of 2010. The Rent Control Appellate Authority had dismissed the appeal confirming the order passed by the Rent Controller. Subsequently, the first respondent/landlord filed E.P.No.152 of 2010 for execution of the decree. During the pendency of the execution petition, the petitioner / tenant filed C.R.P.(MD).No.2697 of 2010 against the judgment of the Rent Control Appellate Authority. This Court, by order dated 28.06.2017, dismissed the revision petition, confirming the orders passed by the Courts below. While so, in the execution petition, the first respondent / landlord filed E.A.No.152 of 2010 seeking to implead the second respondent / subsequent purchaser on the ground that he already sold the property to the 2nd respondent / subsequent purchaser on 30.12.2011 and he has become owner from that day onwards and therefore, he is a necessary party to be impleaded in the execution proceedings. The Court below has allowed the same. Aggrieved by the said order, the petitioner/ tenant filed this Civil Revision Petition.

3. The learned counsel appearing for the petitioner / tenant submitted that both the Courts below allowed the petition filed by the first respondent / landlord on the ground of own use and occupation, and default in payment of rent. Relying upon a decision of a learned Single Judge of this Court in **N.Sanjay Kumar Jain Vs. S.Krishnamurthy and others**, reported in **2016(1) MWN (Civil) 568**, he would further submit that the 2nd respondent / subsequent purchaser cannot continue the eviction proceedings on the ground of own use and occupation as it is personally attached to the first respondent / landlord and on the ground of wilful default as there is no specific assignment of the rent due. Without considering the above aspects, the Court below has erroneously allowed the impleading petition and impleaded the 2nd respondent / subsequent purchaser. Thus, he prayed to allow this petition.

4. The learned counsel appearing for the respondents submitted that immediately after getting favourable order in the Rent Control Appeal, the first respondent / landlord filed execution petition and the petitioner/tenant filed a civil revision petition before this Court. In the meantime, due to financial crisis, the first respondent / landlord sold the demised premises to the 2nd respondent / subsequent purchaser during the pendency of the earlier civil revision petition ie., on 30.12.2011 and therefore, the first respondent / landlord filed the petition for impleading the 2nd respondent / subsequent purchaser in the execution proceedings. The Court below also rightly allowed the same. He would further submit that the *bona fide* requirement of the first respondent / landlord has to be seen on the date of the Rent Control Original Petition and the subsequent events intervening due to protracted litigation will not be relevant and the Court has power to take note of the subsequent events and mould the relief accordingly to promote substantial justice. Therefore, the 2nd respondent / subsequent purchaser can continue the eviction proceedings. Thus, he prayed to dismiss this revision petition.



5. Heard the learned counsel for both sides and perused the records carefully.

6. In this case, it is not in dispute that the eviction was ordered on the grounds of wilful default and own use and occupation, and same was also confirmed in the appeal. It is also not in dispute that the landlord sold the property during the pendency of the civil revision petition filed against the judgment of the rent control appeal. The issue to be decided in this case is whether the subsequent purchaser can be impleaded in the eviction proceedings or execution proceedings, especially when the eviction was ordered on the ground of own use and occupation and wilful default in payment of rent?.

7. When the similar question arises for consideration a learned Single Judge of this Court, relying on the decision of the Hon'ble Apex Court, has held in the decision of **N.Sanjay Kumar Jain Vs. S.Krishnamurthy and others**, reported in **2016 (1) MWN (Civil) 568**, at paragraph Nos.16 to 18 as follows:

"16. When the respondent/landlord sought for eviction on the ground of Own Use and Occupation, it is personal to him and therefore, the subsequent purchaser cannot evict the tenant on that ground. The subsequent purchaser has to establish his case that the property is required for his Own Use and Occupation.

17. So far as the ground of Wilful Default is concerned, the Hon'ble Supreme Court in the Judgment reported in Sheikh Noor and another V. Sheikh G.S. Ibrahim (dead) by Lrs., 2003 (7) SCC 321 held that only if there is assignment of Rent due would the Transferee Landlord be entitled to recover the same from the Tenant as arrears of Rent. Following the ratio, laid down by the Apex Court, this Court, in the judgment reported in Alaudin v. Sathar, 2011 (5) CTC 486, held that in the absence of any specific assignment of arrears of Rent, Transferee Landlord is not entitled to continue the proceedings invoking Section 10(2)(i) or maintain an Eviction Petition for Wilful Default pertaining to period prior to transfer. The ratio laid down in the Judgment reported in Alaudiin v. Sathar, 2011 (5) CTC 486, following the Judgment of the Apex Court reported Sheikh Noor and another V. Sheikh G.S. Ibrahim (dead) by Lrs., 2003 (7) SCC 321, squarely applies to the facts and circumstances of the present case.

18. Similarly, the same ratio was also followed in the Judgment reported in A. Jaganathan V. S. Kalyani, 2007 (6) MLJ 222. In the Judgment



reported in S.V.Periasamy & Sons v.R.Senthil Kumar and others, 1997 (1) LW 527, this Court held that even if there is an assignment, that will amount to only an actionable claim and will cease to be arrears of Rent and arrears of Rent loses its character as arrears and can be transferred only as actionable claim and further this Court had held that the previous Landlord becomes a creditor and the Tenant becomes a debtor and therefore, the Subsequent Purchaser cannot continue the proceeding in view of the judgment of the Hon'ble Supreme Court as well as this Court."

8. From the above decision, it is clear that the subsequent purchaser cannot continue the eviction proceedings initiated by the previous landlord, if the eviction was ordered on the grounds of own use and occupation and wilful default in payment of rent.

9. In the decision in Om Prakash Gupta vs Ranbir B. Goyal reported in **2002 (2) SCC 256**, the Hon'ble Supreme Court has held that subsequent events can be taken into consideration for moulding relief in the eviction proceedings, subject to certain conditions. The relevant paragraph ie. Paragraph No.11 reads as follows:

"11. The ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit and therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In Pasupuleti Venkateswarlu v. Motor & General Traders(1975) 1 SCC 770 : AIR 1975 SC 1409 this Court held that a fact arising after the lis, coming to the notice of the court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the court cannot be blinked at. The court may in such cases depart from the rules of procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided



that there is absence of other disentitling factors or just circumstances. The Court speaking through Krishna Iyer, J. Affirmed the proposition that the court can, so long as the litigation bends, take note of updated facts to promote substantial justice. However, the Court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules or procedure may be bent if not specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautious and (iv) the rules of fairness to both sides should be scrupulously obeyed."

10. In **Sait Nagjee Purushotham & Co. Ltd. vs Vimalabai Prabhulal and others** reported in **2005 (8) SCC 252**, the Hon'ble Apex Court in paragraph Nos.7 and 8, has held as follows:

"7. In the case of *Pratap Rai Tanwani v. Uttam Chand* (2004) 8 SCC 490 it was held that the bona fide requirement of the landlord has to be seen on the date of the petition and the subsequent events intervening due to protracted litigation will not be relevant. It was held that the crucial date is the date of petition. Their Lordships further observed that the normal rule is that the rights and obligations of the parties are to be determined on the date of the petition and that subsequent events can be taken into consideration for moulding the reliefs provided such events had a material impact on those rights and obligations. It was further observed by Their Lordships that it is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. Therefore, the courts have to take a very pragmatic approach of the matter. It is common experience in our country that specially landlord tenant litigation prolongs for a long period. It is true that neither can the person who has started the litigation sit idle nor can the development of the events be stopped by him. Therefore, the crucial event should be taken as on the date when the suit for eviction was filed unless the subsequent event materially changed the ground of relief.

8. In the case of *Gaya Prasad v. Pradeep Srivastava* (2001) 2 SCC 604 Their Lordships observed that the landlord should not be penalised for the slowness of the legal system and the



crucial date for deciding the bona fides of the requirement of the landlord is the date of his application for eviction. Their Lordships also observed that the process of litigation cannot be made the basis for denying the landlord relief while litigation at least reached the final stages. However, Their Lordships further added that subsequent events may in some situations be considered to have overshadowed the genuineness of the landlord's need but only if they are of such nature and dimension as to completely eclipse such need and make it lose significance altogether."

11. From the above decisions, it is clear that the *bona fide* requirement of the landlord has to be seen on the date of the petition and the subsequent events intervening due to protracted litigation will not be relevant and the Court has power to take note of the subsequent events and mould the relief accordingly to promote substantial justice, subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.

12. In this case, the subsequent event would materially change the grounds of relief and therefore, the same cannot be taken into account. More over, in this case, the landlord sold the demised premises during the pendency of the civil revision petition filed against the judgment of the rent control appeal. In that revision, the petitioner/tenant brought to the notice of the Court that the landlord already sold the demised premises by way of sale deed, dated 30.12.2011 and the subsequent purchaser cannot continue the proceedings. Since the sale of the property has not been brought to the notice by the landlord in that revision, this Court has observed that if at all there was any transfer of property, the person, who has purchased the property, should have taken steps for recovery of possession independently through his vendor. While so, the landlord filed the petition for impleading the subsequent purchaser in the execution proceedings before the Court below stating that he already sold the demised premises to the subsequent purchaser on 30.12.2011 itself. In this case, the landlord has not promptly brought to the notice of the Court the subsequent events and made the opposite party surprise. In view of the above, the contention of the respondents are rejected. Since the subsequent purchaser cannot step into the shoes of the landlord and continue the eviction proceedings, which was ordered on the grounds of own use and occupation and wilful default, he is not a necessary party to be impleaded. The Court below, without considering the above aspects,



has erroneously allowed the impleading petition. In view of the above, this Court is inclined to interfere with the order passed by the Court below. Accordingly, the order passed by the Court below is set aside.

13. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal District Munsif,
Tirunelveli.

Copy to:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.F.X.EUGENE, Advocate SR-67009.

+1 CC to Mr.D.NALLATHAMBI, Advocate SR-67490.

order made in
C.R.P. (PD) (MD) No.2427 of 2018
04.06.2019

CS: (13/06/2019) 7P 5C