



C.R.P. No. 2811 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.08.2023

Pronounced on : 10.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No. 2811 of 2023

and

C.M.P.No.17361 of 2023

1. Vasantha
2. S. Geetha
3. T. Mahesh
4. T.Madhan
5. T.Vijayan

...Petitioner

.Vs.

The Official Trustee of Tamilnadu
Represented by the Trust Estate of
Kadapakkam Charities,
Having its Office at
Additional City Civil Court Buildings,
High Court Campus, Chennai 600 104.

...Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to allow this Civil Revision Petition by setting aside the order dated 07.03.2023 made in E.A.No.4 to 7 of 2022 in



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E.P.No.1992 of 2008 in O.S.No.8888 of 1986 on the file of X Assistant City Civil Court, Chennai.

For Petitioner : Mr. K.N.Natrajan

ORDER

This petition is filed seeking a direction to allow this Civil Revision Petition by setting aside the order dated 07.03.2023 made in E.A.No.4 to 7 of 2022 in E.P.No.1992 of 2008 in O.S.No.8888 of 1986 on the file of X Assistant City Civil Court, Chennai

2. The facts of the case is that the subject property belongs to the trust of the Respondent/Trust herein and one person by name P.Thambi who is the father of the petitioners, is a tenant under the respondent. The said Thambi passed away, hence, the petitioners who are the legal heirs of the said Thambi were impleaded in the suit. There was some tenancy dispute between the parties due to which, the Respondent herein filed O.S.No.8888 of 1986 before the XIV Assistant Judge, City Civil Court, Chennai wherein, an order was passed on 27.09.2006, directing the petitioners herein to vacate



and hand over the possession and also to pay the arrears of rent.

Challenging the same, the petitioners herein filed A.S.No.179 of 2007 before the V Additional Judge, City Civil Court, Chennai, wherein the learned Judge confirmed the order passed in O.S.No.8888 of 1986 dated 27.09.2006. Thereafter, the petitioners filed S.A.No.1360 of 2010, before this Court wherein, this Court vide order dated 11.01.2022 had passed a dismissal order confirming the orders passed by the Court below. When this being the case, the Respondent/Trust herein has filed E.A.1 of 2022 in E.P.No.1992 of 2008 to break open the premises and to take delivery of the possession and the same was ordered on 05.03.2022. The grievance of the petitioner is that when a petition which was filed before 12 years back was taken up for hearing on 05.03.2022, the Court ought to have issued notice to the Judgment debtor and ascertained the factum, with regard to the present status, which was not done in this case. Furthermore, the warrant is issued only with respect of suit schedule property measuring 4,522 square feet, but the decree holder with his highhandedness cordoned more than 900 square feet which is beyond the warrant issued with respect to the suit schedule property and the same is in possession and enjoyment of the



petitioners and their ancestors nearly about 7 decades. Hence, the petitioners filed E.A.Nos.4 to 7 of 2022 in E.P.No.1992 of 2008 in O.S.No.8888 of 1986 on the file of X Assistant City Civil Court, Chennai seeking to appointment of Advocate Commissioner, to redeliver the excess property, directing the Court Amin to redeliver the property and to record the paper delivery. However, the learned Judge had passed an order on 07.03.2022, wherein, E.A.No.4 of 2022 was partly allowed with a direction to appoint an Advocate Commissioner and dismissed the other E.As, which has given rise to this petition.

3. The learned counsel for the petitioner submitted that as the petitioner is residing in the area which is not mentioned in the suit, the judicial officers has no right to instruct to vacate the premises and ought to have issued notice to vacate the premises which was not followed by the learned Judge. He further submitted that the learned Judge has not appreciated the facts in a proper perspective and passed the impugned order mechanically. Hence, prays to allow this petition.



4. Heard both sides and perused the materials available on record.

5. On a perusal of the records it is seen that the Court below in O.S.No.8888 of 1986 dated 27.09.2006, A.S.No.179 of 2007 dated 17.08.2010 and the Judgment passed by this Court in S.A.No.1360 of 2010 on 11.01.2022, it is seen that the Respondent/Trust has succeeded. Hence, to take delivery of the possession of the suit schedule property the petitioner has filed E.A.No.1 of 2022 in E.P.No.1992 of 2008 to break open the premises and to take delivery of the possession and the same was ordered on 05.03.2022. The further case of the petitioner is that the petitioner has challenged the order passed in S.A.No.1360 of 2010 dated 11.01.2022 before Supreme Court in S.L.P.No.9622 of 2022 and the same was dismissed on 23.05 2022 with a direction to the petitioner to vacate the premises and the relevant portion is extracted hereunder:

However, on the request of the learned counsel for the petitioner, petitioner is granted upto 31st August, 2022 to vacate the suit premises, subject to filing of undertaking (s) to the Registry of this Court within a period of four weeks from today, stating that the petitioner shall not create any third party rights, will



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clear all rent dues, if any, in the mean while and will peacefully vacate the suit premises concerned within stipulated time. subject to filing of undertaking in the Registry of this Court.

5.1. At the request of the learned counsel for the petitioner, the dismissal order passed in S.L.P.No.9622 of 2022 on 23.05 2022 was again taken up by for hearing in M.P.No.977 of 2022 in SLP(c) No.9622 of 2022 on 31.10.2022 and the petitioner sought to withdraw the petition and the petitioner was granted permission to withdraw the petition.

5.2.Subsequently, the Respondents herein filed E.A.Nos 4 to 7 of 2022 and the prayer sought for in the E.As are E.A.No.4 of 2022 is filed under Order 26 Rule 9 of C.P.C to appoint advocate commissioner to break open the cloth knitted seal and open the lock by securing keys from Decree Holder, list out the inventory available in the demised premises. Such report be directed to be filed to depict the reality to proceed the matter effectively. E.A. No.5 of 2022 is filed under Section 144 of CPC to direct the Amin to redeliver the excess property more than the suit property i.e in excess of 4522 sq.ft allegedly dispossessed to the Judgment Debtor forthwith as the



Judgment Debtor is in possession with their household items, utensils, notebooks inside the premises. E.A.No. 6 of 2022 is filed under Section 144 of CPC to direct the Court Amin to redeliver the property allegedly dispossessed to the Judgment Debtor forthwith as the Judgment Debtor are in possession with their household items, utensils, notebooks inside the premises. E.A.No. 7 of 2022 is filed under Section 151 of CPC not to record the paper delivery of the petitioner schedule property allegedly took place on 31.03.2022.

6. The Trial Court has considered all the applications filed by the Respondents and passed an Common Order dated 07.03.2022, wherein EA.No. 4 of 2002 was partly allowed and dismissed the E.A.Nos.5 to 7 of 2002. In E.A.No.4 of 2002, the learned Judge has passed an order, wherein a direction was issued for appointment of a Advocate Commissioner and further direction was issued to serve notice to both the counsels and the parties to take inventories of the movables inside the schedule mentioned property along with the bailiff who was at the time of executing the delivery warrant on 31.03.2022. The Advocate Commissioner is also further directed



to hand over the movables of the Judgment Debtor after taking inventories.

The Decree holder is directed to cooperate with the Advocate Commissioner for taking inventories and for handing over the movable articles to the Judgment Debtors which is inside the schedule mentioned property, since the possession of the schedule mentioned was with the Decree Holder. It is made clear that the petitioners are not entitled to raise any objections/claim with regard to the delivery of schedule mentioned property to the Decree Holder, regarding the excess holding of land by the Judgment Debtor and Judgment Debtors are not entitled to raise any additional grounds regarding redelivery, since the issues were adjudicated by the Judgment Debtor up to the Hon'ble Apex Court. The Judgment Debtors are entitled only for appointment of Advocate Commissioner for taking possession of the movable articles which is inside the schedule mentioned property and also for taking possession of the movable articles which is inside the schedule mentioned property. The remuneration for the Advocate Commissioner shall be paid directly paid to the Advocate Commissioner and the same shall be borne by both the Decree Holder and the Judgment Debtor. If Judgment Debtor does not agree for taking the movable articles back, the Advocate



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Commissioner shall follow the procedure as contemplated under order 21

Rule 35(4) of CPC.

7. On a fair reading of the impugned order it is seen that the learned Judge has made an observation that inspite the original decree was passed on 27.09.2006 the petitioners are not allowing the Decree Holders to enjoy the fruits of the decree and furthermore they have dragged on this E.P. Proceedings, now they have come forward with these frivolous petitions without any legal right, which is not legally justifiable on any point, and the same is a clear abuse of process of law.

8. For the foregoing reasons, this Civil Revision petition is dismissed. No order as to costs. Consequently the connected miscellaneous petition is closed.

10.10.2023

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Index : Yes/No

Internet: Yes/No

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To.

1. The Official Trustee of Tamilnadu
Represented by the Trust Estate of
Kadapakkam Charities,
Having its Office at
Additional City Civil Court Buildings,
High Court Campus, Chennai 600 104.

2. The X Assistant City Civil Court, Chennai.



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V.BHAVANI SUBBAROYAN,J.
Smn

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