



C.R.P.(NPD).No.2477 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.2477 of 2021

&

C.M.P.No.18720 of 2021

1.R.Ramachandran

2.R.Chandran

...Petitioners

Vs

1.K.Arumugam

2.Dhandayudabani Chettiyar

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 21.09.2021, made in R.E.A.No.77 of 2018 in R.E.P.No.23 of 2014 in R.C.O.P.No.1 of 1998 on the file of learned District Munsif Court, Rasipuram.



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For Petitioners : Mr.S.Patrick
For Respondent 1: Mr.T.R.Rajaraman
for M/s.D.Chitra Maragatham
For Respondent 2: No Appearance.

ORDER

The obstructors are the revision petitioners before this Court challenging the dismissal of the application filed by them under the provisions of Order XXI Rule 97 & 99 of the Code of Civil Procedure. The facts in brief which preceeded the filing of the above Civil Revision Petition are as follows.

2. The revision petitioners are the sons of one Rajendran. The 1st respondent herein and two others had filed a suit in O.S.No.273 of 2001, which was originally filed as P.O.P.No.6 of 1997 on the file of



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the Subordinate Court, Namakkal against Subramaniam and 15 others.

The father of the revision petitioners was arrayed as the 5th defendant.

This suit was subsequently transferred to the file of the Sub Court, Rasipuram and re-numbered as O.S.No.36 of 2008.

3. This suit is filed for a declaration that the plaintiffs were the absolute owners of the suit A – Schedule property, recovery of possession of the A – Schedule property, permanent injunction restraining the 5th and 6th defendants from encroaching or alienating the suit properties belonging to the plaintiffs and for mesne profits.

4. The suit O.S.No.112 of 2008 was filed by the father of the revision petitioners herein against the 1st respondent for an injunction restraining him from interfering with the plaintiff's peaceful possession and enjoyment of the property either by executing the order of the Rent Controller in R.C.O.P.No.1 of 1998 or otherwise.



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5. O.S.No.147 of 2008 was filed by the 1st respondent against the 2nd respondent herein for recovery of a sum of Rs.72,000/- towards arrears of rent.

6. The three suits were tried together and the following decrees were passed:

I. **O.S.No.36 of 2008** was decreed in favour of the 1st respondent and two others (the plaintiffs therein) as follows:

1.That the plaintiffs be and the same are hereby declared as absolute Owners in respect of the suit 2, 4 and 5th items of properties alone.

2.That the defendants be and the same are hereby directed to deliver the possession of the suit 2, 4 and 5th items of properties to the plaintiffs within 2 months from



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today.

3. That the defendants 5 and 6 be and the same are hereby restrained by way of permanent injunction from in any way alienating or encumbering the suit 2, 4 and 5 item of properties.

4. That the suit be and the same is hereby dismissed in respect of the relief of past income.

5. That the suit be and the same is hereby dismissed so far as the suit item 1st and 3rd item of the properties are concerned in respect of all reliefs.

6. Since the suit was registered after allowing the paper O.P. the defendants 1 to 4, 5, and 16 are directed to pay the court fee.

7. That the defendants 1 to 4, 5, 15 and 16 do pay to the plaintiff a sum of Rs.46,441.25 towards cost of the suit.



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II. **O.S.No.112 of 2008** filed by the father of the revision petitioners was dismissed.

III. **O.S.No.147 of 2008** filed by the 1st respondent against the 2nd respondent herein was decreed as prayed for.

7. It appears that the Judgement in O.S.No.36 of 2008 was challenged by the 5th defendant, Rajendran and his legal heirs in A.S.No.17 of 2014 on the file of the Principal District Judge, Namakkal.

8. Likewise, the 5th defendant and his legal heirs had challenged the Judgement and Decree in O.S.No.112 of 2008 by filing A.S.No.19 of 2014 on the file of the Principal District Judge, Namakkal.



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9. The plaintiffs in O.S.No.36 of 2008 (the 1st respondent herein and two others) had filed an appeal in A.S.No.20 of 2014 challenging the disallowed portion.

10. Meanwhile, the 1st respondent has initiated eviction proceedings in E.P.No.23 of 2014 in R.C.O.P.No.1 of 1998 on the file of the District Munsif, Rasipuram seeking eviction of the 2nd respondent herein.

11. Simultaneously, the plaintiffs in O.S.No.36 of 2008 (1st respondent herein) had filed R.E.P.No.26 of 2014 against the 5th defendant for delivery of possession of the suit schedule properties which had been decreed in O.S.No.36 of 2008 by the Sub Court, Rasipuram. This petition was allowed by order dated 16.12.2016. The learned Subordinate Judge, Rasipuram had taken note of the fact that the suit had been decreed on 20.12.2013 with reference to items 2, 4



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and 5 of the suit property and were given two months time to effect delivery and possession to the plaintiff / 1st respondent herein. However, it was not done and hence the Execution Petition. This order was challenged in C.R.P.No.1897 of 2017 by the 5th defendant. Consequently, the order of interim stay was granted in C.M.P.No.9189 of 2017.

12. Simultaneously, the proceedings against the 2nd respondent in R.E.P.No.23 of 2014 was allowed by the District Munsif, Rasipuram by her order dated 24.08.2018.

13. The revision petitioners who are the sons of the 5th defendant had filed R.E.A.No.77 of 2018 in R.E.P.No.23 of 2014. In the said application they had taken out a plea that the decree holder / 1st respondent cannot recover possession from the 2nd respondent. It was their contention in the said obstruction petition that the 2nd respondent



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had ceased to occupy the suit schedule property and that it was their father who was in possession of the same and their father had died on 19.09.2008 and that the property is now in the possession of the revision petitioners, their Aunt Chandra, mother Vellaiyammal and brothers Gowtham and Shankar. After the death of their father they have been in exclusive possession and enjoyment of the property.

14. The said application was resisted by the 1st respondent inter alia contending that the 2nd respondent had taken on lease the Door No.190/1, 190/2 from the 1st defendant. Further, the suit filed for declaration, delivery of possession and injunction filed by him had been decreed in his favour and the R.C.O.P has also been ordered in his favour and confirmed by the Appellate Authority. The revision petitioner's father was a party to these proceedings and therefore the allegation that the revision petitioner's father was in possession of the property in his own right is not correct and that the decree holder



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should be entitled to execute his decree.

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15. The records would also show that earlier a Civil Revision Petition had been filed in C.R.P.304 of 2008 and C.M.P.No.21401 of 2008 in which the following order had been passed by this Court on 12.07.2021:

“3. The learned counsel for the respondent / landlord would submit that in respect of the petition premises, the respondent and others filed a suit for declaration and delivery of possession as against the family members and also for declaration in respect of certain items. The said suit was decreed in favour of the landlord and on the strength of the decree, the landlord filed a petition for eviction on the ground of willful default and the same was allowed and confirmed by the learned Rent Control Appellate Authority.



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4. Now, the tenant has taken a stand that already the possession of the petition premises was handed over to the said Mr.Rajendiran, who is alleged to have purchased the petition premises from one of the sons of the executor of the Will. Though he filed a memo stating that he vacated the petition premises before the learned Rent Control Appellate Authority, he played game with the said Mr.Rajendiran who has allegedly purchased the petition premises and he is still in possession and enjoyment of the property without even paying rent from the year 1997 onwards. Therefore, the court below rightly allowed the petition and he prayed for dismissal of the Civil Revision Petition.

5.The learned counsel for the petitioner / tenant would submit that as against the decree dated 20.12.2013 passed in O.S.No.112 of 2008 on the file of the Sub court,



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Rasipuram, one of the parties filed appeal suit in A.S.No.19 of 2014 is pending on the file of the Principal District Judge, Namakkal. Therefore, the ownership itself Is not declared in respect of petition premises in favour of the landlord. However, the entire possession of the petition premises was already handed over to the said Mr.Rajendiran, who Is the purchaser of the petition premises.

6. The Court below concluded that the tenant failed to produce any substantial piece of evidence to show that he handed over the possession of the petition premises to the said Mr.Rajendiran. That apart, the alleged handing over the possession of the petition premises had taken place during the pendency of the R.C.O.P.No.1 of 1998 and any such transfer will not bind the petitioner and the



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subsequent purchaser of the petition premises is bound by the decree.

7. Therefore, the Court below ordered for delivery of possession in respect of petition premises on or before 24.09.2018 and this Court finds no infirmity or illegality in the order passed by the court below."

16. In the above order, this Court has clearly held that handing over of the possession of the petition premisses had taken place during the pendency of R.C.O.P.No.1 of 1998 and any transfer made during this period is not binding on the petitioners and the subsequent purchaser is bound by the terms of the decree. Therefore, the delivery of possession was ordered on or before 24.09.2018.



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17. Therefore, in the light of this order and taking note of the fact that the petitioners are the sons of Rajendran against whom the orders have been passed, the petitioners are bound by the said order. Consequently, this Civil Revision Petition is nothing but an attempt to protract proceedings and ensure the continued occupation of the suit property by the revision petitioners and their family. The decree holder who has obtained the decree as early as in the year 2013 is yet to enjoy the fruits of the decree.

18. In these circumstances, I do not find any infirmity in the order passed by the learned District Munsif, Rasipuram, accordingly the Civil Revision Petition is dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

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P.T.ASHA, J.,

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To,
The District Munsif Court, Rasipuram.

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