



C.M.A.(MD)No.392 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 04.07.2022

Delivered On : 22.07.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.392 of 2022
and C.M.P(MD)No.3441 of 2022

G.Rajendran

.. Appellant / petitioner /
obstructor / third party

Vs.

1.V.Muthulakshmi

... 1st respondent / 1st respondent /
petitioner / decree holder/plaintiff

2.A.Baluchamy

3.B.Vasantha

... Respondents 2&3 / Respondents 2&3 /
Respondents 1 &2 / judgment debtors / defendants

Prayer: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of Civil Procedure Code, against the fair and decreetal order, dated 14.03.2022, passed in E.A.No.21 of 2020, in E.P.No.13 of 2019 in O.S.No.98 of 2008, on the file of the I Additional District Judge, Madurai.

For Appellant

: Ms.J.Anandhavalli

For Respondent No.1

: Mr. V.Ramakrishnan



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order, dated 14.03.2022, passed in E.A.No.21 of 2020, in E.P.No.13 of 2019 in O.S.No.98 of 2008, on the file of the I Additional District Judge, Madurai. The appellant herein is the third party / obstructor. The appellant filed a petition in E.A.No.21 of 2020 for obstructing the execution of the decree in O.S.No.98 of 2008. That obstruction petition was dismissed by the trial Court. Against the same, the appellant has preferred this appeal.

2. Brief substance of the petition in E.A.No.21 of 2020 is as follows:-

The petitioner is a tenant, under the respondents 2 and 3. There was an agreement between the petitioner and the respondents 2 and 3 regarding the petition mentioned property. The petitioner paid a sum of Rs.15,00,000/- to the respondents 2 and 3 and he was permitted to occupy the premises instead of paying interest. Only on 23.03.2020, when the Court Amin came to the premises, the petitioner came to know that there was a case pending regarding the property. Hence, the petitioner filed this petition. The petitioner is a lawful tenant. The decree of the suit was not intimated to the petitioner. If delivery is ordered in favour of the first respondent, the petitioner will be put into heavy loss and hardship and prayed the petition for



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delivery to be dismissed.

WEB COPY 3. Brief substance of the counter filed by the first respondent in E.A.No.21 of 2020 is as follows:-

It is wrong to state that the petitioner paid a sum of Rs.15,00,000/- to the respondents 2 and 3, on 10.05.2017 and that instead of paying rent, the petitioner was permitted to occupy the premises. Only to safeguard the illegal possession of respondents 2 and 3, this petition was filed. The property was sold to the first respondent by the respondents 2 and 3, on 13.07.1994. Even after the first respondent succeed the case up to the Hon'ble Supreme Court, the respondents 2 and 3 are refusing to vacate the property. After the dismissal of their appeal by the Hon'ble Supreme Court, the respondents 2 and 3 have filed a review petition before the Supreme Court on 24.07.2019 and that petition also was dismissed. The respondents 2 and 3 are bound to obey the decree under order 21 Rule 102 C.P.C. The appellant is bound by the decree against the second and third respondents and the petitioner is not having no *locus standi*, to file this petition.

4. One witness was examined and 8 documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondents. The Trial Court has dismissed the petition.



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WEB COPY 5. Against the dismissal of the petition, the appellant has preferred this appeal on the following grounds:-

The Trial Court failed to consider that the appellant is in possession of the suit property on a valid agreement in Ex.P1. The Trial Court failed to consider that the appellant has parted with a sum of Rs.15,00,000/- to the respondents 2 and 3 herein and was placed in possession of the suit property. Admittedly, the possession of the property is with the appellant and the appellant cannot be evicted, unless under the due process of law. Execution cannot be proceeded against the appellant. The trial court failed to consider that Ex.P1 need not be compulsorily registered. The appellant was placed in possession in the year 2017, but, the first respondent failed to implead the appellant in the second appeal and he is not entitled to proceed with the E.P as against the appellant. Execution of Ex.P1 and receipt of Rs. 15,00,000/- was not disputed by the respondents 2 and 3. The appellant is entitled for the return of Rs.15,00,000/- from the respondents 2 and 3, till the return of the amount, he is entitled to be in possession of the property.

6. On the side of the appellant, it is stated that a suit was filed by the first respondent for recovery of possession against the respondents 2 and 3, stating that the respondents 2 and 3 executed a sale deed in the year 1994 and that they sought



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for one month time to vacate the premises, but, subsequently, they failed to vacate the premises. The case of the defendants / respondents 2 and 3 is that the sale deed was not valid and that the consideration was Rs.3,50,000/-, but, in the sale deed, the consideration was mentioned only as Rs.1,50,000/-.

7. On the side of the appellant, it is stated that the appellant was not aware of the litigation and on 10.05.2017, the appellant entered in to a rental agreement with the respondents 2 and 3 and he paid a sum of Rs.15,00,000/- and he was given possession of the building, in lieu of the interest. On 23.03.2020, only when the Amin visited the property, the appellant came to know that there was a litigation between the first respondent and the respondents 2 and 3. The respondents 2 and 3 got a sum of Rs.15,00,000/- from the appellant and the appellant is entitled to occupy the premises until the amount is repaid. The appellant is in possession from the year 2017, but, the first respondent claimed possession only from the respondents 2 and 3. Though the tenancy period was over, the appellant is holding over the possession. The respondents 2 and 3 did not deny the payment made by the appellant and the first respondent is not entitled to question the payment. Till the amount is repaid, the appellant is having the right to be in possession of the property.

8. On the side of the first respondent, it is stated that this is the third round



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of litigation. The respondents 2 and 3 sold the property to the first respondent and requested the first respondent that they will vacate the premises within a month. The first respondent agreed for the same. Even after the lapse of one year, the respondents 2 and 3 failed to vacate the premises and then, the respondents 2 and 3 filed a suit for bare injunction, stating that the entire sale consideration was not paid. That suit was dismissed by the trial Court. The appeal against the suit was also dismissed.

9. On the side of the first respondent, it is stated that the purchaser / first respondent herein filed a suit for possession and he obtained a decree. The respondents 2 and 3 filed an appeal in A.S.No.12 of 2010. The appeal was dismissed. Against the dismissal of the appeal, the respondents 2 and 3 filed a second appeal before the Hon'ble Supreme Court. The S.L.P. filed before the Supreme Court was dismissed, at the admission stage itself. The respondents 2 and 3 filed a review petition before the Hon'ble Supreme Court and that petition was also dismissed.

10. The first respondent herein has filed a petition for delivery of possession in E.P.No.13 of 2019. Delivery was ordered. At that time, the appellant has filed a petition in E.A.No.21 of 2020. The allegation of the appellant is that he



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entered into a lease agreement with the respondents 2 and 3, on 10.05.2017, and he paid a sum of Rs.15,00,000/- with an agreement to enjoy the property, in lieu of the interest due for the said amount. As the agreement was given for a period of three years and the content of the agreement is “Othi”, the othi deed has to be compulsorily registered, under Order 21 Rule 102 CPC. The petition filed by the appellant before the trial Court was dismissed before numbering and the appellant has approached this Court and obtained an order to number the petition. This Court has ordered the petition to be numbered. The first respondent herein filed a petition for review and this Court has ordered the matter to be disposed of expeditiously on day to day basis. After enquiry, the execution Court has dismissed the petition filed by this appellant.

11. On the side of the first respondent, it is stated that the title of the first respondent was confirmed, even before the Hon'ble Supreme Court. The respondents 2 and 3 cannot question the title of the first respondent. The appellant, who is claiming possession through the respondents 2 and 3, cannot question the first respondent. The appellant is not claiming independent right over the property, he claimed only through respondents 2 and 3. The alleged agreement is with regard to a loan transaction. Limitation period was over. The appellant is not a tenant, holding over possession. After the completion of three years, the appellant is not



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entitled to continue in possession. The appellant is only an illegal occupier. The appellant is alleged to have made payment to the respondents 2 and 3 and not to the first respondent and the claim of the appellant against the respondents 2 and 3 is not binding on the first respondent. The appellant is set up by the respondents 2 and 3. The alleged agreement Ex.P1 is created for the purpose of this case, the respondents 2 and 3 never stated anything regarding the agreement, during pendency of the case. The E.P Court cannot go beyond the decree.

12. Order 21 Rule 102 C.P.C is not applicable, to any transfer, pending litigation, subsequent transfer is hit by the provisions of Order 21 Rule 102 C.P.C. The original suit was filed in the year 2008. The alleged possession of the appellant is only from the year 2017. Ex.P1 is hit by the pendency of the litigation and order 21 Rule 102 C.P.C. is applicable to the present Case.

13. On the side of the first respondent, a judgment of the Hon'ble Supreme Court reported in 2008-CJ-SC-1934 (Usha Sinha V. Dina Ram) is cited, wherein, it is stated as follows:-

“18. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court. The doctrine of 'lis pendens' prohibits a party from dealing with the property which is the



subject matter of suit. 'Lis pendens' itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order XXI.

20. The Court stated;

"It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under rule 97 or rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment debtor, the scope of the adjudication would be shrunk to the limited question whether he is such transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in [Section 52](#) of the



Transfer of Property Act." (emphasis supplied) [See also *Sarvinder Singh v. Dalip Singh*, (1996) 5 SCC 539] “

14. On the side of the first respondent, another judgment of this Court reported in 2008-1-LW-1065 (S.Rajan V. A.Suriyanarayanan and others) is cited, wherein, it is stated as follows:-

“8...The purchaser shall be bound by the decree as judgment debtor himself. In such an event, resistance to execution on the strength of title derived from the judgment debtor need not be adjudicated upon for the simple reason that the entertainment of such a claim will amount to opening the avenue once again for the judgment debtor to resist execution even though such a plea by his predecessor in interest might have been rejected earlier in the suit itself.

9. The very same view was expressed by Madhya Pradesh High Court in Manoj Kumar Sharma v. Mahadev Prasad reported in 2000(3) Civil LJ 861. Referring to Rule 102 and 98(2) of Order XXI C.P.C., the Court has gone to the extent of stating that a detailed enquiry regarding the claim made by a person, who admits to have purchased the property pendente lite from the judgment debtor was an exercise in futility. The following were the observation made by the said Court. “

15. On the side of the first respondent, a judgment of this Court reported in 2019-3-LW-331 (M.Sathyan Sundararajan V. K.R.S.Janakiraman) is cited, wherein, it is stated as follows:-



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“Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree-holder starts in getting possession in pursuance of the decree obtained by him. The judgment-debtor tries to thwart the execution by all possible objections. In the circumstances narrated above, we do not find any fault with the order passed by the High Court.”

16. On the side of the first respondent, it is stated that the first respondent is fighting for his right for the past 28 years. A third party cannot claim any right holding over the property. If the first respondent filed a separate execution proceedings against the appellant, there is every possibility for the respondents 2 and 3 to enter into another agreement with some other person, to remain in continues possession. There won't be an end to any litigation.

17. On the side of the first respondent, it is stated that the appellant has not taken any steps to recover the amount from the respondents 2 and 3 sofar. Only to prevent the first respondent from enjoying the fruits of the judgment of the Hon'ble Supreme Court in the second appeal and with a motive to drag on the case, the appellant and the respondents 2 and 3 colluded together and created EX.P1.



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18. On the side of the appellant, it is stated that the first respondent herein / plaintiff was aware that the appellant was in possession, but, without impleading the appellant, the first respondent has filed a petition for delivery. There is no decree against the appellant. The first respondent failed to obtain a decree against the appellant. The appellant has marked Ex.P1, to prove that the appellant is in possession. Under order 21 Rule 97, an obstructor can make an application. Order 21 Rule 102 C.P.C is not applicable, only in a case where a petition is filed by a decree holder against the obstructor. The right of an obstructor has to be decided under Section 101.

19. On the side of the appellant, it is stated that the appellant came to know about the decree, only when the Amin came to the premises and that the appellant is in lawful possession and his possession has to be protected and that as long as the possession of the appellant was not disturbed, there is no need for the appellant to proceed for the recovery of Rs.15,00,000/- and that the right of the appellant cannot be curtailed and the judgment cited on the side of the first respondent is not applicable to the facts of the present case.

20. On the side of the first respondent, it is stated that the contention of the appellant was well discussed in the order of the Execution Court. Order 21 Rule 101



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C.P.C. is applicable to a third party, who is not having any connection with the judgment debtor and the Section is not applicable to a person claiming possession through a judgment debtor. A person, who is in lawful possession alone, is protected under the Act. If the alleged transactions between the appellant and the respondents 2 and 3 are true, the appellant ought to have proceeded against the respondents 2 and 3.

21. The first respondent purchased the property from the respondents 2 and 3. The first respondent filed a suit in O.S.No.98 of 2008, for recovery of possession and for mesne profits. That suit was decreed on 09.12.2009. The respondents 2 and 3 filed an appeal in A.S.No.12 of 2010 and the appeal was dismissed on 03.08.2018. The first respondent filed an execution petition against the respondents 2 and 3 for delivery of possession. On 16.03.2020, delivery was ordered, Police protection and brake open the lock were ordered.

22. It is seen that the respondents 2 and 3 filed a petition in SLP.(Civil) No.13226 of 2019 before the Hon'ble Supreme Court and that petition was dismissed on 08.05.2019. On the side of the first respondent, it is stated that the respondents 2 and 3 have filed a review petition before the Hon'ble Supreme Court and the review petition also was dismissed.



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23. The appellant herein has filed this E.A petition stating that there was an agreement between the appellant and the respondents 2 and 3, on 10.05.2017, wherein, the respondents 2 and 3 received Rs.15,00,000/- and handed over the possession of the property for enjoyment by the appellant, in lieu of the interest due. The claim of the appellant is that he is having the right to be in possession till the amount is refunded, to him. The appellant is claiming that he was not aware of litigation and only when the Amin was present, the appellant came to know about the litigation. So, the possession of the appellant is based on Ex.P1- agreement. In Ex.P1, the appellant was given possession for a period of 3 years from 10.05.2017. There is clear wordings in Ex.P1 that the appellant can enjoy the property instead of paying the rent. So, this agreement is not a simple tenancy agreement. This agreement seems to be a lease deed, which require registration.

24. The period stated in Ex.P1 is over. Even after the filing of E.A.No.21 of 2020, the appellant has not taken any steps to recover Rs.15,00,000/- from the respondents 2 and 3. The appellant is claiming possession only through the respondents 2 and 3. Ex.P2 to P8 are documents to prove the possession of the appellant. Whether the right of possession against the first respondent is lawful has to be decided in the petition. The appellant can have lawful possession only when



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the respondents 2 and 3 have any right over the property. The first respondent purchased the property in the year 1994. The first respondent is knocking the doors of the Court from the year 2008. The respondents 2 and 3 lost the case up to the Hon'ble Supreme Court. The title of the first respondent is confirmed. Since, the respondents 2 and 3 have no title or right over the property, the agreement of the appellant with the respondents 2 and 3 is not binding on the first respondent. If at all the appellant is having any right, he has to seek his remedy only against the respondents 2 and 3 and the appellant cannot obstruct the right of the first respondent.

25. Non-registration of the agreement - Ex.P1 is fatal. The appellant has not taken any steps for recovery of Rs.15,00,000/- from the respondents 2 and 3. Even after the visit of the Amin, the first respondent has not taken any steps against the respondents 2 and 3. The claim of the appellant is that as long as he is in possession, he need not proceed against the respondents 2 and 3 and that his possession has to be protected. This contention of the appellant itself indicate that there is some collusion between the appellant and the respondents 2 and 3. The appellant is not having any right or *locus standi* to be in possession or to question the title of the first respondent.



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26. In the above circumstances, this Appeal is dismissed. The order, dated 14.03.2022, passed in E.A.No.21 of 2020, in E.P.No.13 of 2019 in O.S.No.98 of 2008, on the file of the I Additional District Judge, Madurai, is hereby confirmed. The first respondent herein is entitled for delivery of possession. The appellant is hereby directed to hand over the vacant possession within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

22.07.2022

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The I Additional District Judge,
Madurai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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