

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.09.2021

PRONOUNCED ON : 25.10.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(N.P.D)No.899 of 2019 and
C.M.P.Nos.5829 & 20270 of 2019**

Sriramulu(Died)

Kumar

...Petitioner

Vs.

C.P.Thiruvengadam(Died)

T.Gayathiri

....Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 22.01.2019 passed in unnumbered E.A.SR.No.64192 of 2018 on the file of XI Small Causes Court, Chennai and to direct XI Small Causes Court, Chennai to number the E.A.SR.No.64192 of 2018 and to take up the application on file and decide the matter on merits.

For Petitioner : Mr.I.Abrar MD Abdullah

For Respondent : Mr.V.Ragavachari for Mr.A.Arunbabu

ORDER

This Civil Revision Petition is filed challenging the order passed in E.A.SR.No.64192 of 2018 by the learned XI Judge, XI Small Causes Court, Chennai on 22.01.2019.

2.The learned counsel for the petitioner submitted that petitioner's father Sriramulu became a tenant under respondent's father C.P.Thiruvengadam. C.P.Thiruvengadam, filed R.C.O.P.No.1080 of 2000 for eviction against the petitioner's father. Eviction was ordered on 11.03.2002. Petitioner's father filed an appeal in R.C.A.No.206 of 2002. During the pendency of the appeal his father died. Petitioner was not aware of R.C.A.No.206 of 2002. R.C.A.No.206 of 2002 was dismissed for default on 05.01.2011. Only after the receipt of notice in E.P.No.336 of 2014, petitioner came to know about the dismissal of R.C.A.No.206 of 2002. In execution petition delivery was ordered. The petitioner preferred C.R.P.No.353 of 2015 and it was dismissed on 14.06.2018. Against the order passed in this C.R.P.No.353 of 2015, petitioner preferred review application in 189 of 2018 and it is pending.

3.It is further submitted that the petitioner's father was a tenant

under respondent's father on a bonafide impression that respondent's father was the owner of the petition mentioned premises. Only a few years back, petitioner came to know that the respondent's father is not the real owner of the petition mentioned building. The petition mentioned property along with an extent of three grounds and 1669sqft., originally belong to Aruilmigu Venugopala Swamy Temple. This temple was worshipped by general public. One bhakthavachalam, constructed the temple several decades ago. He created a will in favour of his wife Jayalakshmi Ammal in 1919. They had no issues and adopted one V.Perumal Pillai as their heir. Perumal Pillai was appointed as dharmakartha of the temple. Perumal Pillai passed away in 1991. He mutated all records in his name and his legal heirs. Respondent's father is the son of the Perumal Pillai. The HR & CE department is the owner of the petition mentioned property and therefore HR & CE department is entitled to receive rent. Respondent is not entitled to receive rent. The proceedings taken against the father of the petitioner for eviction by the respondent's father and now by respondent cannot be maintained in law.

4.The grievance of the learned counsel for the petitioner is that though the petitioner had made very valuable contention that the respondent's father, now the respondent is not the owner of the petition mentioned premises and therefore, the eviction petition filed by the respondent's father prosecuted by the respondent, after his father's death, is fundamentally not correct. Therefore, the petition in unnumbered E.A.SR.No.64192 of 2018 was filed under Section 47 of C.P.C., 1908 to dismiss the execution petition as in-executable and not maintainable. Without considering the submissions and also the materials produced, especially the details of the temple lands particulars of Egmore Town belongs to HR & CE department, the learned XI Judge, XI Small Causes Court, Chennai, has rejected the petition even without numbering. The rejection of petition even without numbering is not in accordance with law. The petition should have been numbered and order should have been passed after hearing both the parties. Therefore, the learned counsel for the petitioner prayed for setting aside the order passed by the learned XI Judge, XI Small Causes Court, Chennai, in unnumbered E.A.SR.No.64192 of 2018 in E.P.No.336 of 2014 and for numbering this

petition and disposal in accordance with law.

5.In response, the learned counsel for the respondent submitted that the rent control petition was filed in the year 2000 for evicting petitioner's father and eviction was ordered in 2002. Appeal filed by the petitioner's father was dismissed for default. Therefore, the eviction order has become final. Execution petition was filed in 2014 and till now the respondent is not able to take possession. The petitioner is protracting the proceedings in the execution petition. This petition filed under Section 47 of Civil Procedure Code 1908 is yet another attempt to further delay the execution proceedings. Having failed in all attempts, petitioner has filed this petition again. The tenant cannot deny the title of the landlord. The tenant during the continuance of the tenancy is debarred, on the doctrine of estoppel, from denying the title of his landlord as per Section 116 of Indian Evidence Act 1872. In this regard, the learned counsel for the respondent relied on the judgment reported in **2017 5 SCC 451 (Om Prakash and another Vs. Mishri)** to highlight the proposition that a tenant is estopped from denying the title of the

landlord.

“d.33.Further the original defendant having accepted Smt.Chameli Devi as his landlady and thereafter continued to pay rent to her son Bhola Nath, the father of the appellants, in terms of the definition of “landlord” in Section 3(j) of the Act, he during his lifetime and after his demise, the respondents are estopped under Section 116 of the Evidence Act, 1872 to dispute the status of the appellants as their landlord in a suit for his eviction from the tenanted premises.

e.34.That a tenant during the continuance of the tenancy is debarred on the doctrine of estoppel from denying the title of his landlord through whom he claims tenancy, as is enshrined in Section 116 of the Evidence Act, 1872, is so well settled a legal postulation that no decision need be cited to further consolidate the same. This enunciation, amongst others is reiterated by this Court in S.Thangappan Vs. P.Padmavathy and Bhogadi Kannababu Vs. Vuggina Pydamma. In any view of the matter the appellants, being the son of Bhola Nath, who at all relevant time, was the landlord Vis-a-vis the original defendant and the respondents in terms of Section

3(j) of the Act, their status as landlords for the purpose of eviction under the Act, could not have been questioned so as to non-suit them for want of locus”.

Judgment reported in **(2021) 6 SCC 418 (Rahul S.Shah Vs. Jinendra Kumar Gandhi and others)** is pressed into service with regard to the directions given by the Hon'ble Supreme Court which dealing with execution proceedings,

“41.Having regard to the above background, wherein there is urgent need to reduce delays in the execution proceedings we deem it appropriate to issue few directions to do complete justice. These directions are in exercise of our jurisdiction under Article 142 read with Article 141 and Article 144 of the Constitution of India in larger public interest to subserve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law.

42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:

42.1. *In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.*

42.2. *In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.*

42.3. *After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.*

42.4. *Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.*

42.5. *The Court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.*

42.6. *In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.*

42.7. *In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.*

42.8. *The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises*

any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9.The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10.The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.

42.11.Under section 60 of CPC the term “...in name of the judgment- debtor or by another person in trust for him or on his behalf” should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

42.12.The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by

recording reasons in writing for such delay.

42.13.The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

42.14.The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts.

43.We further direct all the High Courts to reconsider and update all the Rules relating to Execution of Decrees, made under exercise of its powers under Article 227 of the Constitution of India and Section 122 of CPC, within one year of the date of this Order. The High Courts must ensure that the Rules are in consonance with CPC and the above directions, with an endeavour to expedite the

process of execution with the use of Information Technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable”.

6.Thus, the learned counsel for the respondent submitted that the petitioner has filed the petition under Section 47 of C.P.C., 1908 only with a view to dragging the proceedings and delay the delivery of property and therefore prays for confirming the order of the learned XI Judge, XI Small Causes Court, Chennai and for dismissal of this Civil Revision Petition.

7.Considered the rival submissions and perused the records.

8.Admittedly, the petitioner's father was inducted as tenant in respect of petition mentioned property by the respondent's father. Then the respondent's father filed R.C.O.P.No.1080 of 2000 for eviction. Eviction was ordered against the petitioner's father. Petitioner's father filed appeal and that appeal came to be dismissed for the reason that the

petitioner's father died. Even after the death of petitioner's father, petitioner continued to be the tenant in the property. After respondent's father's death, respondent became the landlord. Until now there is no dispute with regard to the case of both the parties. Only in the execution stage, petitioner has taken a plea that the respondent's father was not the owner but the HR & CE department is the owner of the petition mentioned property. The rent control proceedings initiated by the respondent's father and now by the respondent is not in accordance with law. However, in support of this contention of the petitioner, there is no acceptable evidence available. In fact, there are materials available to contradict the case of the petitioner.

9.The execution petition is filed for a non-residential portion of building in the ground floor in Door No.120, Egmore High Road, Egmore, Chennai-600008. The details of the temple lands particulars of Egmore town land to HR & CE department shows that no door number is given in respect of a shop and temple said to have been owned by Arulmigu Venugopala Swamy Temple. Petitioner has filed O.S.No.1728

of 2016 against the respondent and Hindu Religious Charitable and Endowment Department for the relief of declaring that the Hindu Religious Charitable and Endowment Department is legally entitled to receive the rent and respondent is not entitled to receive the rent. Respondent filed I.A.No.10388 of 2016 under Order VII Rule 11 & 151 of C.P.C., for rejection of plaint in O.S.No.1728 of 2016. After hearing both the parties, learned XVI Assistant Judge, City Civil Court, Chennai, allowed the petition and rejected the plaint in O.S.No.1728 of 2016. It appears that the petitioner filed C.R.P.No.353 of 2015 challenging the order passed in E.P.No.336 of 2014 in R.C.O.P.No.1080 of 2000. That Civil Revision Petition was dismissed. In the order passed in C.A.No.146 of 1947, in the matter of Sri Venugopalaswami temple, it was ordered that “we feel that the use of the temple by the public during the few years after the High Court's judgment is not sufficient evidence from which a presumption of dedication to the public can be drawn”. Petitioner has also filed R.C.O.P.No.1397 of 2014 against the respondent under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act to deposit the rent. Filing of this petition shows that the

petitioner recognised the respondent as the landlord.

10. Petitioner filed W.P.No.26538 of 2018 against the Commissioner of HR & CE department and others to dispose his representation dated 16.08.2018. This representation was given for fixing fair rent for his shop portion in No.120, Egmore High Road, Egmore, Chennai. Direction was given to the respondent in the Writ Petition to dispose petitioner's representation within a period of six weeks from the date of a receipt of a copy of this order. Subsequently, the Joint Commissioner of HR & CE department passed an order on 18.02.2019, stating that on considering the materials Arulmigu Venugopala Swamy Temple is not coming under the control of HR & CE department and therefore fair rent cannot be fixed as claimed by the petitioner. Again in an order passed on 20.09.2019, it was observed that Arulmigu Venugopala Swamy Temple was held as private temple in the order passed in C.S.No.98 of 1923 on 20.10.1925. It was confirmed in HR & CE department Board's order No.52, dated 07.01.1947. Thus it is clear from these orders passed by the HR & CE department that

Arulmigu Venugopala Swamy Temple is a private temple and it is not a temple coming under the management and control of the HR & CE department.

11.Having accepted the respondent's father as a landlord and entered as a tenant it is not open to petitioner's father or the petitioner now to deny that respondent's father or respondent is not the owner of the petition mentioned premises and the rent control proceedings and the eviction proceedings initiated by them are not maintainable and inexecutable. As rightly pointed out by the learned counsel for the respondent and as found from the judgment referred above, the petition filed under Section 47 of Civil Procedure Code 1908, by the petitioner is purely an exercise to protract and delay the delivery of the property. This Court finds no reason to interfere with the order dated 22.01.2019 in unnumbered E.A.SR.No.64192 of 2018 in E.P.No.336 of 2014 in R.C.O.P.No.1080 of 2000, passed by the learned XI Judge, XI Small Causes Court, Chennai and the order is confirmed.

12.Accordingly, this Civil Revision Petition is dismissed with

costs. Additional cost of Rs.10,000/- to the respondent to be paid by the petitioner. Consequently, connected miscellaneous petitions are closed.

Ep

25.10.2021

Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

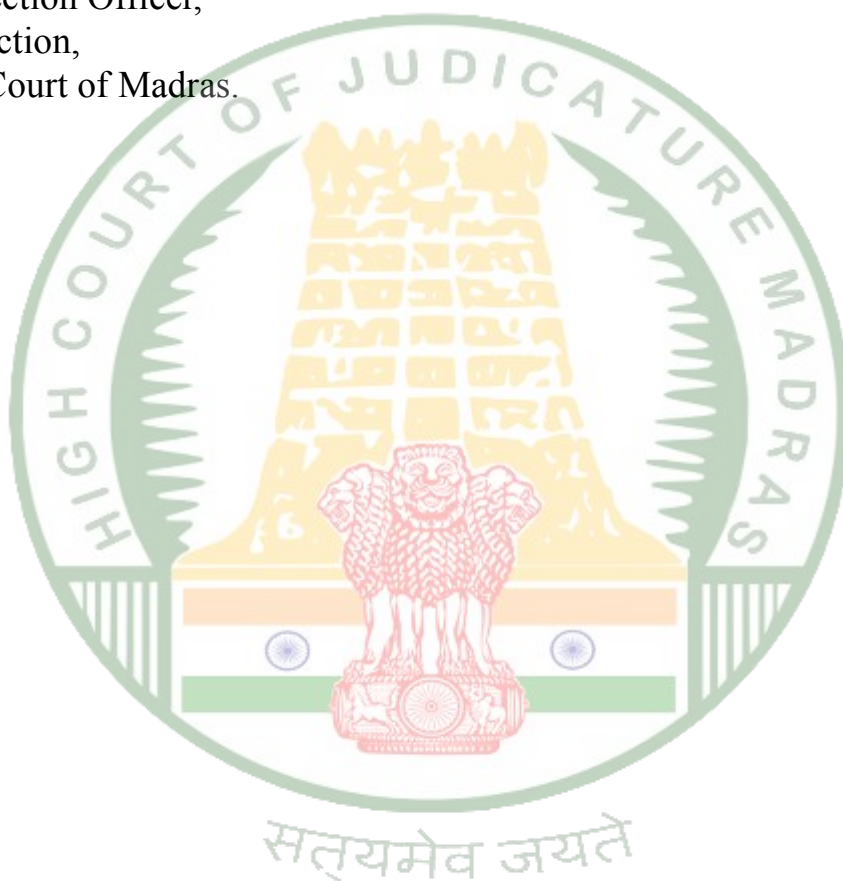


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To

1. The XI Judge,
XI Small Causes Court,
Chennai.

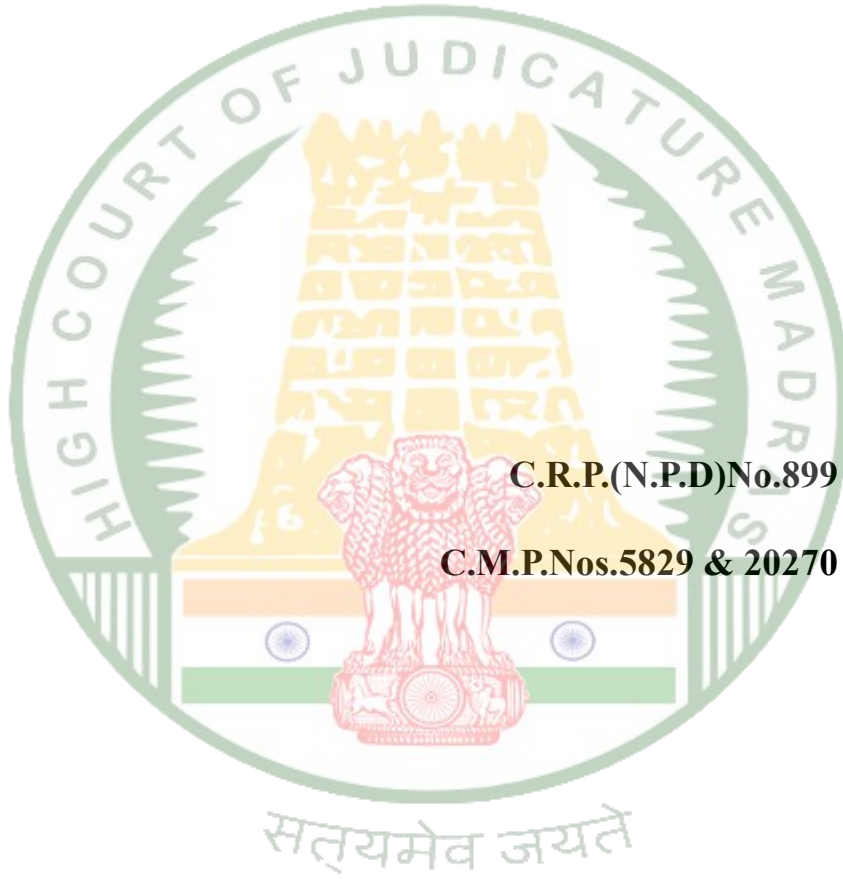
2. The Section Officer,
VR Section,
High Court of Madras.



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G.CHANDRASEKHARAN.J,

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