

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD)No.1661 of 2021
and C.M.P.No.12894 of 2021
(Through Video Conference)

Rajambal

.. Petitioner

Versus

Asothai

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside decretal order passed in E.P.No.56 of 2018 dated 23.07.2019 in O.S.No.115 of 2017, on the file of Learned Principal District Munsif, Thittagudi.

For Petitioner : Mr.R.Balaguru Swamy

O R D E R

This Civil Revision Petition is filed to set aside the order passed in E.P.No.56 of 2018, dated 23.07.2019 in O.S.No.115 of 2017, on the file of the Learned Principal District Munsif, Thittagudi.

2. The learned counsel for the petitioner assailed this order on the ground that the respondent should have filed R.C.O.P. for evicting the petitioner.

Instead of filing R.C.O.P., she filed a suit seeking a prayer for the delivery of possession and for recovery of rent for the period from July 2016 to November 2017. According to the learned counsel for the petitioner, the decree passed in the suit is illegal. He further submitted that while effecting delivery of the property, the movables available in the property were also delivered to the respondent. In this regard, she filed a petition before the Learned Principal District Munsif, Thittagudi for return of the movables and the petition was rejected. Learned counsel for the petitioner prayed for setting aside the order passed in E.P.No.56 of 2018 on 23.07.2017.

3. Considered the submissions and perused the records.

4. It is seen from the copy of the plaint in O.S.No.115 of 2017 that the suit was filed by the respondent on the ground that the petitioner was initially given permission to occupy the suit premises and then, there was an oral lease agreement between them. The petitioner was not regularly paying the rent from July 2016. The petitioner is an unauthorized occupant and therefore, the respondent is entitled for possession and to claim damages.

5. On the above said plea, the suit was filed. It is seen from the judgment and decree passed in O.S.No.115 of 2015 that the petitioner has not appeared before the Court and therefore, the petitioner was set ex parte and an ex parte

decree was passed on 27.02.2018. Thus, it is clear that the suit was decreed *ex parte*. The issues now raised by the learned counsel for the petitioner, have not been raised before the trial Court. It appears that there is no appeal against the judgment and decree in O.S.No.115 of 2017 and it has become final. Subsequently, an execution petition in E.P.No.56 of 2018 was filed and it is seen from the delivery acknowledgment, dated 16.08.2019 that the suit property was delivered to the respondent after removing the articles available in the suit property.

6. As stated earlier, the suit was decreed *ex parte* and there is no appeal and decree was also executed. Therefore, there is no reason for interfering with the order of the Learned Principal District Munsif, Thittagudi passed in E.P.No.56 of 2018 on 23.07.2019. With regard to the contention that the petitioner filed a petition before the Learned Principal District Munsif, Thittagudi seeking for the return of the movables available in the suit property, if any such application is filed by the petitioner, and if any such movables are available in the custody of the Court, the Learned Principal District Munsif, Thittagudi is directed to dispose the application in the manner known to law.

G.CHANDRASEKHARAN, J.,

sts/mn

7. For the reasons aforesaid, this Court finds that the order passed in E.P.No.56 of 2018 dated 23.07.2019 in O.S.No.115 of 2017 cannot be set aside and it is confirmed. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.08.2021

Speaking Order / Non-Speaking Order

Index : Yes / No

sts/mn

To:

The Learned Principal District Munsif,
Thittagudi.

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Order made in
C.R.P.(PD) No.1661 of 2021