



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

C.R.P. (MD)No.806 of 2012

N.A.Zackaria

.. Revision Petitioner/2nd Petitioner/
4th Plaintiff

vs.

1.Mohideen Andavar Hanabi Jumma Pallivasal
Jamad Executive Committee,
Through its President,
Keelapallivasal Street, Puliyangudi Kaspas,
Sivagiri Taluk, Tirunelveli District.

2.Mohideen Andavar Hanabi Jumma Pallivasal
Jamad Executive Committee,
Through its Secretary,
Keelapallivasal Street, Puliyangudi Kaspas,
Sivagiri Taluk, Tirunelveli District.

3.Subbiah

4.Mohd. Nainar .. Respondents/ Respondents1&2
& Petitioners 1&3/
Defendants 1&2 & Plaintiffs 3&5

[no relief prayed against respondents 3 &
4. Hence, no notice is necessary to
Respondents 3 & 4]

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 03.11.2011 in E.P.No.12 of 2009 in O.S.No.127 of 2008, on the file of the District Munsif-cum-Judicial Magistrate, Sivagiri.

For Petitioner : Mr.K.Chengiz Khan

For Respondents 1 & 2 : Mr.M.P.Senthil

ORDER

This Civil Revision Petition has been directed against the impugned fair and decreetal order, dated 03.11.2011, made in
<https://hcservices.ecourts.gov.in/hcservices/>



E.P.No.12 of 2009 in O.S.No.127 of 2008, passed by the learned District Munsif- cum-Judicial Magistrate, Sivagiri.

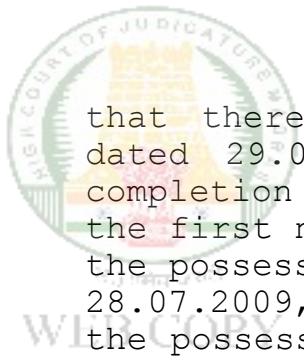
2. The learned counsel for the petitioner challenging the correctness of the impugned fair order, submitted that when the petitioner was one of the tenants occupying the building belonging to the 1&2 respondents/Pallivasal, steps were taken to demolish / reconstruct the building in question. Since the petitioner declined to vacate the premises in question and apprehending unlawful dispossession at the hands of the respondents, he filed a civil suit in O.S.No.127 of 2008 on the file of the District Munsif-cum-Judicial Magistrate, Sivagiri, on 11.08.2008 seeking a decree for permanent injunction. Pending suit, a compromise was reached on 29.09.2008 and a compromise decree was passed. As per the said compromise decree, the petitioner should vacate and hand over the premises in question enabling the respondents to reconstruct and thereafter, to allow the petitioner in possession. As per the conditions mentioned in the compromise decree, dated 29.09.2008, even after the demolition and reconstruction, the respondents have not come forward to fulfill the conditions mentioned in the compromise decree, dated 29.09.2008. Therefore, when the Mohideen Andavar Hanabi Jumma Pallivasal/1&2 respondents refused to accommodate the petitioner as a tenant as per the compromise decree, an execution petition in E.P.No.12 of 2009, was filed before the learned District Munsif-cum-Judicial Magistrate, Sivagiri, alleging that the compromise decree has been violated and therefore, the petitioner has been put to great hardship.

3. In reply, a counter affidavit has also been filed by the respondents stating that the petitioner was informed about the payment of caution deposit and on two occasions, ie., on 17.07.2009 and 28.07.2009, the respondents issued notices informing the petitioner to take over the possession of the shop allotted to him. However, the petitioner has not come forward to take over the possession for a long time. Thereafter, instead of keeping the shop idle, in order to derive revenue to the Pallivasal, the shops were let out to others. Accepting the case of the respondents, the EP was dismissed, as against which, the present Civil Revision Petition has been filed.

4. The learned counsel for the petitioner would submit that on receipt of the above mentioned two letters, the respondents were approached by the petitioner. The petitioner was called upon to pay a sum of Rs.1,50,000/- towards caution deposit. Though this huge amount would not be paid by the petitioner and it is an unreasonable one, the Executing Court has failed to consider the bonafide grievance raised by the petitioner and therefore, the impugned order is liable to go, the learned counsel contended.

5. Opposing the above prayer, the learned counsel for the respondents would submit that the contentions made by the petitioner

<https://www.mca21.com>



that there was violation of the agreement of compromise decree, dated 29.09.2008, is frivolous for the reason that after the completion of construction, though two notices were issued, ie., the first notice on 17.07.2009 informing the petitioner to take over the possession of the shop allotted to him and the second notice on 28.07.2009, informing the petitioner that if he failed to take over the possession of the said shop, the same will be allotted to other persons. Therefore, the said shop was allotted to other persons. Hence, he prays for dismissal of this petition.

6. Appreciating the inaction on the part of the petitioner, the trial Court has passed the impugned order, which does not call for any interference. This Court fully appreciates the submission of the learned counsel for the respondents for the reason that two notices, dated 17.07.2009 and 28.07.2009 were issued by the 1&2 respondents/Pallivasal calling upon the petitioner to come forward to take over the physical possession. Admittedly, in these two notices, no amount was mentioned. Secondly, when the petitioner approached the respondents, they demanded to pay a huge amount and at that stage, the petitioner ought to have approached the Executing Court, which has not been done and no case was made out with regard to the claim made by the 1&2 respondents/Pallivasal for payment of Rs.3,00,000/-. Therefore, this Civil Revision Petition fails and accordingly, it is dismissed. No Costs.

7. At this juncture, the learned counsel for the petitioner, by referring to the rental receipt, dated 05.08.1993 issued by the 1&2 respondents/Pallivasal for acknowledging the receipt of Rs.15,000/-, stated that the said amount may be directed to be refunded. If the above said amount is refundable, and if any request is made by the petitioner, the 1&2 respondents/Pallivasal shall consider the same.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

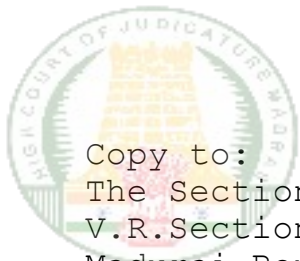
/ /2020

Sub Assistant Registrar(CS)

PJL

To

The District Munsif-cum-Judicial Magistrate,
Sivagiri.



Copy to:
The Section Officer, (2 Copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

WEB COPY

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-1022[F] dated 09/01/2020)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-1078[F] dated 09/01/2020)

C.R.P. (MD) No.806 of 2012
08.01.2020

JMN(20.02.2020) 4P : 6C