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CRP No.854 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM :

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CRP No.854 of 2023
&CMP No.6436 of 2023

M.Venkatesan

.... Petitioner

-Vs-

- 1.Leelavathy
- 2.Jambuveni(deceased)
- 3.Balaguru
- 4.Pattama
- 5.Arumugam
- 6.Gandhima
- 7.Mahalingam

.... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India, to set aside the decreetal order dated 04.01.2023 made in E.A No.4 of 2022 in E.P No.107 of 2004 on the file of the learned Registrar Small Causes Court, Chennaie and allow the Civil Revision Petition.

For Petitioner : Mr.A.L.Franc Paul Asirvadam
For R1 : S.Suresh Kumar



ORDER

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This Civil Revision petition has been filed to set aside the decretal order dated 04.01.2023 made in E.A No.4 of 2022 in E.P No.107 of 2004 on the file of the learned Registrar Small Causes Court, Chennai, and allow the Civil Revision Petition. Except petitioner and the first respondent, other respondent has not contested the suit hence notice the respondents.

2. Originally Ejectment suit No. 32 of 1986 was filed by the first respondent herein/plaintiff/decreed holder for ejectment before the Small Causes Court, Chennai, against the 7 defendants, due to the death of first defendant seventh defendant impleaded himself as legal heir of the first defendant. **First defendant** alone contested the suit other defendants remain exparte. The case of the plaintiff is that she purchased the property to an extent of 1737 square feet in R.S.16 Door No.22, 23, Beerkaran Street, from one Mohamed Sheriff. Out of 1737 square feet, 742 square feet is in Door No.22 and it is in the possession of the defendant/judgement debtor/petitioner herein. First defendant has let out the said property to other defendants and collected rent. The plaintiff issued notice on 06.02.1984 and 03.04.1984 to the defendant calling upon to execute rental agreement and continue to pay rent to the plaintiff. The first defendant/petitioner



herein claiming right under the city tenants protection Act. Thereafter, the first defendants failed to pay rent as per rent agreement from the year 1983. on 17.01.1986, the plaintiff issued notice to the first defendant/petitioner herein informed that tenancy of the defendants was terminated with effect from 28.02.1986, the petitioner/tenant did not give reply to the said notice. Hence the plaintiff filed suit for vacate and delivery of possession. First defendant filed written statement contending that though the plaintiff purchased the neighbour property, not the defendant's property and she has no right in that property which is under her occupation and also denied the tenancy. After considering the oral and documentary evidence the Trial Court decreed the suit in favour of the plaintiff/respondent herein/land lord.

3. Against which the landlord/deGREE holder preferred E.P No. 107 of 2004 which also decreed in favour of the decree holder/plaintiff. Thereafter, the defendant filed M.P No. 284 of 2004 in E.P No. 107 of 2004 which was dismissed on 12.08.2016. Subsequently, the defendant filed CRP No. 1961 of 2012 before this Court to set aside the eviction order dated 22.09.2003 passed in Ejectment suit NO. 32 of 1986, and the same was dismissed. Against the order in CRP No. 1961 of 2012 the defendant filed SLP (c) NO.(S) 20156 of 2014 before the Apex Court and the same was dismissed. Further the first defendant filed



C.S No. 31735 of 2014 before this Court to set aside the Ejectment suit No. 32 of 1986 and the same was dismissed. Against the dismissal order in C.S No. 31735 of 2014 the defendant/ petitioner herein filed OSA No.164 of 2014 before this Court and the same also dismissed by confirmed the order in C.S No. 31735 of 2014. Thereafter, the first defendant filed E.A No. 156 and 157 of 2014 in E.P NO. 197 of 2004 which also dismissed. Against the dismissal order in E.A No. 156 and 157 of 2014 the petitioner filed CRP No. 2869 and 2870 of 2015. Subsequently, challenging the order of this Court in CRP No. 2869 and 2870 of 2015 she preferred SLP No. 5406, 5407 of 2016 and the same was dismissed on 29.02.2015. Further the petitioner mother filed E.A No. 5 of 2016 and the same was dismissed, against which, CRP No. 1747 of 2016 was filed before this Court and the same was dismissed on 17.06.2016. Then the commissioner was appointed property was measured and as per the commissioner report there is lesser extent of the property is available on ground with regard to Door No. 22 which is under the occupation of the seventh defendant/petitioner herein. While so, the petitioner filed E.A 4 of 2022 praying to appoint advocate commissioner Execution Court finally held that as per Ex.B1 sale deed the plaintiff purchased 1737 square feet in door No. 23 but in ground 1177 square feet only, remaining 560 square feet is in door no. 22 which is under the occupation of the



petitioner/seventh defendant advocate commissioner report clearly established that an extent of ground which does not required to measure the property through surveyor hence said application was dismissed. Hence the present petition. First Defendant died her legal heir impleaded as Seventh defendant/petitioner herein.

4. The learned counsel for the petitioner/seventh defendant submitted that the plaintiff have no right to claim door No. 22 because as per the sale deed she purchased 1737 square feet in door No.23 but the available land is only 1177 square. Thereafter, he filed suit claiming 742 square feet in door No.22 but now restrict his claim to 560 square feet in the said door No.22 which is not acceptable. Hence the petitioner filed E.A NO.4 of 2022 to appoint advocate commissioner to measure the property but the executing Court erroneously dismissed the relief claimed by the petitioner which is unfair and liable to be set aside.

5. By way of reply the learned counsel for the respondent submitted that the for more than 30 years in spite of getting decree the respondent not able to recover the possession of the property from the petitioner. In fact, as per the sale deed Door No. 23 is forming part of Door No.22, then which is under the occupation of first defendant now under the seventh defendant's/petitioner herein claiming as legal heir of first defendant. Now contrary to the tenancy agreement



now he denied the plaintiff's right over the property as such is not maintainable, the Court below rightly appreciated this facts. Hence he prays to dismiss this petition.

6. On bare perusal of the decree passed in ejectment suit, it reveals that as on date ejectment decree is in force. As per the plaint schedule, the plaintiff claiming for delivery of possession to the extent of 742 square feet in Door No. 22 which is under the occupation of the petitioner herein rear side portion which is forming part of Door No.23. Now on ground available only 560 square feet in Door No.22. Further, the plan attached with the sale deed clearly shows that in R.S NO.16 total available land is 1737 square feet comprising Door No.22,23 and patta also stands in the name of plaintiff. But as per the commissioner report on ground available only 1177 square feet he restricted his claim of 560 square feet to that effect he filed memo before the executing Court which also recorded. Furthermore, the detailed plan attached by the respondent clearly correlate the plan attached with sale deed. But the contention of the petitioner is that door No.23 in R.S No.16 was specifically mentioned in the sale deed hence the plaintiff is not entitled to take possession of the property in Door No.22. As discussed above, the suit was filed in the year of 1986 the petitioner cannot claim to appoint advocate commissioner after 30 years of decreed suit which is not



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permissible in law. Furthermore, the conduct of the petitioner reveals that in order to drag on the proceedings this application was filed which could not be acceptable, the executing Court rightly dismissed the application which needs no interference. The execution Court is directed to vacate and handover possession of the suit property to the respondent within a period of three months from the date of receipt of a copy of this order

6. Accordingly this Civil Revision Petition is dismissed. No cost. Consequently connected miscellaneous petition is closed.

27.03.2023

Index : Yes/No

Internet : Yes/No

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Note: Issue order copy on 29.03.2023.



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