



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(PD) (MD)No.1741 of 2017

and

C.M.P(MD) No.9434 of 2017

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Tmt.Fathima Beevi

... Petitioner/Petitioner/Respondent

Vs.

Sikkanthar Badhusha

... Respondent/Respondent/Petitioner

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 04.08.2017 made in I.A.No.48 of 2017 in R.C.O.P.No.9 of 2012 on the file of the Principal District Munsif/Rent Controller Court, Aruppukkottai, Virudhunagar District.

For Petitioner : Mr.M.Saravanakumar

For Respondent : Mr.T.R.Jeyapalam

ORDER

Aggrieved by the dismissal of her application to stay all further proceedings in RCOP No.09 of 2012 till disposal of O.S.No.110 of 2011, the revision petitioner before this Court.

2.The facts in brief are as follows:-

(i) The petitioner herein has filed the suit in O.S.No.110 of 2011 claiming partition of the suit schedule properties and to allot 2/8th share to her. She claimed the right as the widow of one of the son of Abdul Razak. Meanwhile, the respondent herein had filed RCOP No.9 of 2012 against the petitioner herein seeking eviction on the ground of wilful default, ceasing to occupy, owner's occupation and demolition and reconstruction.

(ii) The petitioner in the rent control proceedings had submitted that the property in question had been gifted by the Abdul Razak in favour of his son Ibram Ali under gift deed dated 09.03.2006. Ibram Ali had entered into rental agreement on 03.12.2007 with the petitioner herein. Thereafter, the said Ibram Ali had settled the property on his wife Paritha under settlement deed, dated 01.07.2008. Paritha in turn had executed the general power of attorney in favour of one Syed Masoodu on 05.01.2010 and the said Syed Masoodu as power agent of Paritha had sold the property to the respondent herein under the registered sale deed,

<https://hcservices.ecourts.gov.in/hcservices/>



dated 20.01.2011. The respondent had also obtained the building plan approval so as to construct the building in the demised premises.

(iii) It is, at this juncture, that the petitioner herein had filed the suit for partition and this respondent had filed RCOP on the ground of wilful default. The respondent had filed the defence that she is co-owner of the property and therefore, the Rent Control Petition cannot be proceeded with, particularly when her suit for partition was pending. This application has been dismissed by the learned Rent Controller and it is this order that is subject matter of challenge.

3. Heard the learned counsel appearing on either side and perused the records.

4. It is brought to the notice of this Court through photographs that the demised premises is totally in dilapidated and uninhabitable stage. The walls have all crumbled and it is only a portion of outer shell of the building that remains. Therefore, it is clearly seen that the petitioner is not in occupation of the said building. Admittedly, the petitioner has entered into a lease agreement with the erstwhile owner Ibram Ali which clearly proves that she is the tenant in respect of the property and under the terms of lease deed, she has also agreed to pay rent which she has on her own admission not paid, as she is claiming a right as a co-owner. The rent control proceedings need not therefore await the result of the suit for partition, particularly, when the original owner, namely, Abdul Razak has himself executed a registered gift deed in favour of Ibram Ali and the partition suit is in respect of not only the demised premises, but the larger extent. Therefore, even assuming that the petitioner succeeds in her suit, the equities can be worked out at the time of final decree. Therefore, there is no impediment to the respondent proceedings with the rent control proceedings.

5. In these circumstances, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

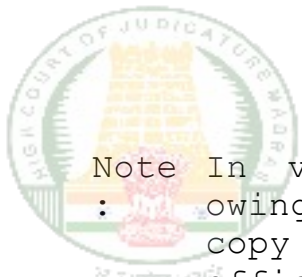
Sd/-

Assistant Registrar (WRITS)

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/ /2022

Sub Assistant Registrar (CS)



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Note In view of the present lock down
: owing to COVID-19 pandemic, a web
copy of the order may be utilized for
official purposes, but, ensuring that
the copy of the order that is
presented is the correct copy, shall
be the responsibility of the
advocate/litigant concerned.

To:-

The Principal District Munsif/
Rent Controller Court,
Aruppukkottai,
Virudhunagar District.

+1 CC to M/s.M.SARAVANAKUMAR, Advocate (SR-39207[F] dated
17/12/2021)

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