



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2019

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (NPD) (MD) .No.912 of 2019

and

C.M.P. (MD) .No.5246 of 2019

Mrs.Visalakshi ... Petitioner/Respondent/Judgment Debtor
Vs.

Mrs.Kanchana ... Respondent/Petitioner/Decree Holder

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against Delivery Return and Atachi of Bailiff dated 29.03.2019 in E.P.No.240 of 2016 in R.C.O.P.No.143 of 2011 made on the file of the Additional District Munsif Court, Trichy.

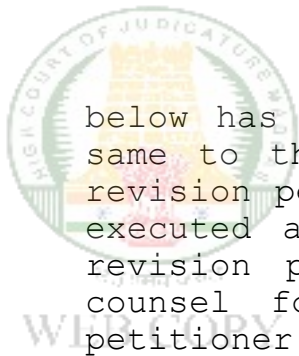
For Petitioner : Mr.B.Rajesh Saravanan

For Respondent : Mr.D.Nallathambi

O R D E R

The Civil Revision Petition has been filed challenging the Return and Atachi of Bailiff made by the Additional District Munsif Court, Trichy in E.P.No.240 of 2016 in R.C.O.P.No.143 of 2011, dated 29.03.2019.

2. The petitioner is the tenant and the respondent is the landlord in R.C.O.P.No.143 of 2011. The respondent/landlord has filed the above R.C.O.P.No.143 of 2011 before the Court below and the said petition was allowed. Thereafter, execution petition in E.P.No.240 of 2016 has been filed by the respondent. The Court below appointed an Ameena to take possession of the suit schedule property and hand over the same to the decree holder/respondent. As per the decree, the respondent herein is entitled to the ground floor and the second floor. As per the decree and order of the Execution Court, the Ameena of the Court shall hand over the same to the respondent. Now, the contention of the revision petitioner is that she is in possession of the entire suit schedule property ie., ground, first and second floors. The R.C.O.P.No.143 of 2011 was filed by the respondent only for eviction of ground and second floors and not for the first floor. According to her, she was in possession of the first floor and the Ameena appointed by the Court



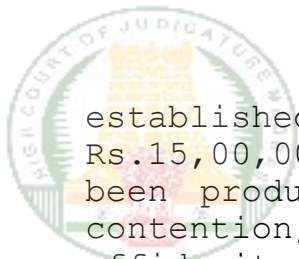
below has taken the possession of entire floors and hand over the same to the decree holder. The respondent fairly admits that the revision petitioner herein is the owner of the property and she has executed a sale deed on 15.07.2004. From 2004 to till 2019, the revision petitioner has been enjoying the property. The learned counsel for the revision petitioner contended that though the petitioner executed the sale deed in favour of the respondent, still the revision petitioner is in possession of property and therefore, she is liable to pay a sum of Rs.15,00,000/- as part of the sale consideration. Therefore, the petitioner alone is entitled to retain the property. However, all of a sudden, on 14.09.2011, the respondent filed R.C.O.P.No.143 of 2011 and the eviction was ordered on 29.08.2016. The execution order was issued on 17.11.2016 and delivery was ordered on 29.03.2019. The order of the Court below is only for delivery of the ground floor as well as the second floor of the property, but whereas, the Court below has wrongly taken possession of the first floor also. Against the said return of the Ameena, she filed the present civil revision petition.

3. According to the respondent, she purchased the property on 15.07.2004 and thereafter she leased out the ground floor and the second floor to the revision petitioner. Since the revision petitioner failed to repay the rent, the respondent has filed R.C.O.P.No.143 of 2011 before the Court below and the said petition was ordered on 29.08.2016. Thereafter, she filed E.P.No.240 of 2016 only with respect to ground and second floors alone and as per the order of the Execution Court, the Ameena took over the possession from the revision petitioner herein and hand over the respective ground and second floor alone.

4. According to the revision petitioner, the respondent is in the possession of the ground and first floor from the date of purchase of the property. Therefore, she contends that the question of taking lawful possession from the revision petitioner does not arise. According to the respondent, she was already in occupation of the first floor. Therefore, she has not filed any R.C.O.P. with respect to the first floor but only with respect to the ground and second floor. Therefore, the respondent contended that there is no illegality in returning of the Ameena dated 29.03.2019. Hence, he prayed for dismissal of the same.

5. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the materials available on record.

6. The original owner of the property was the revision petitioner and she sold the property on 15.07.2004 to the respondent herein and thereafter the revision petitioner executed a sale deed in favour of the respondent. It is an admitted fact that nothing has been mentioned with regard to the outstanding amount of



established her case with regard to the outstanding amount of Rs.15,00,000/- by way of oral statement and no other documents have been produced or evidences have been let in to substantiate her contention, except, ipse dixit of averments in the counter affidavit. Further, on perusal of the Ameena Return, it appears that he handed over the ground and second floor alone. Therefore, this Court do not find any infirmity to interfere with the return of the Ameena by invoking the provision under Article 227 of the Constitution of India and to pass orders. It is for the revision petitioner to work out her remedy before the appropriate civil forum in the manner known to law, if at all, if there is any illegality on the part of the Ameena in taking over the possession and delivering the same to the respondent herein.

7. With the above observations, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Cr1.Side)

// True Copy //

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Sub Assistant Registrar(CS)

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To
The Additional District Munsif,
Trichy.

+1 CC to M/s.B. RAJESH SARAVANAN, Advocate (SR-101302[F] dated 26/11/2019)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-102351[F] dated 28/11/2019

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