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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2109 of 2020
and
Caveat No.3823 of 2020

Pratap Pierre Gerard De Condappa

... Petitioner

Vs.

1. Manet Ravi

2. Raj Maleappane

3. Marie Therese Anandi Vanina Rajarathnam

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to dispose of E.A.No.130 of 2019 in E.P.No.9 of 2017 in H.R.C.O.P.No.40 of 2007 pending before the Principal District Munsif, Pondicherry within a stipulated time.

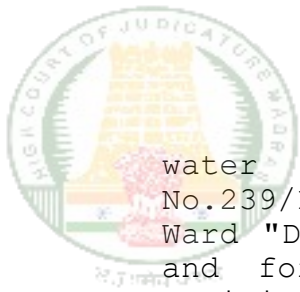
For Petitioner : Mr.Sanjay Ramaswami

For Respondents : Mr.D.Senthilkumar for R3

O R D E R

This Civil Revision Petition has been filed to dispose of E.A.No.130 of 2019 in E.P.No.9 of 2017 in H.R.C.O.P.No.40 of 2007 pending before the Principal District Munsif, Pondicherry within a stipulated time by raising various grounds.

2. The petitioner is the landlord, 1st respondent is the tenant, 2nd respondent is the sub-tenant and the 3rd respondent is the third party. The case of the petitioner is that the petitioner, who is the owner has filed H.R.C.O.P.No.40 of 2007 under Section 10(2)(i) and (ii) of the Pondicherry Buildings (Lease and Rent Control) Act, 1969 before the Rent Controller, Pondicherry to pass an order of eviction of both the respondents from the schedule mentioned property, viz., "The brick built terraced building in the ground and first floor on the western side of the property measuring an extent of 4058 Sq.ft., approx and garden area on the northern side measuring an extent of 1475 Sq.ft., Approx. marked in blue in the sketch, together with



water and electricity connections, comprised in re-Survey No.239/Part, Town Survey No.47 and Patta No.1442 in Block 30 of Ward "D" bearing Door No.38, Dumar Street, Puducherry - 605001" and for delivery of vacant possession of the same to the petitioner through process of law and for cost. The said H.R.C.O.P was allowed in favour of the petitioner on 15.03.2017 by observing that the petitioner is entitled for eviction on the ground of willful default and sub-lease and hence the respondents are hereby directed to vacate and handover the possession of the demised premises within two months from the date of order.

3. In consequence, the petitioner filed H.R.C.E.P.No.9 of 2017 in H.R.C.O.P.No.40 of 2017 to pass an order for delivery of the E.P.Schedule Mentioned property to the petitioner as per Order 21 Rule 35 of CPC and pass necessary Orders. Subsequently, E.A.No.130 of 2019 was filed by the 3rd party, who is alleged to be the relative of the petitioner / decree holder under Section XXI Rule 97 and 101 of CPC to record his resistance and obstructions of delivery of possession of the property in pursuance of the order dated 15.03.2017 passed in H.R.C.O.P.No.40 of 2007 and declare that the right and possession of 3rd party is lawful and obstruction caused is justifiable and dismiss the execution petition filed by the petitioner.

4. A detailed counter affidavit was filed by the petitioner to the petition filed by the obstructor denying all the averments and submits that once he found out the mutual mistake crept in the partition deed dated 11.03.1976 by not mentioning the exact extent of 16,484 sq.ft., the petitioner had approached 3rd respondent's father for necessary rectification since he did not come forward, a suit in O.S.No.2368 of 2013 was filed as against the 3rd respondent's family. Thereafter, on consent the matter was referred to Lok Adalat in I.A.No.3483 of 2015 and by virtue of filing of joint compromise memo, the suit relief was granted as prayed by Award dated 24.04.2015. The said award was also registered vide document no.14158 of 2015, as per law and as per compromise memo filed before the Lok adalat, the defendants in the suit had executed a Rectification Deed dated 04.01.2016 in favour of the petitioner and that the respondents have no legal right to the suit schedule mentioned property and thereby seeks to dismiss the petition filed by the 3rd respondent / obstructor.

5. Yet another petition, viz., T.O.P.No.52 of 2019 was filed by the 3rd respondent / 3rd party before the District Judge, Pondicherry under Section 24 of CPC for withdrawal and transfer of proceedings in E.A.No.130 of 2019 in E.P.No.9 of 2017 in H.R.C.O.P.No.40 of 2007 before the Rent Controller-I, to



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any other Rent Controller Court. The said learned Principal District Judge, Puducherry had dismissed the petition on 10.03.2020. The petitioner / landlord has filed the present petition to dispose of E.A.No.130 of 2019 in E.P.No.9 of 2017 in H.R.C.O.P.No.40 of 2007 pending before the learned Principal District Munsif, Pondicherry within a stipulated time.

6. The learned counsel for the petitioner submits that the court below ought to have seen that the E.P.No.9 of 2017 is pending for a long time and the petitioner is unable to enjoy the fruits of the eviction order after a contest between the parties for more than a decade. Further, the respondents on the other hand are trying to prolong the matter by filing false and vexatious suits and applications, hence it is just and necessary to fix a time for disposing the E.A.No.130 of 2019 in E.P.No.9 of 2019.

7. It is the further contention of the petitioner that the court below failed to note that the petitioner has clearly spent nearly a decade to get the eviction order against the respondents and the petitioner has raised valid points for early disposal of the execution petition based on law and facts that the acts of the respondents to put up 3rd party obstructions, filing of vexatious transfer applications clearly proves the illegal conduct of the respondents to deny the petitioner the right to enjoy the fruits of the eviction order passed in H.R.C.O.P.No.40 of 2017. Therefore, the petitioner seeks for a direction to dispose of E.A.No.130 of 2019 in E.P.No.9 of 2017 in H.R.C.O.P.No.40 of 2007, the learned counsel pleaded.

8. The learned counsel for the 3rd respondent / obstructor would submit that challenging the lok adalat award passed in the year 2015, the 3rd respondent has filed a C.R.P.No.948 of 2020 before this Court and the same is pending for adjudication and prayed that the matter should not be disposed of, as the said CRP is also to be finalised.

09. Heard the learned counsel for the respective parties and perused the documents placed on record.

10. On going through the said pleadings of the respective parties, it is clear that there is a registered partition deed executed between the family members and the petitioner's father had filed a suit for partition and for separate possession in O.S.No.238 of 1989 on the file of learned Principal Sub Judge, Pondicherry, pending said suit, there was an amicable settlement and joint compromise memo was filed in which the 1st item of Schedule - A of immovable property found in O.S.No.238 of 1989 absolutely confirmed to the exclusive possession and enjoyment of the petitioner's father and the said item is the subject



matter of the property. Moreover, the petitioner's father was conveyed to the total extent of land and building 16,484 sq.feet, which confirms with revenue records and thereby enjoying the properties without any disturbance.

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11. Further, it is also evident from the records that once the petitioner found out the mutual mistake which was crept in the partition deed dated 11.03.1976 by not mentioning the exact extent of 16,484 sq.ft., the petitioner had approached the 3rd respondent's father for necessary rectification and since he did not evince interest, a suit in O.S.No.2368 of 2013 and pending suit, the petitioner and other family members had given consent to refer the suit before the Lok Adalat in I.A.No.3483 of 2015 and by virtue of filing of joint compromise memo, the suit relief was granted, as prayed, by Award dated 24.04.2015 and the award was duly registered. Moreover, the petitioner / decree holder is allotted certain property mentioned in the suit schedule to an extent of 6,100 square feet on the undivided share of 16,000 square feet and odd and there was a mistake crept in and accordingly, a was suit filed in before the court below and after the suit was filed, a rectification was made and the same was also registered before the concerned authority by way of effecting compromise before the Lok Adalat proceedings. Now, the third respondent submits that he is also the co-owner of the property and the same cannot be disposed of without deciding the said CRP, viz., 948 of 2020. On going through the averments it is seen that the suit schedule property is only 4,058 square feet of building and the garden area measuring to an extent of 1,475 totalling only 5,533 square feet of land in the suit schedule property and only botheration by the 3rd respondent is that the entire property has been shown in the boundary, which is the boundary of the entire extent of land 16,000 and odd, according to the petitioner, the entire property which has been conveyed is 16,000 and odd square feet of land after the rectification deed executed and that being the case, this matter is not regarding partition or any possession and this is only with regard to E.P. and E.A. Proceedings in H.R.C.O.P. No.40 of 2017 and in the pending proceedings, the petitioner is trying to evict the respondents / tenants for his personal use and occupation. In such view of the matter, whether the respondents have got right over the property as a co-owner or not has to be decided elsewhere and not in this petition and the respondents can canvass the same before the concerned court, where the proceedings are pending for adjudication with regard to the said dispute and this petition is filed only for early disposal of the said E.P. and E.A. Proceedings.



In view of the above, the present Civil Revision Petition is allowed with a direction to the court below to expedite the proceedings pending for adjudication in E.A.No.130 of 2019 in E.P.No.9 of 2017 in H.R.C.O.P.No.40 of 2007 and dispose the same on or before 30.09.2021. It is needless for this Court to point out that the parties shall not seek unnecessary adjournments. No costs. Consequently, Caveat Petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

ssd

To

1. The Principal District Munsif,
Pondicherry
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.T.C.Sajith Babu, Advocate, S.R.No.13307.
+1cc to Mr.D.Senthil Kumar, Advocate, S.R.No.13427.

C.R.P.No.2109 of 2020 and
Caveat No.3823 of 2020

SS(CO)
CSR 30.03.2021