

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 07.02.2020

Judgment Pronounced on : 19.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD)No.4531 of 2010

Vanaja (died)

1.R.Ganesh (died)

..Petitioner/Petitioner/Decree Holder/
Petitioner

2.G.Parthiban

.. Petitioner

[2nd petitioner is impleaded as LR of
the deceased first petitioner, namely
R.Ganesh vide order dated
13.11.2019 in CMP.23282/2019]

Vs.

1.Komalambal

2.Kannan

3.Annamalai Garmani

.. Respondents 1 to 3/

Respondents 1 to 3 /

Judgment Debtors/

Respondents 1 to 3

4.Lourdhumarianathan

.. 4thRespondent/4th Respondent/
Obstructor/3rd Party

Prayer: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair order and decretal order dated 02.11.2010 in E.A.No.98 of 2002 in E.P.No.8 of 2002 in HRCOP.37 of 2010 on the file of the Rent Controller (Principal District Munsif), Pondicherry.

For Petitioner : Mrs.Hema Sampath
Senior Counsel
For M/s.Meenal
For Respondents : Mr.V.Kamala Kumar
for M/s.Sai Bharath &Ilan
for R4
R1 to R3- given up

ORDER

The revision petitioner is the Decree Holder. This revision is filed against the order passed in a petition filed under Order XX1 Rule 35(3) & 97 read with Section 47 and 151 of CPC for adjudicating upon the rights of the Fourth respondent/Obstructor in accordance with law and that the petitioner/Decree Holder be put in possession of the E.P.schedule mentioned property with police aid and to break open the lock.

2. Brief averments that are necessary for determining of this Civil Revision Petition are as under:

The revision petitioner is the petitioner in the above Execution Petition as well as in the HRCOP.37 of 2001 and that the respondents 1 to 3 are the Judgement Debtors in the said EP and that the 4th respondent is the Obstructor and is residing at No.100, Saint Rozario Street, Muthialpet, Pondicherry-605 003 and claims to run a Lathe works in the name and style of M/s.Quality Engineering Works in part of the EP schedule mentioned property under the permissive possession of the respondents/Judgment Debtors. On 08.11.2002, Execution Court ordered for delivery of the Execution Petition schedule mentioned property and ordered Batta in 3 days and that the petitioner paid the batta on 07.10.2002 and that on 18.10.2002, the Court Amin accompanied by the petitioner and by her husband went to execute the warrant to obtain possession of the Execution Petition schedule mentioned property and the few number of persons working there and others joined together and resisted and obstructed the Court Amin from doing his duty and that when the Court Amin enquired about their names and other particulars, they refused to reveal anything and simply locked the EP schedule mentioned property and left and that after enquiry, the

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petitioner came to know that it was the 4th respondent, who was behind all this and was the Obstructor and that the 4th respondent, probably at the instigation of the respondents 1 to 3/the Judgment Debtors, resisted and obstructed the Court Amin from delivering vacant possession to the petitioner and that the 4th respondent/Obstructor resisted and obstructed delivery without any just cause. Hence the petition.

3. Brief averments in the counter in a nutshell are as follows:

This respondent is running a Lathe workshop in the disputed premises after getting proper licence from the Municipality and after obtaining power connection in his name. The existence of the workshop is perceptible even to the naked eye and the petitioner could not plead ignorance of the existence of this respondent in the premises for the past more than 13 years.

4. Heard the learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the fourth respondent and perused the records.

5. It is seen from the records that HRCOP was filed on 06.01.2001 and the eviction petition was filed by the petitioner herein against the respondents 1 to 3. The schedule of the property in the HRCOP petition is as follows:

“Brick built house initially without door number and subsequently with door No.166 and at present with Old Door No.166 and New Door No.378 situated at Mahatma Gandhi Road within the Registration District of Pondicherry and Sub Registration District of Pondicherry, Pondicherry Municipality at Shevarayapeth, Rangavilas Thottam in Muthialpet (Opp. to Ramakrishna Nagar) with an extent of 450 sq.ft. Boundaries to the west of Mahatma Gandhi Road, to the south of M/s. Saint Xavier Industries building, to the north of the house of Murugesan and Patchiappan and to the east of the pond (presently dry) and is comprised in R.S.No.131/2 . As per records, the HRCOP was decreed on 05.12.2001 and hence E.P.No.8 of 2002 was filed before the Rent Controller, Pondicherry on 18.02.2002.

6. It is seen from the records that the petitioner's wife Vanaja Ganesan obtained a Decree for evicting the respondents 1 to 3. She filed

E.P.No.8 of 2002 before the Rent Controller, Pondicherry for taking possession. The fourth respondent herein obstructed execution and she filed E.A.No.98 of 2002 for removal of obstruction. On her death pending the said application, the petitioner/her husband was permitted to continue execution. Evidence was taken and Execution Application was posted for orders on 27.08.2003. At that stage, the fourth respondent filed E.A.No.144 of 2003 for re-opening the case. It was ordered and again the case was posted for orders on 11.09.2003. To protract the proceedings, the fourth respondent filed the said application to reopen the matter and it was allowed. The petitioner filed C.R.P.No.443 of 2003 against the said order of re-opening and the said CRP dismissed on 21.11.2006. It took the executing Court more than one year to commence enquiry after this order. After giving several opportunities, the fourth respondent's side evidence was closed. On 12.11.2009 again the fourth respondent was absent. The Court ordered removal of obstruction and batta was paid as directed. Again when the Amin attempted to execute, the fourth respondent obstructed him and the Amin returned the warrant requiring police aid. The fourth respondent filed E.A.No.90 of 2009 to set aside the order dated 12.11.2009 for removal of obstruction. On 12.04.2010, the Court below allowed the petition

directing the fourth respondent to pay cost of Rs.500/-, which the petitioner refused to receive and E.A.No.98 of 2002 filed by the petitioner for removal of obstruction was dismissed.

7. The chequered history behind this Execution Proceedings are as under:

(a) Before proceeding further, it remains to be stated that one St.Xavier Industries filed O.S.No.803 of 1982 against the respondents 2 to 4 before the learned Additional District Munsif, Pondicherry for declaration of title and recovery of possession and arrears of rent and the suit was decreed.

(b) On 07.07.2000 in S.A.No.1710 of 1989, this Court confirmed the Decree in favour of the plaintiff/St.Xavier Industries. Pending Second Appeal, the petitioner's wife Vanaja Ganesan had purchased the property under Registered Sale Deed dated 05.10.1989. Subsequent to the Judgment in Second Appeal, the said Vanaja Ganesan filed R.C.O.P.No.37 of 2001 before the learned Principal District Munsif-Rent Controller, Pondicherry against the respondents 2 to 4 for eviction. On 05.12.2001, eviction was ordered.

(c) The said Vanaja Ganesan filed E.P.No.8 of 2002 and the same was allowed on 04.10.2002. When the Amin went to the property for execution of the delivery of warrant, there was obstruction. Petitioner's wife filed E.A.No.98 of 2002 against the respondents for removal of obstruction.

(d) The said petition was filed under Order XXI Rule 35(3) read with Section 47 of C.P.C., to adjudicate rights of the fourth respondent herein and for putting petitioner's wife in possession. The fourth respondent herein filed a counter stating that he was in possession for more than 13 years and that he is running a lathe workshop in the disputed premises.

(e) On 26.10.2002, the petitioner's wife Vanaja passed away and the petitioner was permitted to continue the proceedings. Evidence was taken in E.A.No.98 of 2002 and the matter was posted for orders on 11.09.2008. At that stage, the fourth respondent herein has filed E.A.No.154 of 2003 to re-open the matter for the second time. That application in E.A.No.154 of 2003 for reopening was allowed by the Executing Court challenging that the revision petitioner/Decree Holder has preferred this Revision Petition.

8. The revision petitioner, who is the Decree Holder has purchased the property pending S.A.No.1710 of 1989, which arose from the Judgment and Decree granted in O.S.No.803 of 1982 on the file of the Additional District Munsif Court, Pondicherry. In the said second appeal, the decree granted by the trial Court was restored. Pending Second Appeal, the original Execution Petitioner Vanaja purchsaed the property and filed the present HRCOP.37 of 2001 and obtained the decree and order of eviction on 05.12.2001. Thereafter the said Vanaja filed E.P.No.8 of 2002. During the course of execution proceedings, the said Vanaja died and her husband was brought on record. During pendency of this eviction he also died and hence her only son was brought on record. The respondents 1 to 3 were remained absent before the trial Court so also before this Court and hence they are given up. The fourth respondent is the obstructor objecting the execution of the decreetal order granted in HRCOP.37 of 2001 dated 05.12.2001. Hence the decree holder filed E.A.No.98 of 2002 for removal of obstruction. The obstructor filed the counter.

9. In the counter, at the risk of repetition however for the sake of clarity, the fourth respondent herein raised an objection that he is running a

Lathe workshop in the disputed premises after getting proper license from the Municipality and after obtaining power connection in his name. This respondent has taken possession of the property in question in the year 1988 and he has been running the workshop therein without any let or hindrance from any person including the petitioner and other respondents for the past more than 13 years.

10. In the enquiry on behalf of the petitioner, no oral and documentary evidence has been adduced on behalf of the fourth respondent. The fourth respondent herein, who is an obstructor has entered the witness box and examined himself as RW.1 and marked Exs.R1 to R6 and also examined RW.2/Assistant working at the Pondicherry Municipality. It appears that based upon the Exs.R1 to R6 and also reasons assigned thereon, the learned Rent Controller has dismissed the application and hence this Civil Revision Petition.

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11. Challenging the finding rendered by the learned Rent Controller in the eviction proceedings, Mrs.Hema Sampath, learned Senior Counsel appearing for the revision petitioner could draw my attention to Exs.R1 to

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R6 and also various decisions, viz., 1998 (3) SCC 723 (Siverline Forum Pvt. Ltd., vs. Rajiv Trust and another) and 2002 (2) CTC 385 (Vummidi Bangaru Chetty (P) Ltd., vs. M/s. Spencer & Co. Ltd.,).

12. Per contra Mrs.V.Kamala Kumar, learned counsel appearing for the fourth respondent made submissions in support of the order of the trial Court and relied upon the decisions reported in 2004 LW 709 (Nallasivam vs. Dakshinamurthy and another) and 1997 (3)SCC 694 (Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswai and another).

13. Before going through the above decisions, I have perused the evidence of RW.1 before the Execution Court and in the objection petition/. He has nither whispered how he was get into possession of the property nor stated from whom he was entered into the property; whether it is a permissive possession or an encroacher assumes significance. In the chief-examination, he sated that he is in possession of the property and marked Exs.R1 to R5. As stated supra, his chief-examination is focus only to the point that he is in possession of the property since 1998. He also deposed that he was not aware of who the petitioner is. In the cross-examination, he

has fairly admitted that in respect of the petition property, he has not filed any title deed in his favour. He has also stated that he has not claimed any title to the property nor filed any document to show his title to the property. In the cross-examination it is stated that he has obtained possession from one Sambasivam and he has also admitted he has not filed any document to show how the said Sambasivam was connected with the property and he is in possession since 1998.

14. Perused Ex.R1-certificate issued by the Pondicherry Municipality in respect of D.No.178, M.G.Road, Muthialpet, Pondicherry. Admittedly, it is not the petition property. Ex.R3 is the letter given by the Town and Country Planning Department issued for the site clearance in respect of R.S.No.131/2, Mahatma Gandhi Road, Muthialpet, Pondicherry. It is only a no objection for the proposed set up of the industry. In other words, it only indicates that there is a proposal and it does not indicate that the fourth respondent is in possession of the said property.

15. Furthermore on perusal of Ex.R4, dated 17.01.1991, issued by the Inspector of Factories, it is seen that the said property is with regard to the

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D.No.84, M.G.Road, Muthialpet, Pondicherry. Admittedly, it is not the petition property whereas Ex.R5 issued by the Government of Puducherry Industrial Centre in respect of the proposed site for pollution control in respect of D.No.84, M.G.Road, Muthialpet. This is also not the petition property. Ex.R6 is the no objection certificate issued by the Pondicherry Planning Authority for the proposed set up at D.No.131/2. It is only a clearance of the proposal.

16. On perusal of the documentary evidence produced by the fourth respondent before the trial Court, as discussed supra, none of the property referred to in the document relies to the petition premises, namely, building in S.No.131/2 and building in Old Door No.166 and New Door No.378 situated at Mahatma Gandhi Road and the only one document, where it was referred to is also with regard to the proposal not for a possession. For the reasons unknown, the learned Rent Controller has gone beyond his scope of the enquiry forgetting the fact that the Execution Court cannot go beyond the decree in the HRCOP proceedings, which is totally unwarranted. Though the fourth respondent claimed he is in possession from 1998, no legally acceptable evidence, evidencing his possession from 1998 was

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produced before the Court in respect of the petition premises.

17. As discussed supra, it remains to be stated that the Execution Court has not rendered any finding that any material as if the fourth respondent is in possession from 1970. It is to be stated that the fourth respondent has not deposed nor proved as to in what capacity he was in the alleged possession. Neither in the counter statement nor in the chief-examination, he has not whispered about the nature of his possession.

18. As stated supra, only in the cross-examination, it is elicited from RW.1 that he was get into possession through one Mr.Sambasivam. Neither any document of title of the said Sambasivam nor any title of the fourth respondent has been filed before the Execution Court. In the absence of any document either in connection with the title or in connection with the possession as that of the said Sambasivam or as that of the fourth respondent herein, it appears that the learned Rent Controller has rendered a finding that the fourth respondent is in possession which glaring error on the face of the record.

19. After going through the documents filed before the Execution Court and also the evidence of RW.1 and taking note of the admission elicited in the cross-examination of RW.1, this Court is of the considered view that except the name Board placed upon the petition mentioned property, the fourth respondent is causing hindrance without any legal basis in respect of the execution of the Civil Decree, namely, decree granted in HRCOP.37 of 2001. Earlier this Court found that the Rent Controller not even looked into the documents in Exs.R1 to R4 in proper perspective and appears to be an extrapolated the contents of the document and gave an erroneous finding as if the fourth respondent is in possession and hence the same is liable to be vacated and accordingly the same stands vacated and the claim of the revision petitioner stands proved and the fourth respondent is no way in possession of the property and his possession is not proved in the manner known to law and he has successfully prevented the execution of the decree granted in the year 2001.

20. In the result, this Civil Revision Petition stands allowed on cost, accordingly, the fourth respondent is directed to pay cost of Rs.5000/- to the credit of HRCOP.37 of 2001 before the Court below.

19.06.2020

Index : Yes/No
Internet: Yes/No
PJJ

Note: The Registry is directed to call for explanation from the concerned Judicial Officer (Rent Controller, PDM, Pondicherry), if she still in service, as to her finding at paragraph Nos.12, 13 and 14 in the impugned order, dated 02.11.2010 made in E.A.No.98 of 2002 in E.P.No.8 of 2002 in HRCOP.37 of 2001, within a period of four weeks.

To

1. The Principal District Munsif,
The Rent Controller,
Pondicherry.
2. The Section Officer,
Vernacular Records,
Madras High Court,
Madras.

C.R.P.(NPD)No.4531 of 2010

RMT.TEEKARAMAN, J.

PJL



**Pre-delivery
Order made in
C.R.P.(NPD)No.4531 of 2010**

19.06.2020

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