



C.R.P.(NPD) No.461 of 2022
& CRP(NPD) No.291 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.04.2022

Pronounced on : 27.05.2022

CORAM : JUSTICE N.SESHASAYEE

C.R.P.(NPD) No.461 of 2022
& CRP (NPD) No.291 of 2020
and CMP. No.2433 of 2022 & CMP.No.1474 of 2020

CRP(NPD) No.461 of 2022 :

A.Mathivanan ... Petitioner / Claimant / Third Party

Vs

D.Balakumar ...Respondent / Respondent / Decree holder

CRP(NPD) No.291 of 2020 :

A.Kalaivanan (died)
1.Geetha Kalaivanan
2.Ishwarya
3.Aswin Kumar

... Petitioners / Respondent / Respondent

Vs

D.Balakumar ...Respondent / Petitioner / Petitioner



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Prayer in CRP (NPD) No.461 of 2022 : Civil Revision Petitions filed under Section 115 of CPC., praying to set aside the fair and decretal order of the learned Additional District Munsif, Vellore, Vellore District dated 15.12.2021 in E.A.No.132 of 2021 in E.A.No.89 of 2021 in E.P.No.240 of 2016 in RCOP.No.63 of 2011 and to order the said E.A

Prayer in CRP (NPD) No.291 of 2020 : Civil Revision Petitions filed under Section 115 of CPC., praying to call for the entire records in respect of the decretal order passed by the learned Additional District Munsif, Vellore, dated 29.11.2019 in E.P.No.240/2016 in RCOP.No.63/2011 on the file of Rent Controller / Principal District Munsif, Vellore District and set aside the same.

In CRP(NPD) No.461 of 2022:

For Petitioner : Mr.T.M.Hariharan

For Respondent : Mr.S.N.Ravichandran

In CRP(NPD) No.291 of 2020:

For Petitioners : Mr.D.Rajagopal

For Respondent : Mr.S.N.Ravichandran



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COMMON ORDER

The Revision Petitioner in CRP (NPD) No.461 of 2022 herein is a third party-obstructor to the execution proceedings in E.P. 240 of 2016, which is filed by the decree-holder Landlord in RCOP 63 of 2011 for delivery of property pursuant to the exparte order of eviction that he had obtained. The revision petitioners in CRP (NPD) 291 of 2020 are the tenants who are facing eviction in the said Execution petition.

2. The facts as presented by the revision petitioners which led up to the filing of the Revision, may be briefly stated;

- A certain Kalaivanan had purchased a piece of vacant site Vide sale deed dated 09.05.2002. In this, a residential building comprising a ground floor and a first floor, each measuring 125 sq.mts, was built besides a compound wall. The construction was made with the aid of the sale prospects of a certain family property. In other words, it is a joint investment made by Kalaivanan and his mother.
- While so, Kalaivanan borrowed a sum of Rs.2.0 lakhs from a certain Babu.



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On 04.01.2010, Babu obtained a sale agreement in his favour and also a General Power of Attorney in favour of his friend Kumaran vis-a-vis the same property, both executed by Kalaivanan. This according to the revision petitioner in CRP 461 of 2022 were obtained as security for the repayment of the loan that Kalaivanan had obtained.

- On 07.12.2010, Kumaran, the General Power of Attorney of Kalaivanan had executed a sale deed in favour of certain Balakumar. A rent note even dated 07.12.2020 also came into existence between Balakumar and Kalaivanan. According to the case of the revision petitioner, this document was fabricated by Balakumar.
- Few months thereafter, Balakumar laid RCOP.No.63 of 2011 for eviction on grounds of wilful default in the matter of payment of rent. This RCOP was laid against Kalaivanan and his wife. While so, Kalaivanan died and his children were brought on record as additional respondents. On 24.11.2015, an ex-parte order of eviction was passed. Now, the respondents in the RCOP came forward with necessary Application to set aside the ex-parte order of



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eviction along with I.A.No.184 of 2018 for condonation of delay of 961 days in taking out the former Application. This Application for condonation of delay was dismissed, challenging which, Kalaivanan's widow and children preferred CRP.No.1085 of 2021 on 15.06.2021. This came to be dismissed too.

- In the meantime, Balakumar, the landlord in the RCOP filed E.P.No.240 of 2016 for delivery. On 29.11.2019, the Execution Court ordered delivery and this is being challenged in CRP.No.291 of 2020.
- Be that at it may, the mother of Kalaivanan would now come out with two separate suits. The first suit in O.S.No.163 of 2015 for partition, wherein, she alleges that the property in question is not the exclusive property of Kalaivanan but, it is a family property. The second suit that she laid was O.S.No.79 of 2017 in which she has challenged (a) the sale deed which the Power of Attorney of Kalaivanan had executed in favour of Balakumar, the landlord in RCOP.No.63 of 2011; and (b) the decree passed in the said RCOP.



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- During the pendency of these two suits, Kalaivanan's mother, the plaintiff in the suit, died and she was replaced by one her sons, who to reintroduce is the revision petitioner in CRP 461 of 2022.

3. It is in this setting, the present plaintiff in the suit has come forward with an application in E.A.No.89 of 2021 in E.P.No.240 of 2016 for recording obstruction. In this EA, he has taken out yet another E.A.No.132 of 2021 for appointing a Commissioner for local inspection. This application for appointing a Commission was dismissed by the Execution Court and this is now in challenge in CRP 461 of 2022.

4.1 Mr.T.M.Hariharan, the learned counsel appearing for the revision petitioner in CRP.No.461 of 2022 submitted that it is a case of the obstructor/revision petitioner that the property concerned is a residential building comprising of a ground floor plus a first floor each measuring 125 sq.mt plus a compound wall whereas, in the sale deed dated 07-12-2010, which is executed by the power of attorney of Kalaivanan in favour of the alleged landlord of the property is described as a



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building measuring a mere 40 Sq.mtr with no first floor. In other words, while the extent which the building has a larger carpet area, the extent covered by the sale deed is only a fraction. Hence, appointment of a Commission was required.

4.2 1 In response, the learned counsel for the respondent/landlord submitted;

- Under the sale deed, the landlord has purchased a total extent of 2,640 Sq.ft. Equal to 245.26 Sq.mt in Sy.No.575/1A1 as well as the building that stands thereon. The details given in Form-1A of the sale deed does not decide the issue, for what was purchased is the land and all that stands in the land. This schedule is carried forward to the eviction petition in RCOP.No.63 of 2011 and also in E.P.No.240 of 2016.
- The decree in RCOP.No.63 of 2011 has become final, and Kalaivanan's widow and children have tried their level best to delay the execution of the decree passed by the Rent Controller. Here, it is significant to note that the present application in E.A.No.89 of 2021 was filed after the Execution Court has ordered delivery in E.P.No.240 of 2016. This implies that the revision petitioner has been set up by the widow and children of Kalaivanan to delay



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things for the landlord.

- While Kalaivanan's mother in O.S.No.79 of 2017 has sought declaration to the effect that the sale deed under which the landlord derived title is null and void, but strangely in E.A.No.89 of 2021, the revision petitioner seeks to have the very eviction order in RCOP.No.63 of 2011 declared as void, and to defer execution till the disposal of O.S.No.79 of 2017. On the face of it, this very application cannot be sustained nor maintained.
- when the facts are what they are, the revision petitioner seeks a Commission to be appointed for local inspection to be assisted by an Authorized Civil Engineer and Surveyor. This is only an attempt on his part to gather evidence for the pending suits. The learned counsel also relied on the following authorities: ***Chandrasekaran Vs. V.Doss Naidu*** [2006-2- LW 159], ***T.K.Krishnamurthy Vs. Tamil Nadu Water and Drainage Board*** [2006 (5) CTC 178], ***K.Sundaramoorthy Vs. R.Perumal*** [CRP(NPD)No.3225 of 2018]



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5. In reply, the learned counsel for the revision petitioner in CRP.No.461 of 2022 submitted that the description of the schedule of property under the sale deed dated 07-01-2010 in favour of Balakumar, the landlord, is a verbatim reproduction of the description given in the sale deed dated 09.05.2002 in favour of Kalaivanan except for an addition of building. This sale deed, as has been stated few times, is a product of fraud, since Kalaivanan executed a sale agreement and Power of Attorney to secure a loan, and with no intention to authorize the power of attorney holder to convey title. The present application E.A 89 of 2021 and E.A.132 of 2021 have to be seen in the context of O.S.No.79 of 2017. He however, conceded that the prayer in E.A.No.89 of 2021 could have been wrongly worded.

6. The learned counsel for the revision petitioners in CRP.No.291 of 2020, made a statement that during the pendency of E.P.240 of 2016, Balakumar, the decree-holder has executed a registered power of attorney dated 04.03.2019 in favour of certain N. Ponnusamy, and in this he has described the property as comprising a two storey building. This is contrary to the description of the property in the sale deed dated 07-01-2010, more particularly Form IA thereto.



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7. The counsel for Balakumar however, would argue that the schedule of property of the sale deed under which Balakumar purchased the property in question describes the property conveyed thereunder as land plus residential building. Only in Form IA to the said sale deed the building is required as a RCC roofed building measuring 40 sq.ft. And, Form IA is only intended for purposes of registration and its effect cannot be telescoped to affect the nature of conveyance.

8.1 This Court carefully weighed the rival submissions. The admitted set of facts are that:

- A certain property was purchased by one Kalaivannan, and that he had executed a Power of Attorney in favour of a certain Kumaran. Whether this Power of Attorney is executed as a security for the loan, or with an intent that it be acted upon as a Power of Attorney, essentially is a point in issue in O.S.No.163 of 2015 and O.S.No.79/2017 referred to above.
- Now the Power of Attorney Holder who has executed a sale in favour of Balakumar is not in dispute, but this is followed by a certain rent note alleged to have been executed as between Balakumar, the ultimate transferee and Kalaivanan, the original owner of the property in question.



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➤ It is not in dispute that Balakumar had laid RCOP.No.63/2011 against Kalaivanan and his wife, and had obtained an exparte order of eviction, and that the same has become final. Balakumar now filed E.P.No.240/2016 for delivery, and the delivery has been ordered. This is being challenged by the judgment debtor in C.R.P.((NPD) No.291 of 2020.

8.2 This Court has little hesitation to hold that given the fact that the eviction order has become final, the order of delivery is but a necessary consequence, and in an ordinary circumstance, the judgment debtor cannot resist delivery. Here, however, the resistance is made not in terms of the breach of any procedure laid down by the Court, but on certain aspects of facts, that on the basis of which the conduct of the landlord in presenting the facts before the Court.

9. The facts disclosed in paragraphs 7.1 and 7.2 above show that there indeed is a variance in describing the building that Balakumar has purchased under the sale deed dated 07.12.2010, and the one he has described in the Power of Attorney dated 04.01.2010. And, both relate to the same property and the same building. And,



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Balakumar is yet to obtain the physical possession of the property for which he has laid his E.P.No.240 of 2016. Now, what is the building that which he seeks delivery of?

10. This now brings to focus the submissions of the counsel for Balakumar. He would submit that the description of the property as provided in Form 1A should not be read as forming part of the sale deed dated 07.12.2010 in favour of Balakumar and that it was intended only for purposes of registration. The effect of this statement is that parties to the sale deed can commit fraud on the Stamp Act and Registration Act, and the court should ignore it. This Court refuses to trek along that lane.

11. Any litigant who approaches the Court must place the facts fairly and should in all circumstances be beyond blames. A party can have just misconception in understanding the document and the effect of any of the terms, but should never manipulate material facts. A statement wherever made to which a party subscribes, cannot be ignored in a judicial proceedings. If the Court were to accept the



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contention of the counsel for Balakumar, then it puts premium on fraud on statutes, which, as already indicated, is a course that this Court consciously intends to refrain from. Here it is pertinent to note that revision petitioners in CRP 291 of 2020 have produced a copy of the building plan materials which may throw some light on the correctness of the fact recited in the power of attorney document executed by Balakumar: If he had improved the property after purchase.

12. But the larger issue is, if the respondent/landlord had played any fraud vis-a-vis the variance in describing the building in question, as detailed above? If so, whether it is a fraud on the Court or merely a fraud on the revision petitioners? It is true that the eviction order passed in RCOP No.63/2011 has become final, but in attaching finality to any order it is always presumed that no fraud is played by the party in whose favour the order was passed. This is the bottom-line. Here the nature of facts placed before this Court make the order suspect. It should not be forgotten that the eviction order passed in RCOP No.63/2011 in an exparte order, and that the revision petitioner in CRP 291 of 2020 by their conduct in not defending the eviction-action might have forfeited their opportunity to put forth the facts that are now placed before this Court. That however, does not give any licence to the



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landlord to be inadequately responsible to the judicial fora. Indeed, in all exparte proceedings, the responsibility is more on the suitor or the petitioner to be wholly honest and true to the court because Court will then be acting solely on this statement.

13. The variance in describing the building in two documents, separated by about a decade, one in favour of Balakumar and another by Balakumar, has alerted this Court, and this Court is keen to ascertain that the eviction order passed is RCOP.No.63/2011 does not involve any element of fraud on court. This, however, is a question of fact and this needs to be investigated. Then there is an additional aspect: Whether eviction is sought for the entire two storey-building or only a as regards a portion of the building covering a mere 40 sq.ft.

14. Hence this Court allows CRP 261 of 2020, sets aside the order of delivery, dated 29.11.2019 passed by the Execution Court in E.P.240 of 2016 and remands the matter back to the same court and it is now required to dispose of the E.P., after holding an enquiry if the Order passed in R.C.O.P.63 of 2011 involves any fraud on court.



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15. Turning to CRP.(NPD) No.461 of 2022, the petitioner herein is the obstructor, and for the reasons already stated, this Court deems it appropriate to allow the the revision, since information which a Commission may obtain on a local inspection may benefit the court in its endeavour. Here, this Court dismisses the objection of the counsel for Balakumar that the revision petitioner/obstructor is only attempting to gather evidence. Here it should be stated that every commission-report indeed, is an evidence, and it is for the court to ascertain its utility in the context of a particular case. This Court considers a commission report will have a utility in this case. Hence CRP(NPD) No.461 of 2022 is also allowed.

16. In conclusion :

(a) **CRP(NPD) No.461 of 2022 is allowed**, and the order of the Execution Court dated 15.12.2021 in E.A.No.132 of 2021 in E.A.No.89 of 2021 in E.P.No.240 of 2016 in RCOP.No.63 of 2011 is set aside. The Execution Court is now directed to appoint a Commissioner for local inspection by an Advocate Commissioner with reasonable standing and regular in his appearance before the Court with the assistance of a qualified engineer, on



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such remuneration, which the Court deems it appropriate. The trial Court is now directed to expedite the disposal of the entire matter within a period of six months from the date of communication of the order.

(b)CRP(NPD) No.291 of 2020 is allowed and the order of the Execution Court dated 29.11.2019 in E.P.No.240 of 2016 in RCOP.No.63/2011 is set aside, and the matter is remanded back to the Execution Court, which would now consider whether the eviction order obtained in RCOP.No.63/2011 is tainted with fraud on Court.

No costs. The connected miscellaneous petitions are closed.

27.05.2022

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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N.SESHASAYEE.J.,

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Pre-delivery Order in
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27.05.2022