



C.R.P.No.2889 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**C.R.P.No.2889 of 2023 and
C.M.P.No.17881 of 2023**

I.Mathivanan Issac

... Petitioner

Vs.

1. The Friend – in- need
Society rep. By its President
28, Poonamallee High Road,
Periamet, Chennai – 600 003

2. R.D.S.Pandian
Prop. Of M/s Murugan Traders & Others
Shop nos.3 &4, No.28, Poonamallee High Road,
Periamet, Chennai – 600 003

3. M/s Blue Cell Florist,
Prop. Sundarrajan,
No.28, Poonamallee High Road,
Periamet, Chennai – 600 003

... Respondents

Civil Revision Petition filed under Article 227 Constitution of India to set aside the fair and decreetal order dated 30.06.2023 in R.C.A.No.2 of 2023 by the learned VII Small Causes Court, Chennai and reverse the fair and decreetal order dated 13.11.2019 passed in M.P.No.204 of 2005 in E.P.No.128 of 2005 in R.C.O.P.No.2051 of 1992 by the learned XI Small Causes Court, Chennai.



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For Petitioner : Mr. L.Gavaskar

For Respondents : Mr.Bahety & Advocates
Mr.Siddarth Bahety
Mr.L.Ravichandran for R1

ORDER

The present Civil Revision Petition is filed to set aside the fair and decreetal order dated 30.06.2023 in R.C.A.No.2 of 2023 by the VII Small Causes Court, Chennai and reverse the fair and decreetal order dated 13.11.2019 passed in M.P.No.204 of 2005 in E.P.No.128 of 2005 in R.C.O.P.No.2051 of 1992 by the learned XI Small Causes Court, Chennai.

2. The brief facts of the case is as follows:-

(i) The 1st respondent has filed R.C.O.P. No.2051 of 1992 for evicting the 2nd respondent/ Judgment debtor, who is a tenant under their society in respect of Shop Nos.3 and 4 in the petition premises, on the ground of willful default, wherein by order dated 14.02.1994 eviction was ordered. As against the same, the 2nd respondent preferred RCA No.266 of 1994 and the same came to be dismissed on 21.03.1998, challenging the said order, the 2nd respondent preferred C.R.P. No.2001 of 1998, which was also dismissed by an order dated 15.03.2002, confirming the order of Eviction passed in R.C.O.P. No.2051 of 1992.

(ii) Subsequently, after prolonged litigation, E.P. No.128 of 2005 was filed by the 1st respondent nearly after 11 years from the date of order



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passed by the appellate court. When the 1st respondent took the bailiff to execute the delivery warrant issued by this Court on 11.03.2005, the petitioner and 3rd respondent, who are strangers were in occupation of shop nos.3 and 4 and on due enquiry, it came to their knowledge, that the 2nd respondent had illegally handed over the possession of the petition premises by parting it and has received advance from them and also receiving monthly rents from the petitioner as well as 3rd respondent, who does not have any privity of contract.

(iii) Subsequently, the 1st respondent preferred M.P.No.204 of 2005 against the petitioner and respondents 2 and 3 to order to remove the obstruction created by the petitioner and 3rd respondent in the execution of the warrant of delivery of possession. Counter was filed by the respondents therein. Upon perusing the counter as well as the averments in the affidavit, the court below by Judgment dated 13.11.2019 ordered to remove the obstructions. As against the same, the RCA No.2 of 2023 was filed by the petitioner and the same was also dismissed on 30.06.2023, aggrieved by the same, the petitioner has preferred the present Revision.

3. The learned counsel for the petitioner would submit that when the RCA No.2 of 2023 was adjourned to 30.06.2023 for orders, the petitioner immediately filed SRNo.25021 of 2023 on 28.06.2023 for reopening the



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petitioner's side arguments, however, the same was returned on the ground that the order was pronounced on 30.06.2023.

4. The learned counsel for the petitioner also submits that the appellate court had failed to consider that the scope of obstruction petition is very wide as per Order 21 Rule 101 of CPC. The obstruction petition to be treated as suit and the same has to be determined by the trial court by providing sufficient opportunity to all the parties for adducing evidence, but in this case, the court below erroneously dismissed the application in E.A. No.4 of 2022 for reopening the evidence on the side of the petitioner, hence pleaded to set aside the order passed by the appellate court.

5. Per contra, the learned counsel for the 1st respondent / landlord submits that an order of eviction as against the 2nd respondent was ordered on 14.02.1994 in R.C.O.P. No.2051 of 1992. The Appeal and Civil Revision filed by the petitioner with regard to the above order was also dismissed. During the course of execution of the warrant by the bailiff, it was found that the petitioner and the 2nd respondent, who are strangers are in possession of the premises. After a prolonged litigation, the courts below as well as this Court in earlier Revision had negated the claim of the petitioner, which does not require any interference, thereby pleaded to dismiss the present Revision.



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6. Heard the learned counsel on either side and perused the documents placed on record.

7. It is the contention of the petitioner that the court below has failed to take note of Order 21 Rule 101 CPC, it is necessary to extract the same,

“Order 21 Rule 101 (as amended by 1976 Act) under which all questions relating to right, title or interest in the property arising between the parties under Order 21 Rule 97 or Rule 99 shall be determined by the Court and not by a separate suit.”

It is relevant to note that when the obstructors, viz., petitioner and the 3rd respondent claim that there is a rental agreement entered into between them and the 1st respondent/ landlord and they are lawful tenants, the court below considered the entire materials on record and came to the conclusion that the said petitioner has not produced any evidence to show that there was a tenancy in existence.

8. Originally eviction petition was filed by the 1st respondent / landlord in the year 1992 and the said petition was ordered on 14.02.1994, as against RCA No.266 of 1994 was preferred by the petitioner and the same was dismissed on 21.03.1998 and thereafter, CRP No.2001 of 1998 was preferred and the same was also dismissed on 15.03.2002 and no Special Leave Petition was preferred and Execution Petition was ordered seeking



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for delivery of possession of Shop Nos.3 and 4 on the ground of willful default. That apart, when the obstructors, petitioner as well as 3rd respondent have not proved anything to show that there was a tenancy in existence, they cannot come to the court and say that there was a jural relationship between them, which has already attained finality in CRP No.2001 of 1998 by order dated 15.03.2002.

9. It is to be noted that the contention of the 3rd respondent that he has paid a sum of Rs.50,000/- to the 2nd respondent for handing over vacant possession of the petition property and entered into a rental agreement with the 1st respondent society represented by one Dr.Francis to sign the agreement itself is being denied by the 1st respondent and further the 3rd respondent has not filed any rental agreement alleged to have been executed between him and Dr. Francies to substantiate their case. The court below taken note of the averments of the petitioner wherein it is averred that they came into possession of the petition property only after the order of eviction was passed by the court below against the 2nd respondent as early as on 14.02.1994, therefore, concluded that the petitioner cannot claim any independent right.

10. In view of the above, this Court does not find any illegality in the order passed by the court below warranting interference and the present



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Revision is dismissed at the admission stage. At this juncture, the learned counsel for the 1st respondent / landlord submits that the warrant was already executed and possession has been taken on 16.08.2023 itself by the 1st respondent. The said submission of the learned counsel for the 1st respondent / landlord is hereby recorded. Consequently, connected miscellaneous petition is closed. No costs.

29.09.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

To
1. The VII Small Causes Court,

Chennai

2. The XI Small Causes Court,

Chennai.



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V.BHAVANI SUBBAROYAN J.

ssd

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