



CRP. No.2381 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

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- 1.Krishnan (died)
2. K.Kasthuri Bai

(P-2 K.Kasthuri Bai w/o Krishnan, No. 169, 4th Main Road Secretrait Colony, Okkiyam Thoraipakkam, Chennai – 600 097. Sole petitioner died, 2nd petitioner brought on record as Lrs of the deceased sold petitioner viz., K.Krishnan vide Court order dated 18/10/2022 made in CMP No. 1969/2022 in CRP No.2381/19 by TVTSJ)

...Petitioner

Vs.

Isha Siddi Vinayagar Temple,
Rep by its Trustee C.K.Kannabiran (Deceased),
Presently Mr.D.Oviyanathan,
Kalikundram Main Road,
Tharamani, Chennai – 600 113.

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the order in E.P No.33/1997 in ejectment suit No.16/1990 dated 21.11.2016 passed by the learned Registrar Court, (Small Causes Court at Chennai) and thereby allow the above Civil Revision Petition.



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For Petitioner : Mr.A.Rajesh Kanna
For Respondent : Not appeared

ORDER

This Civil Revision Petition has been filed to set aside the order in E.P No.33/1997 in ejectment suit No.16 of 1990 dated 21.11.2016 passed by the learned Registrar Court, (Small Causes Court at Chennai) and thereby allow the above Civil Revision Petition.

2.The Revision Petitioner herein is the legal heir of the original tenant krishnan who is tenant for the super structure in the suit mentioned property, as per the sale deed dated 31.08.1994 Kasthuri bai claimed herself as owner of the suit property/super structure she is in possession of the property which is subject matter of the suit in Ejt. Suit NO. 16 of 1990 which was filed by the Ishta Siddi Vinayagar Temple(herein after referred to as "temple") represented by its trustee on the file of the small causes Court, Chennai, against the respondent original tenant Mohan who is husband of Kasthuri bai/petitioner herein. The said suit was decreed in favour of the



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temple and to execute the same the plaintiff filed E.P No.33 of 1997 in Ejt.

Suit No. 16 of 1990. During the pendency of the said proceedings one Kasthuri bai claimed herself as the purchaser of the super structure from the original tenant one Mohan in the execution application to remove obstruction the decree holder temple filed M.P No. 473 of 2001 in E.P No. 33 of 1997 the said application was contested by the obstructor Kasthuri Bai as well as his vendor original tenant Mohan. On hearing both sides executing Court held that there is a suit filed by the obstructor due to filing of the suit 1200 of 2001 subsequently said suit was withdrawn then he filed second suit in O.S No.6673 of 2001 before the 18th Asst. City Civil Court, the said application was dismissed for the reason that as per the provisions of order 21 Rule 104 of CPC the findings of pending suit is prevail over the execution order. Thereafter, the execution E.P was terminated on 21.11.2016 against the termination of E.P order, obstructor preferred this petition.

3. Heard the learned counsel for the petitioner and there is no representation on the side of the defendant.



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4. On perusal of the records, it reveals that the temple filed suit for ejectment in the year 1990 in O.S No. 16 of 1999 against the original owner Mohan and the said Mohan contested the ejectment suit which decreed in favour of the temple and the temple filed E.P No. 36 of 1997 in the suit, during the pendency of the proceedings Kasthuri Bai filed M.P No. 473 of 2011 claimed herself as owner of the super structure through document dated 31.08.1994 in which she purchased the suit property from one mohan. Admittedly, the said mohan is not a owner of the property but he transferred super structure to her. As per the recital of said sale deed he received 3,000/- for the super structure. Admittedly she is a tenant of the said temple property and the obstructor/kasthuri bai not purchased super structure from the original land lord/temple. But all the way claiming right over the property the execution Court also refused her claim for the reason that she has not proved her possession of the property before any Court nor she entered into agreement with original land lord/temple obstruction filed by the landlord was dismissed. Further, the learned counsel for the revision petitioner argued that there is dispute in original property challenging the same he filed the suit in O.S No.6673 of 2001 on the file of the 18th Asst. City



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Civil Court,. Hence, this Court is of the view that the suit is pending before the Court below she has to work out her remedy before the Court concerned.

Accordingly, the Civil Revision Petition is dismissed as no merits.

5. In the result, this Civil Revision Petition is dismissed. No costs.

07.11.2022

pbl

To

1. The Registrar Court (Small Causes Court) Chennai.



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T.V.THAMILSELVI,J.

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