



C.R.P.No.2494 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.2494 of 2019
and C.M.P.No.16264 of 2019

K.Krishnasamy

... Petitioner

Vs.

1. P.T.Saravanan
2. T.Anandan

... Respondents

Prayer :- Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 30.04.2019, made in E.P.No. 117 of 2017 in O.S.No.423 of 2008 on the file of the I Additional Subordinate Court, Erode, by allowing this Civil Revision petition.

For Petitioner : Mr.D.Gopal

For Respondents

For R1 : No appearance

For R2 : Mr.M.Guruprasad



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ORDER

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The Civil Revision Petition has been filed as against the order dated 30.04.2019, passed by the learned I Additional Subordinate Judge, Erode, in E.P.No. 117 of 2017 in O.S.No.423 of 2008, thereby allowing the execution petition to deliver the possession of the suit property in favour of the respondents.

2. The respondents are the tenants in the suit premises. Since the suit premises was in dilapidated condition, the petitioner requested the respondents to vacate the premises. Therefore, the respondents filed suit in O.S.No.701 of 2001 on the file Principal District Munsif, Erode, for bare injunction restraining the petitioner from evicting them from the petition premises without due process of law. The said suit was decreed on 19.03.2003.

3. At the same time, the respondents also filed petition in R.C.O.P.No.13 of 2013 for depositing the rent. Therefore, the petitioner was constrained to file petition for eviction in R.C.O.P.No.16 of 2003 on the



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ground of willful default, demolition and reconstruction. During the pendency of both the petitions, there was amicable settlement between the parties. Accordingly, the respondents vacated and surrendered the vacant possession of the petition premises in favour of the petitioner herein. However, the respondents demanded more money from the petitioner. Since the petitioner refused to pay the said amount, the respondents lodged complaint with false averment that the respondents were evicted from the premises illegally and it amounts to contempt of Court and it is against the decree passed in O.S.No.701 of 2001.

4. In the said complaint, the respondents managed to registered FIR in Crime No.311 of 2008 and it was culminated in C.C.No.792 of 2008 on the file of the learned Judicial Magistrate No.I, Erode, for the offences under Sections 341 & 506(ii) of IPC as against the petitioner and others. In the meanwhile, the respondents also filed an execution petition in E.P.No.38 of 2008 in O.S.No.701 of 2001, before the learned Principal District Munsif, Erode, to punish the petitioner.



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5. While pending the execution petition and the trial proceedings in C.C.No.792 of 2008, the respondents also filed another suit in O.S.No.423 of 2008 on the file of the Principal Subordinate Judge, Erode, for re-possession of the petition premises. The said suit was also decreed by an order dated 13.06.2011 and aggrieved by the same, the petitioner filed an appeal suit in A.S.No.100 of 2011 on the file of the learned District Judge, Erode. When the said appeal was pending, again there was negotiation between the parties, as such the appeal suit was withdrawn as not pressed. Subsequently, the execution petition in E.P.No.38 of 2008 in O.S.No.701 of 2001 was also withdrawn by the respondents.

6. In the mean time, the criminal proceedings in C.C.No.792 of 2008 was dismissed and acquitted the petitioner and others by an order dated 27.05.2016. Thereafter, after dismissal of C.C.No.792 of 2008, the respondents once again filed execution petition in E.P.No.117 of 2017 to execute the decree passed in O.S.No.423 of 2008 on the file of the learned I Additional Subordinate Judge, Erode.



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7. In that execution petition, an Advocate Commissioner was appointed to inspect the suit property. Accordingly, the Advocate Commissioner inspected the suit property and he had taken photographs. On a perusal of the photographs, the suit property was vacant and in dilapidated condition and it cannot be used for any purpose without reconstruction. Even though the execution Court allowed the execution petition and ordered delivery of possession of the petition premises, as against which the present Civil Revision Petition.

8. Heard Mr.D.Gopal, learned counsel appearing for the petitioner and Mr.M.Guruprasad, learned counsel appearing for the second respondent.

9. The petitioner is the landlord and the respondents are the tenants. Admittedly, the respondents vacated the suit premises on 31.05.2008. Even till 2008, there is no proof to show that the respondents were in possession of the petition premises. In fact, the respondents also had withdrawn the petition in R.C.O.P.No.13 of 2013 which was filed for



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depositing the rent in the Court. If there was no settlement between the parties, there was no need to the respondents to withdraw the petition in R.C.O.P.No.13 of 2013 filed for deposit of rent. It shows the malafide intention of the respondents to defeat the ownership of the landlord viz., the petitioner herein. Though the execution Court recorded all the circumstances, allowed the execution petition for the reason that the law shall be upheld whether the tenant able to utilize the building or not, since the petition premises cannot be used for any purpose.

10. Considering the above facts and circumstances, this Court finds the order passed by the Court below is liable to be set aside. Accordingly, the order 30.04.2019, passed by the learned I Additional Subordinate Judge, Erode, in E.P.No.117 of 2017 in O.S.No.423 of 2008, is hereby set aside. Consequently, the execution petition in E.P.No.117 of 2017 is also dismissed.



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WEB COPY 11. Accordingly, this Civil Revision Petition stands allowed.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

19.12.2022

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

To

1. The I Additional Subordinate Judge,
Erode.



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G.K.ILANTHIRAIYAN, J.

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