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C.R.P.No.2210 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.04.2023

Pronounced on : 28.04.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.2210 of 2016
and CMP.No.11461 of 2016

K.Chandrasekaran

.. Petitioner / Petitioner /
Third Party Obstructor

Vs

K.Shyamalamba (Died)
K.Appa Rao (Died)

1.K.Sathyendra Kumar
2.K.Shyam Sundar Rao
3.K.Vikrama Chakravathy
4.K.Ashok Chakravathy
5.K.Rama Rao
6.K.Lakshmana Rao
7.K.Siva Rao

.. Respondents / Petitioners /
Decree Holders

8.C.R.Krishnamoorthy (Advocate Receiver)
The Madras Bar Association
High Court Buildings, Chennai - 104.

.. Respondent / Respondent /
Advocate Receiver

9.Senthamari Kannan

.. Respondent / Respondent /
Judgment Debtor



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Prayer : Civil Revision Petition filed under Section 115 of CPC., praying to set aside the order and decretal order dated 13.07.2016 made in E.A.No.34 of 2015 in E.P.No.466 of 2013 in Ejt. Suit No.2 of 1988, on the file of learned Registrar, Small Causes Court, Chennai.

For Petitioner : Mr.ARL.Sundaresan, Senior Counsel
for Mr.D.Ravichander

For Respondents : Mr.S.A.Rajan for R3 to R7
R8 & R9 - Given up
R1 & R2 - No appearance

ORDER

The present revision is preferred by a third party to an ejectment suit in O.S.No.2 of 1988 on the file of the Registrar, Small Causes Court, Chennai, challenging an order dismissing his petition in E.A.No.34 of 2015 filed under Order 21 Rule 97 C.P.C.

2.The facts that led up to the institution of the present revision petition may be briefly stated:

- A vacant site measuring 14 and odd grounds belonged to a certain Thanikesan Pillai. On 15.09.1937, he granted a ground lease of the entire property to one Kakka Mohammed Ismail. Within few months



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thereafter, to be precise on 12.03.1938, the lessee, Kakka Mohamed Ismail transferred the lease to a certain Shyamalamba. The said Shyamalamba, in turn had inducted quite a few individuals as sub-lessees, and one among them is one Senthamarai Kannan. He was a sub-lessee of 2,486 sq.ft under Shyamalamba.

- While so, Shyamalamba had filed a set of litigations against her lessees and one among them is O.S.No.2 of 1988, which she had laid against Senthamarai Kannan. On 18.04.2005, this suit came to be decreed. Aggrieved by the same, Senthamarai Kannan, the lessee laid C.R.P.No.996 of 2006, rather unsuccessfully, as the same came to be dismissed by this Court on 24.02.2012.
- In the meantime, Shyamalamba had passed away, and her legal heirs have already stepped into the proceedings. The decree holders would now institute E.P.No.466 of 2013.
- During the pendency of the execution proceedings, on 12.02.2014, the two daughters of Thanikesan Pillai (the original owners of the



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entire block of the property), had sold an extent of 2,255 sq.ft to the revision petitioner. On the strength of these sale deeds, the revision petitioner interfered with the pending execution proceedings with an application in E.A.No.34 of 2015 under Order 21 Rule 97 C.P.C.

- Vide order dated 13.07.2016, E.A.No.34/2015 came to be dismissed.

The line of reasoning of the Execution Court is that since the lease to Shyamalamba expires only in 2026, the application under Order 21 Rule 97 C.P.C is premature, since the sale deed in favour of the revision petitioner itself would take effect only after the expiry of the lease. This order is now under challenge.

3.1 Mr.A.R.L.Sundaresan, the learned Senior Counsel appearing for the revision petitioner submitted that the Execution Court has misconceived the vesting of right to the property when it held that the sale deeds obtained by the revision petitioner are incapable of vesting the right *in presenti*, and that vesting of right is postponed till the lease in favour of the lessee is expired. While vesting of title of the lessors in favour of their purchasers happens *in presenti*, and the physical enjoyment of the property under lease might have



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to wait till after the expiry of the lease period, which the Execution Court ignored.

3.2 So far as the present case is concerned, the revision petitioner had already entered possession on the strength of the sale deeds in his favour, and that he neither claims possession under Senthamarai Kannan, the JD in E.P.No.466 of 2013, nor is he a trespasser since he is in possession of the property on the strength of the sale deeds he had obtained from the lessors.

4.Per contra, Mr.S.A.Rajan, the learned counsel appearing for the respondents made the following submissions:

- a) Under Order 21 Rule 102 C.P.C., a *pendente lite* transferee is not entitled to invoke Order 21 Rule 97 C.P.C;
- b) The jural relationship between the decree holder and Senthamarai Kannan is different from their jural relationship with the revision petitioner. Every lease creates a jural relationship and every successive transfer by the lessee creates a fresh jural relationship. Therefore, unless the lease is terminated and possession is taken as per law, the revision petitioner cannot get into possession of the



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property.

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c) Thirdly, inasmuch as the revision petitioner has purchased only a fraction of the property under lease to the respondents, the line of argument of the revision petitioner, if enabled, would interfere with the integrity of the entire lease.

5. In response, the learned senior counsel for the revision petitioner submitted that the statement made by the learned counsel for the respondents more particularly as regards (b), it is valid but only subject to Section 109 of the Transfer of Property Act, 1882. This would require that there should be an attornment of landlord's title by the lessee. This lessee namely the respondents herein have not chosen to attorn the lease in favour of the purchaser.

6.1 Upon careful examination of rival submissions for their merit, it becomes evident that while the revision petitioner challenges the line of reasoning of the Execution Court doubting the vesting of title in the revision petitioner viz-a-viz the extent of property that he had purchased, the respondents 1 to 7 /decree holders questions the *locus standi* of the revision



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petitioner even to file an application under Order XXI Rule 97 CPC. Their case is straight forward: the revision petitioner might be a purchaser of a part of the property from the descendants of the original lessor, but the right of enjoyment of the very property is with the decree holders which is founded on a jural relationship.

6.2 The revision petitioner presents a case which carefully veils a fallacy wrapped within it. A leasehold right creates a right of enjoyment of the property leased to the lessee. And subject to the proviso to Sec.10 of the Transfer of Property Act (which provides for restricting the right of a lessee to sub-let), it is both transferable and heritable. On facts, when Shyamalamba became a sub-lessee of the property from Kakka Mohammed Ismail, she came into possession of the property, which right is both transferable and heritable. Every transfer of immovable property short of absolute sale, exchange or gift, creates a jural relationship, since either of the parties to the transfer will retain the right to terminate the jural relationship. Accordingly in the case of a lease, both the lessor and the lessee have the right to terminate the lease, subject however, to the terms of the lease. But, until the lease is terminated, and the jural relationship



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between lessor and the lessee is brought to an end, it stands absolutely protected in law. Therefore, during the subsistence of the lease, even the lessor cannot interfere with the possession of the lessee. And, what applies to the lessor will apply without any variance or qualification to the purchasers of the lessor. This is an inescapable incidence of law, which neither the lessor nor his purchaser can aim to out-manoeuvre. This would imply that till the lease in favour of the decree holders subsists, neither the original lessor, nor the purchaser of the whole or part of the lease hold property can interfere. This is the only legal possibility, and it does not accommodate a possibility of the purchaser of the leasehold property in legitimate physical possession of the property under lease to a third party. And, it instantly negates the theory of the revision petitioner that he is in possession on the strength of his title. He can either be a *pendente lite* trespasser, or must have gained possession through the Judgement Debtor, and barring these two possibilities, there is no third possibility. In neither category, the occupant can legitimately obstruct delivery in execution of a decree.

7. Obstruction to delivery of an immovable property within the meaning of



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Order XXI Rule 97 CPC is intended to protect the possession of a non-party to the suit, who claims an independent title which is not traceable to either the decree holder or the judgement debtor. It is a safety-valve to protect the possession of a rightful holder from being disturbed by a decree that does not bind him. Now, if the case of the revision petitioner is spread on the principle stated, then the fallacy hidden in the contention of the revision petitioner gets exposed as an axiomatic consequence.

8.1 Turning to the reasoning of the Execution Court for dismissing the E.A.No.34 of 2015 is concerned, the revision petitioner is bound to score a few points, which, as has been found in the earlier paragraph, are still not good enough to win the game.

8.2 It must be stated that the Execution Court was very egregiously erred in the jurisprudential understanding of ownership and the derivative right of a lessee and its vesting. It is too rudimentary a principle that right to transfer the right of the lessor operates independently, and is unaffected by the right of the lessee. And, when the lessor transfers his right, his right, subject to the terms of transfer, vests immediately.



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9. Therefore, the finding of the Execution Court that the title to the plot of land which the revision petitioner had obtained under the sale deed in his favour would be in a state of suspended animation till the lease term in favour of the decree holders expires is flawed and is unsustainable. It now follows as a natural consequence that the contention of the revision petitioner that he had come into possession on the basis of the sale deed dated 12.02.2014 is equally flawed, for if at all he had come into physical possession as he claims, that could only be on the strength of any arrangement between him and the judgment debtor, which under circumstances is the only possibility. He therefore has no business to interfere with a subsisting jural relationship created by Kakka Mohammed Ismail and Shyamalambal. Rule of law which spares none, and any plan to out smart it to gain an unmerited advantage will be viewed with least charity in law. The revision petitioner may have become over ambitious to obtain possession, but there can be no premium for anything devised contrary to the procedure established by law.

10. This Court directs the Registry to forward a copy of this Order to Tamil



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Nadu State Judicial Academy for it to address that which is intended to be conveyed in this order.

11. It all now boils down to a point where this Court is optionless but to uphold the order dismissing E.A.No.34 of 2015, though on its independent line of reasoning.

12. In fine, this Court does not find any merit in this revision petition and hence, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.04.2023

Index : Yes / No
Speaking order / Non-speaking order
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To:

1. The Registrar
Small Causes Court, Chennai.
2. The Section Officer
VR Section, High Court, Madras.

Note:

Issue order copy today.



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N.SESHASAYEE.J.,

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Pre-delivery order in
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