



WEB COPY



CRP. No.1408 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.062023

CORAM:

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

CRP. No. 1408 of 2018

Nanjammal (Died)

1.Dhanalakshmi

2.Bakkiyalakshmi

...Petitioners

Vs.

1.Murugan

2.C.S.Honifa

3.Abbas

4.Mustafa

...Respondents.

PRAYER : This Civil Revision Petition is filed under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 03.04.2018 passed in E.A No. 235 of 2011 in E.P No. 110 of 2005 in RCOP No. 85 of 2001 on the file of the Principal District Munsif Court, Coimbatore by allowing this Civil Revision Petition.

For Petitioners : Mr.P.Jagadesan

For R1 : Mr.N.Manoharan



CRP. No.1408 of 2018

For R2 to R4 : No such addresses.

WEB COPY

ORDER

This petition has been filed to set aside the fair and decreetal order dated 03.04.2018 passed in E.A No. 235 of 2011 in E.P No. 110 of 2005 in RCOP No. 85 of 2001 on the file of the Principal District Munsif Court, Coimbatore.

2. The revision petitioners herein are third parties to the RCOP No. 85 of 2001 and filed a petition under Section 47 of CPC praying to dismiss the E.P proceedings in RCOP No. 85 of 2001 by stating that there is no landlord tenant relationship between the the first respondent and second respondent. Further the revision petitioner contended that the petitioners are in possession of the petition mentioned property and the alleged decree holder not entitled to take possession of the property bearing door No. 101 in 100 feet road, Gandhipuram, Coimbatore, and one Mohamed Anwar was in possession and enjoyment of the petition mentioned property for several years as a tenant under the petitioners but suppressing the above facts first respondent herein claiming as a landlord to the petition mentioned property and initiated RCOP proceedings against deceased Nasar/second respondent and obtained exparte decree in RCOP No. 85 of 2001. subsequently, based



CRP. No.1408 of 2018

on the exparte decree the first respondent admitted to take possession of the property for which he has not entitled. At present, one Rajendran is in possession of property and doing the business under the name and style of Rainbow Mobiles. Hence the revision petitioner prayed to dismiss E.P No. 110 of 2005 as no merits.

3. The respondents contended that it is abuse of process of law, in fact notice was issued to the tenant they remain exparte, thereafter he obtained order of eviction on 17.11.2004 and he filed application for execution proceedings and advocate commissioner also appointed but when they reached the property one Mohammed Anwar claiming himself as tenant and he filed a petition to implead himself as tenant and same was dismissed. Therefore, at the intigation of the second respondent this petitioner filed petition under Section 47 of CPC, which is liable to be dismissed.

4. On hearing both sides, the Trial Court dismissed the petition stating that the petitioners are third parties to the RCOP proceedings and also there is no document on the side of the petitioner to show that they are owners of the property. Furthermore petition under Section 47 of CPC is not maintainable because they are third parties to the RCOP proceedings. Accordingly petition was dismissed.



CRP. No.1408 of 2018

WEB COPY

5. Challenging the said findings, the petitioner filed this petition. The learned counsel for the petitioners submitted that the lower Court failed to appreciate the facts that the respondent obtained exparte order in RCOP No. 85 of 2001 against the previous tenants and also the trial Court failed to appreciate the documents Ex.P1 to Ex.P6 adduced on the side of the petitioners which proving the ownership and title of the petitioner over the petition mentioned property therefore order passed by the Trial Court is perverse and liable to be set aside.

6. Considering the fact that in the executing Court the revision petitioner claiming title over the property based on Ex.P5 and Ex.P6 which are the judgment and appeal proceedings arising in O.S No. 175 of 2022 and O.S No. 2229 of 2004 and A.S No. 327 of 2016. In the above suit proceedings, first respondent/Murugasan is plaintiff and revision petitioners Nanjammal(died), Dhanalakshmi, Bakkiyalakshmi, Nasar(died)and others are defendants in the said suit proceedings sixth defendant Nasar (died)/ second respondent filed written statement contending that he was a tenant to the Door No. 101 in Gandhipuram, 100 feet road, under Nanjamal(died)



CRP. No.1408 of 2018

(petitioner's mother) in monthly rent of Rs. 2,250/-. But strangely the first respondent/Murugeasan claiming himself as landlord and filed RCOP No. 85 of 2001 against the said Nasar in which said alleged tenant/Nasar died his legal heirs was remain exparte and rent controller passed order of eviction on 17.11.2004. Thereafter, based on the exparte decree rent controller passed order in E.P No. 110 of 2005 in RCOP No. 85 of 2001. It is seen that the the rent controller passed order without application of mind since because in the above mentioned suit proceedings the respondent Nasar(died) claiming himself as tenant under the first revision petitioner Nanjamal in the year 1998 onwards but as per the contention of the revision petitioner when the Advocate commissioner visited the property for execution of delivery it was objected by the first petitioner and one Mohammed Anwar. Hence he filed memo that one Mohammed Anwar was under the occupation of the premises. All these facts prime facie reveals that one Nasar is under the occupation of the property since he died now his legal heirs impleaded as tenant of the property which has to be decided by the executing Court. However the Court is empowered to decide about the executability of decree but the executing court erroneously dismissed the petition filed under Section 47 of CPC to support his contention the learned



CRP. No.1408 of 2018

counsel for the petitioner relied the judgment in the case of B.Mookayee Vs

Ayyadurai reported in 2009 SCC Online Mad 1099:

15. In view of the above propositions of law, it has to be necessarily observed that the respondent is competent to file the petition under Section 47 of C.P.C as regards the questions to be determined by the executing court as to the executability of the decree.

7. Considering the above, the executing Court bound to decide the issue with regard to executability of the decree in respect of application filed by the revision petitioner but executing Court failed to do so and was dismissed as such is totally erroneous and liable to be set aside.

8. Hence, E.A No. 235 of 2011 in E.P No. 110 of 2005 in RCOP No. 85 of 2001 is remanded back to the executing Court for fresh consideration and the executing Court is directed to issue notice to the other parties and verify the person who is under the occupation of the property and decide executability of the decree then proceed with the main petition within a period of three months from the date of receipt of a copy of this order.



CRP. No.1408 of 2018

WEB COPY 9. In result, the Civil Revision petition is disposed of. No cost.

Consequentially, connected miscellaneous petition is closed.

19.06.2023

pbl



WEB COPY



CRP. No.1408 of 2018

T.V.THAMILSELVI,J.

Pbl

CRP. No.1408 of 2018

19.06.2023