

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 18.02.2020
Judgment Pronounced on : 05.06.2020

CORAM:
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P (NPD) .No.1705 of 2013

1.M.S.Jayaprakash
2.M.S.Shanmugam

.. Petitioners

Vs.

G.Sundaram (died)

.. Respondent

2.S.Gajalakshmi
3.S.Sathish Kumar
4.S.Dhilip Kumar
5.S.Anuradha

.. Respondents

[R2 to R5 brought on record as
LRs of the deceased sole
respondent vide Court order dated
28.01.2020 made in CMP.9758/2016
in CRP (NPD) .1705/2013]

Prayer: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1906, against the order and decreetal order dated 04.12.2012 in E.A.S.R.No.19651 of 2012 in E.P.No.180 of 2012 in R.C.O.P.No.1394 of 2010 on the file of the X-Small Cause Rent Controller Court, Chennai.

For Petitioner : Mr.N.Suresh
For Respondents : Mr.K.Ashok Chakravarthy
2 to 5

ORDER

The petitioners in R.C.O.P.No.1394 of 2010 are the revision petitioners herein. The petitioners/landlord filed R.C.O.P.No.1394 of 2010 before the X-Small Causes Court under Section 10 (2)(1)(iii) & 14(1) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The eviction is sought on the ground of willful default and for owner's occupation for the purpose of demolition and reconstruction. The petition premises is at Door No.82, Old No.83, V.V.Koil Street also called Vijaya Koil Street, Choolai, Chennai-600 112, now bearing with the name

board Gajalakshmi Cloth shop occupied by the respondent.

2. The said RCOP was decreed on 25.11.2011. Thereafter Execution Petition was filed in E.P.No.180 of 2012 and delivery was ordered. EP was closed as terminated. Thereafter, the present E.A.SR19651/2012 was filed by the landlord/petitioners to reopen the EP on the ground that the Senior Bailiff, who went to execute the warrant has colluded with the Judgment Debtor and not properly looked into the schedule of the property and extent and executed the warrant by taking wrong possession of 200 sq.ft alone instead of 1240 sq.ft. That petition has been taken in SR level and by an order dated 04.12.2012, the said petition was rejected. On the ground that since delivery was recorded, EP was terminated, and hence the petition to reopen is not maintainable. Hence, this Civil Revision Petition.

3. Heard the learned counsel on both side and perused the records.

4. According to the learned counsel for the petitioners the Senior Bailiff went to the place, where the petition premises is located. The respondent having shop next to the petition premises on the east made an opening on the eastern side wall of the petition premises and closed the main entrance by constructing a permanent wall on the petition schedule premises and left the varandah portion for delivery of possession. This fact has not been reached the Decree Holder. The erstwhile advocate clerk accompanied with the Senior Bailiff also has not informed the facts to the decree holder accompanied with him. Now, the Judgment Debtor fully enjoying the major area of 1040 sq.ft. Out of the total extent of 1240 sq.ft., is still under the possession of the judgment debtor undelivered.

5. According to the learned counsel for the respondents, the EP was executed in terms of the Decreeal order to the satisfaction of the Decree Holder and the report of the senior bailiff was filed and recorded in the Court. As such there is no ambiguity and the Decree Holders at a later hour cannot harp on the Court or its staff for their failure in proper identification and Omission to take possession of their own property as claimed by them in their plaint/petition.

6. In the decision of the Hon'ble Supreme Court in Shew Bux Mohata and others vs. Bengal Breweries Ltd., and Others, reported in AIR 1961 SC 137, the Hon'ble Supreme Court holds that it is settled position of law that once the decree stands fully satisfied, a second execution petition would not lie for execution of the said decree and therefore, second execution

petition could not claim for the execution of the decree. However, in the instant case, the petition is to reopen the execution proceedings on the ground that a lesser extent of law only delivered due to the connivance of the Senior Bailiff along with the Judgment Debtor.

7. It is the specific case of the petitioners that during the pendency of the case, the tenant using the passage connecting the petition premises and adjoining property owned by him, has constructed a wall and closed the door behind the main door of the premises. The key to the main door is handed over to the respondents by bailiff as a symbolic possession, but the wall and closed door prevent the access to the entire premises and therefore, the opportunity has to be given to the landlord to prove and demonstrate as to the extent of the petition premises and also the extent of the possession and extent of the land and building that was delivered through the Court. If there is a shortage of 1000 sq.ft as pleaded by the petitioner, the said plea cannot be negatived on flip-shot. The petition is filed only for reopening the E.P.No.180/2012, which was closed by terminating the same on 18.06.2012. The EP was closed based upon the Senior Bailiff's report dated 18.06.2012. Since the extent of the possession was disputed, I am of the considered view that this is a fit case where the revisional Court shall exercise its powers under Article 115 of the Civil Procedure Code.

8. In the result, this Civil Revision Petition is allowed. No costs. The fair and order dated 04.12.2012 in E.A.S.R.No.19651 of 2012 in E.P.No.180 of 2012 in R.C.O.P.No.1394 of 2010 on the file of the X-Small Cause Rent Controller Court, Chennai, is set aside. The matter is remitted back to the Rent Controller, X-Small Causes Court, Chennai, to number the MP in E.A.SR.19651 of 2012 and to hold a preliminary enquiry as to the extent of the land, after giving opportunity to both the parties and the same shall be decided as a preliminary issue before passing final order.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

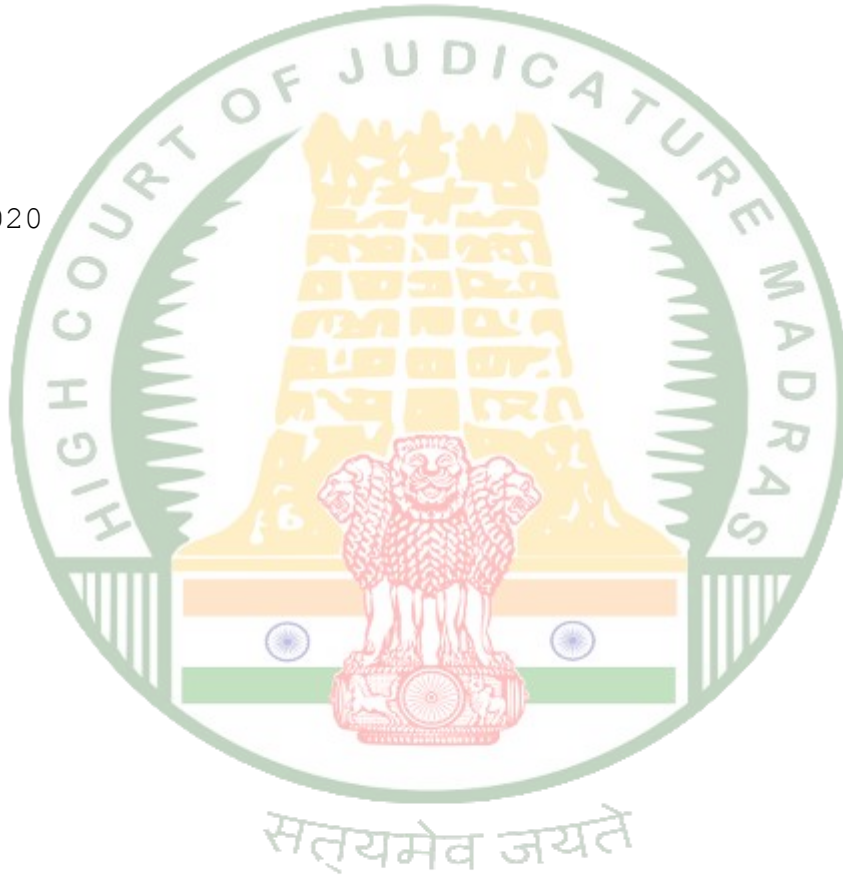
PJL

To

1. The Judge,
X-Small Cause Rent Controller Court,
Chennai.
2. The Section Officer,
Vernacular Records,
Madras High Court,
Madras.

C.R.P.No.1705 of 2013

sj (co)
aa30/09/2020



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