

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(NPD)No.4329 of 2012 &
C.R.P.(NPD)Nos.2931 & 3157 of 2013
and M.P.Nos.1 & 2 of 2012
& M.P.Nos. 1,1 & 2 of 2013

C.R.P.No.4329 of 2012

S.N.Kulasekaran

... Petitioner

Vs.

1. Dr. Vasanthi Chandrasekarn
2. S.Packiaraj

F.Nagoor (deceased)
rep. by LR.

3. Meera Begum
4. Musthapa

(Respondents 3 & 4 are given up
since they are not necessary parties)

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed by the learned XVIII Additional Judge, XVIII Additional and Sessions Court, Chennai in C.M.P.No.4 of 2012 in A.S.No.311 of 2012 dated 17.09.2012 by allowing this Civil Revision Petition.

For Petitioner : No appearance
For Respondents
For R1 : Mr.A.A.Mohan
For R2 : No appearance
For R3 & R4 : Given up

C.R.P.No.2931 of 2013

D.Mohan Senthil Kumar ... Petitioner

Vs.

1. S.N.Kulasekaran
2. S.Packiaraj

- F.Nagoor (deceased)
rep. by LRs.
3. Meera Begum
4. Musthapa

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order of rejection dated 03.08.2013 passed in E.A.SR.No.34715 of 2013 in E.P.No.457 of 2007 in O.S.No.1311 of 1981 on the file of the X Assistant City Civil Court at Chennai and direct the Execution Court to dispose the same in accordance with law.

For Petitioner : Mr.S.P.Sudalaiyandi
For Respondents
For R1 : No appearance
For R2 : No appearance

C.R.P.No.3157 of 2013

S.Rafika

... Petitioner

Vs.

1. S.N.Kulasekaran

2. S.Packiaraj

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order of rejection dated 21.08.2013 in E.A.SR.No.37303 of 2013 in E.P.No.457 of 2007 in O.S.No.1311 of 1981 on the file of the X Assistant City Civil Court at Chennai and direct the Execution Court to dispose the same in accordance with law.

For Petitioner : Mr.S.P.Sudalaiyandi

For Respondents

For R1 : No appearance

For R2 : No appearance

COMMON ORDER

The Civil Revision Petition in C.R.P.No.4329 of 2012 is directed as against the fair and decreetal order dated 17.09.2012, passed by the learned XVIII Additional Judge, XVIII Additional and Sessions Court, Chennai in C.M.P.No.4 of 2012 in A.S.No.311 of 2012, thereby granting stay of all further proceeding in the order dated 03.07.2012 in E.P.No.457 of 2007 in O.S.No.1311 of 1981 on the file of the X Assistant Judge, City Civil Court, Chennai pending disposal of the appeal in A.S.No.311 of 2012.

2. The Civil Revision Petitions in C.R.P.Nos.2931 & 3157 of 2013 are directed as against the fair and decreetal orders dated 03.08.2013 & 21.08.2013 respectively, passed by the learned X Assistant Judge, City Civil Court, Chennai in E.A.SR.Nos.34715 & 37303 of 2013 respectively, in E.P.No.457 of 2007 in O.S.No.1311 of 1981, thereby returning the petitions to record the petitioners' valuable obstruction for the delivery in E.P.No.457 of 2007 in O.S.No.1311 of 1981.

3. The petitioner in C.R.P.No.4329 of 2012 and the first respondent in C.R.P.Nos.2931 & 3157 of 2013 viz., S.N.Kulasekaran (herein after called as "the decree holder") has filed a suit in O.S.No.1311 of 1981 for declaration and recovery of possession with consequently prayer of permanent injunction. The said suit was decreed in his favour by the judgment and decree dated 29.12.1988. Aggrieved by the same one of the defendants viz., Packiaraj filed appeal suit in A.S.No.15 of 1989 and the same was also dismissed by the judgment and decree dated 21.09.1989. Against which, the said Packiaraj filed second appeal and the same was also dismissed by this Court. Thereafter, he filed Special Leave Petition before

the Hon'ble Supreme Court of India and the same was also dismissed in the year 1991.

4. After that, the decree holder filed execution petition in E.P.No.181 of 1991 before the District Munsif Court, Poonamallee. While pending the execution proceedings, one another person viz., Deva Anbu claimed title over the very same property and he filed suit in O.S.No.2188 of 1994 for declaration declaring that the judgment and decree passed in O.S.No.1311 of 1981 dated 25.12.1988, as null and void. In the mean time, the said Deva Anbu sold out the suit property to one Rajeswari. Subsequently, the suit in O.S.No.2188 of 1994 was dismissed as withdrawn by the judgment and decree dated 27.04.2001.

5. In the execution petition, the deliver was ordered in the year 1999, but the Bailiff could not be able to execute the delivery due to the obstructors. Therefore, the decree holder filed applications in E.A.Nos78, 79, 84,85 & 86 of 1999 to remove the obstructors and the Execution Court by a common order dated 22.11.1999 dismissed all the applications along

with the main execution petition. Aggrieved by the same the decree holder filed Civil Revision Petitions before this Court in C.R.P.Nos. 136 to 144 of 1999 and all the revision petitioner were allowed by this Court by a common order dated 10.08.2000. One of the obstructors viz., Rajeswari filed Special Leave Petition before the Hon'ble Supreme Court of India in S.L.P.No.13755 of 2000, in which the Hon'ble Supreme Court of India ordered status quo by an order dated 11.09.2000. Thereafter the leave was granted by the Hon'ble Supreme Court of India by an order dated 19.02.2001 with direction to maintain status quo till disposal of the appeal.

6. The Hon'ble Supreme Court of India allowed the Civil Appeal No.1417 of 2001 by the judgment and decree dated 29.03.2006 with direction to the decree holder to seek such remedy as may be available to him in accordance with law. Accordingly, the decree holder filed appeal in C.M.A.No.56 of 2007 before the VI Additional City Civil Court, Chennai, challenging the common order passed in the petitions in the execution proceedings viz., E.A.Nos.78, 79, 84, 85 & 86 of 1999 and 181 of 1981. The said appeal was allowed by an order dated 21.10.2011.

7. In the mean while, the execution petition was transfered to the file of the IX City Civil Court, Chennai and renumbered as E.P.No.457 of 2007. In the execution petition, the decree holder filed application in E.A.No.2057 of 2012 for deliver of possession and the same was ordered by an order dated 03.07.2012. As against the above orders, the obstructor viz., the subsequent purchaser viz., Rajeswari filed appeal in C.M.S.A.No.36 of 2012 and revision petition in C.R.P.No.2779 of 2012 challenging the order passed in C.M.A.No.56 of 2007 and E.A.No.2057 of 2012 respectively before this Court.

8. This Court by a common judgment dated 22.04.2013 dismissed both the cases in C.M.S.A.No.36 of 2012 and C.R.P.No.2779 of 2012. As against the said common judgment, the obstructor viz., Rajeswari filed Special Leave Petition before the Hon'ble Supreme Court of India in S.L.P.Nos.26165 and 26166 of 2013, in which the Honb'ble Supreme Court of India ordered status quo by an order dated 25.11.2013. In fact the said interim order granted by the Hon'ble Supreme Court of India made absolute

by an order dated 14.07.2017 and both the S.L.Ps are pending in Civil Appeal Nos. 10613 & 10614 of 2013.

9. In the mean time an another obstructor viz., Dr.Vasanthi Chandrasekarn filed petition in C.M.P.No.4 of 2012 to stay all further proceeding in pursuance to the order dated 03.07.2012 in E.P.No.457 of 2007 in O.S.No.1311 of 1981 and the same was allowed by the XVIII Additional & Sessions Court, Chennai by an order dated 14.07.2012. Challenging the said order of stay to delivery of possession, the decree holder filed the present Civil Revision Petition in C.R.P.No.4329 of 2012.

10. The other revision petitions in C.R.P.Nos.2931 & 3157 of 2013 are filed by the subsequent purchasers of the suit property from the said Rajeswari, who is the appellant before the Hon'ble Supreme Court of India in Civil Appeal Nos.10613 & 10614 of 2013. They filed petitions in E.A.SR.No.37303 & 34715 of 2013, to record their valuable obstructions for the delivery in E.P.No.457 of 2007 in O.S.No.1311 of 1981 along with the stay petition. Both the petitions were returned for the reason that since

the application for delivery of possession in E.A.No.2057 of 2012 has already been allowed and the same was also confirmed by this Court in C.R.P.No.2779 of 2012, the obstruction and stay petitions filed by the petitioners are not maintainable.

11. On perusal of records, the vendor of the petitioners challenged the order passed in C.M.A.No.56 of 2007 and E.A.No.2057 of 2012 before this Court in C.M.S.A.No.36 of 2012 and C.R.P.No.2779 of 2012. Both the cases were dismissed by this Court and aggrieved by the same their vendor filed appeal before the Hon'ble Supreme Court of India in Civil Appeal Nos.10613 & 10614 of 2013, in which an interim order of status quo was granted and the same was also made absolute by an order dated 14.07.2017. Therefore, till the disposal of the Civil Appeals by the Hon'ble Supreme Court of India, the Execution Court cannot proceed further. Further the Execution Court cannot return the petition for obstruction and stay, as not maintainable without even numbering the same.

12. Insofar as the Civil Revision Petition in C.R.P.No.4329 of 2012 is concerned, the decree holder filed this petition aggrieved by the interim stay granted by the learned XVIII Additional Judge, XVIII Additional and Sessions Court, Chennai in C.M.P.No.4 of 2012 in A.S.No.311 of 2012, thereby stayed the execution proceeding in respect of the property ad measuring 733 sq.ft., purchased by the first respondent herein. The main appeal is still pending. In view of the discussion made in the above paragraphs, this Court finds no illegality or infirmity in the order passed by the Court below.

13. Accordingly, the Civil Revision Petition in C.R.P.No.4329 of 2012 stands dismissed and the Civil Revision Petitions in C.R.P.Nos.2931 & 3157 of 2013 are allowed. The orders dated 03.08.2013 & 21.08.2013, passed by the learned X Assistant Judge, City Civil Court, Chennai in E.A.SR.Nos.34715 & 37303 of 2013 respectively, in E.P.No.457 of 2007 in O.S.No.1311 of 1981, are hereby set aside. The petitioner in both the petitions are directed to re-present the petitions for obstruction and stay in accordance with law and on receipt of the same, the learned X Assistant

Judge, City Civil Court, Chennai, is directed to number the same and keep the petitions pending till the disposal of the Civil Appeal Nos.10613 & 10614 of 2013, by the Hon'ble Supreme Court of India. It is made clear that the Hon'ble Supreme Court of India has already ordered status quo and the same was also made absolute by an order dated 14.07.2017. Registry is directed to return the original petitions in E.A.SR.Nos.34715 & 37303 of 2013 to the petitioners in C.R.P.Nos.2931 & 3157 of 2013, respectively after substituting the xerox copy of the same. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

21.01.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

WEB COPY

G.K.ILANTHIRAIYAN, J.

rts

To

1. The XVIII Additional Judge,
XVIII Additional and Sessions Court,
Chennai.
2. The X Assistant City Civil Court,
Chennai.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



C.R.P.(NPD)No.4329 of 2012 &
C.R.P.(NPD)Nos.2931 & 3157 of 2013
and M.P.Nos.1 & 2 of 2012
& M.P.Nos. 1,1 & 2 of 2013

WEB COPY

21.01.2021