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CRP.No.1812 of 1999 and
C.M.P.No.1234 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2022

CORAM:

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

C.R.P.No.1812 of 1999
and
C.M.P.No.1234 of 2010

Muthukumaresan

.. Petitioner

Vs.

1.Govindammal
2.Venkatachalam (died)
3.Jeganathan
4.Easwari
5.Leela
6.Loganathan
7.Kala
8.Dhanalakshmi
9.Vijayakumar
10.Renuga
(RR8 to 10, impleaded as per order dated 10.11.2022)

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the fair and decreetal order passed in E.P.No.115 of 1996 in R.C.O.P.No.154 of 1974 dated 23.12.1998, by the learned Rent Controller (Principal District Munsif) of Salem, Salem District, to quash the same.



WEB COPY



CRP.No.1812 of 1999 and
C.M.P.No.1234 of 2010

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.V.Lakshmi Narayanan

ORDER

Challenging the impugned order passed in E.P.115 of 1996 in R.C.O.P.No.154 of 1974 in the Court of Principal District Munsif, Salem, the petitioner / decree holder preferred this revision.

2. Originally R.C.O.P.No.154 of 1974 was filed by the mother of this petitioner namely Palaniammal against the respondents for eviction from the property with an old Door No.104/306, New Door No.83/308, situated in Salem Town, Kitchiipalayam, Salem District, with 4 boundaries along with house and other structure on the ground of wilful default in payment of rent. In the said application, notice was served and the respondents appeared through counsel but they failed to file written statement. Hence, they remained ex parte and an ex parte order was passed on 09.04.1975. To set aside the ex parte decree, the respondents filed I.A.No.214/78. The said application was dismissed by the trial Court on 30.10.1995. Thereafter, the

2/10



CRP.No.1812 of 1999 and
C.M.P.No.1234 of 2010

WEB COPY

decree holder filed E.P.115 of 1996, on 29.01.1996 to execute the decree passed in the said RCOP. In that application, the respondents also appeared through counsel. The objection of the respondents is that the decree holder entitled to execute the decree after 21 years from the date of the order.

3. On considering the submissions, the Executing Court held that as per Rule 12 Clause 3 of Tamilnadu Lease and Rent Control Rules, the decree holder has no right to file application after 21 years from the date of the decree. Accordingly, it was held that the said application, as such, is not maintainable in law, it is barred by limitation and hence, dismissed.

4. Challenging the said finding, the decree holder preferred this revision.

5. Learned counsel appearing for the revision petitioner submits that the order of eviction was passed on 09.04.1975, thereafter, the respondents filed an application to set aside the ex parte decree on 11.07.1979 in I.A.No.214/78 and it was dismissed for default on 29.02.1980.



CRP.No.1812 of 1999 and
C.M.P.No.1234 of 2010

WEB COPY

Thereafter, to restore the said application in I.A.No.82/80 was filed on 11.03.1980 and the same was allowed on 29.03.82. Thereafter, I.A., was restored and on hearing both side, the said application. in I.A.No.214/78 was strongly contested by the landlord and on hearing both side, the said application was dismissed on merits on 30.10.1995, thereby, the ex parte decree passed in favour of the revision petitioner was confirmed. Hence, to execute the decree, he filed EP., on 29.01.1996 within two months from the date of the disposal of the I.A.No.214/78. But, the trial Court without appreciating the pendency of the proceedings initiated by the respondents and also interrening time spent in the pending proceeding, erroneously dismissed that E.P., on the ground it is barred by limitation.

6. By way of reply, the learned counsel appearing for the respondents submit that under Section 12 Clause 3 proviso states that after obtaining ex parte decree, the landlord is bound to file an application to execute the order and there is no bar to file such application, but the present revision petitioner has not filed any such execution application immediately after obtaining the ex parte decree in the year of 1975. But to execute the



CRP.No.1812 of 1999 and
C.M.P.No.1234 of 2010

WEB COPY

said decree, he filed application in the year 1996 as such it is barred by limitation and executing Court rightly appreciated this aspect. Further, he also submits that to execute the decree, 12 years time is permitted under Limitation Act. Even within 12 years, the landlord has not taken any steps to file an application. Hence, the present E.P., filed by the landlord is barred by limitation which was rightly appreciated by the trial Judge. Hence, prayed to dismiss the revision as no merits.

7. Considering both submission and on perusal of the records, it reveals that in the year 1974, the revision petitioner's mother, Palaniammal, as landlord, filed RCOP No.154/74 for eviction of the respondents from the suit property concerned on the ground of wilful default. Admittedly, the respondents remained ex parte. Ex parte decree was passed on 09.04.1974 for eviction. Thereafter, the original petitioner, Palaniammal died leaving behind the second petitioner. Then LR application was filed and he was impleaded in the RCOP proceedings. In the meanwhile, the respondents / the alleged tenants filed an application to set aside the ex parte decree in I.A.No.214/78 on 11.07.1978. The said application was dismissed for default



CRP.No.1812 of 1999 and
C.M.P.No.1234 of 2010

WEB COPY

on 29.02.1980. Thereafter, to restore the said application, I.A.No.84/81 filed and the same was allowed on 29.03.1982. After restoration of the said application, steps were taken on the side of the parties to implead the legal heirs and consequently, application was dismissed and again restored. Finally, I.A.No.214/78, to set aside the ex parte decree, was disposed on merit on 30.10.1995. The application filed by the tenants were contested by the landlord before the trial Court. As a legal heir of the mother, the present revision petitioner proceeded with the execution application. The application for setting aside the ex parte order was thereafter dismissed on 30.10.1985 and within 5 months from the disposal of the said application on 29.01.1996, the revision petitioner filed an EP to execute the decree and the same was taken on file in E.P.No.115 of 1996. In that execution application, notice was issued and tenants appeared and submitted their objection stating that the E.P., is barred by limitation. It is stated that after passing of the decree from the year 1975, nearly about 21 years later, the landlord preferred this execution application for eviction, as such it is not maintainable and barred by law and also contends that he ought to have filed an application to execute the decree, even during the pendency of the proceeding, immediately after the

6/10



CRP.No.1812 of 1999 and
C.M.P.No.1234 of 2010

said ex parte decree but he failed.

WEB COPY

8. On considering both the submissions, the trial Judge held that the revision petitioner ought to have taken steps to implead and no reason assigned for filing the execution application after 21 years from the date of the decree as such is clearly barred by law, for the reason that because within 12 years from the date of the decree he ought to taken steps to execute the decree. Now the fact reveals that during the pendency of the application to set aside the ex parte decree in I.A.No.214/78, which was dismissed on 30.10.1995, the landlord has not taken any steps to file execution application. Immediately after the disposal of the said application on 30.10.1995, he filed execution application on 29.01.1996. Therefore, all this intermediate delay from the date of the ex parte decree order passed till 1995 has to be taken note of. The proceedings were pending before the trial Court. Finally the application to set aside the ex parte decree was dismissed on 30.10.1995, thereafter, the decree passed in favour of the landlord was confirmed. Within six months, he filed application to execute the decree and it is well within the time. Therefore, it is not barred by limitation. For the reason that the



CRP.No.1812 of 1999 and
C.M.P.No.1234 of 2010

WEB COPY

intermediate period during the proceedings pending before any of the Court is liable to be excluded to calculate the limitation period but the trial Judge failed to take note of the same.

9. Furthermore, another objection raised by the respondents are that under Section 12 Clause 3, the landlord ought to have taken steps to execute the decree immediately after the said decree but has not taken any steps, thereby, he is not entitled to proceed further with the EP in the year 1996 after 21 years, but the proviso says that if at all any execution application proceedings were pending, it has to be stayed until the disposal of the application. It does not mean that the landlord has to compulsory file application to execute the decree. Therefore, the objection raised by the respondents by relying this provision, as such is not applicable to the facts of the case. All the facts clearly reveals that after disposal of the application in I.A.No.214/78 filed by the tenants to set aside the ex parte decree in the year 1996, the landlord preferred E.P., as such is maintainable in law.

10. Accordingly, the Civil Revision Petition is allowed. The fair and



CRP.No.1812 of 1999 and
C.M.P.No.1234 of 2010

decreetal order passed in E.P.No.115 of 1996 in R.C.O.P.No.154 of 1974 dated 23.12.1998, by the learned Rent Controller (Principal District Munsif) of Salem, Salem District is hereby set aside. EP Court is directed to dispose the E.P.No.115 of 1996 within three months from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

02.12.2022

AT
Index :Yes/No

To
The Rent Controller (Principal District Munsif) of Salem,
Salem District.



WEB COPY



CRP.No.1812 of 1999 and
C.M.P.No.1234 of 2010

T.V.THAMILSELVI, J.

AT

C.R.P.No.1812 of 1999 and
C.M.P.No.1234 of 2010

02.12.2022