



WEB COPY



CRP No. 4159 of 2017
and CMP.Nos.19505 of 2017 & 17618 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM :

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

Civil Revision Petition No.4159 of 2017
and
C.M.P.Nos.19505 of 2017 and 17618 of 2021

V.Pushpa Leela

... Petitioner

Versus

The Pazhaverkadu Venkasamy
Gramini Trust Rep.by its Trustee
at No.7, Valleeswaran Koil Street,
Mylapore, Chennai-4.

... Respondent

Civil Revision Petition filed Under Section 115 of the Code of Civil Procedure, praying to set aside the Fair and Decretal order dated 10.10.2017, made in M.P.No.10 of 2017 in E.P.No.199 of 2003 in Ejectment Suit No.75 of 1990, on the file of the Registrar, Small Causes Court, Chennai.

For Petitioner : Mr.Veerapathiran
For Respondent : Mr.T.G.Dhinesh

ORDER

The petitioner has prayed to set aside the fair and decretal order dated 10.10.2017, made in M.P.No.10 of 2017 in E.P.No.199 of 2003 in Ejectment Suit.No.75 of 1990, on the file of the Registrar, Small Causes Court, Chennai.



CRP No. 4159 of 2017
and CMP.Nos.19505 of 2017 & 17618 of 2021

2. Heard Mr.G.Veerapathiran, learned counsel for the petitioner and Mr.T.G.Dhinesh, learned Counsel for the respondent and perused the materials available on record.

3. The revision petitioner herein is the defendant in E.P.No.199 of 2003 and the respondent in M.P.No.10 of 2017 and tenant / defendant in Ejectment Suit No.75 of 1990. The respondent herein, who is the landlord, had filed Ejectment Suit No.75 of 1990 against the tenant / revision petitioner praying to direct him to deliver vacant possession of the land comprised in R.S.No.2363, bearing Door No.7, Valeeswaran Koil Street, Mylapore, Madras-4.

4. The contention of the landlord is that, the respondent herein is a public Trust as per the terms of a Scheme Decree in C.S.No.221 of 2015, on the file of the High Court of Madras. The properties including Door No. 7, Valeeswaran Koil Street, Mylapore, Madras-4, absolutely belong to the Trust and the present revision petitioner is a tenant, in respect of a portion of the premise measuring 1005 sq.ft. on monthly rent of Rs.40/-. He issued notice in the year 1990 and he filed the Ejectment suit in the year 1990 for delivery of possession of the land.



CRP No. 4159 of 2017
and CMP.Nos.19505 of 2017 & 17618 of 2021

5. The defendant / tenant remained ex-parte, and hence the ex-parte decree was passed on 28.03.2003 in E.S.No.75 of 1990 in favour of the plaintiff, directing the defendant to vacate and deliver the vacant possession of the suit property. To execute the same, he filed E.P.No.199 of 2003, and as such, executing proceedings were initiated by the plaintiff/landlord and the petitioner/ judgment debtor filed a petition under Section 47 of CPC in M.P.No.81 of 2004 stating that the decree holder / plaintiff is not the owner of the property and the description of the property has also not been correctly stated. Besides, no compensation was fixed for the superstructure and it is also contended that Arulmighu KolavizhiAmman Temple is the owner of the said property, and against the Temple, the petitioner filed a suit in O.S.No.2769 of 1999 to discharge the title of the property, thereby, the decree holder is not entitled to execute the decree.

6. The landlord submitted objection stating that she remained ex-parte in the suit, and wantonly, she filed an application before the trial Court invoking Section 9 of the Madras City Tenants Protection Act, and thereafter, she remained ex-parte and her application was dismissed on 23.02.1999. Subsequently, after putting up of the superstructure, the defendant paid rent, and thereafter she committed default, and submitting those facts, the landlord



CRP No. 4159 of 2017
and CMP.Nos.19505 of 2017 & 17618 of 2021

claimed that already the defendant had admitted the tenancy and paid rent.

Therefore, there is no locus-standi for the defendant to deny the title, besides she has no right to dispute the Scheme Decree passed in C.S.No.221 of 2015 pertaining to the plaintiff /Trust.

7. Considering the submissions of both parties, it is seen that the Executing Court finally held that there is some discrepancy in the survey number. So, the reason assigned by the tenant is acceptable. Accordingly, under Section 47 of CPC, M.P.No.81 of 2004 filed by her was allowed, against which CRP.Nos.797 and 798 of 2006 were filed before this Court.

8. Upon hearing both sides, it is seen that a learned Single Judge of this Court passed an order, on 03.06.2014, in the said CRP's by concluding that the tenant admitted the relationship of landlord and tenant and also filed an application under Section 9 of Madras City Tenancy Protection Act. But, subsequently, the respondent / tenant has not contested the case. On the other hand, the landlord filed Execution Petition in E.P.No.199 of 2003 under Order XXI Rule (2) of the CPC, before the Executing Court raising all the allegations, which ought to have been raised even in the suit itself and the objection was raised by the tenant about the discrepancy in the survey



CRP No. 4159 of 2017
and CMP.Nos.19505 of 2017 & 17618 of 2021

number. But the same was not proved with reliable evidence. Accordingly, the findings of the Executing Court were set aside and Revision Petitions in CRP.Nos.797 & 798 of 2006 were allowed on 03.06.2014.

9. In E.P.No.199 of 2003, the respondent / Judgment Debtor /tenant, by order dated 27.10.2014, was directed to deliver vacant possession, after removing the superstructure in the property within three months to the revision petitioner. Thereafter, the matter was remitted back to the Executing Court. Notice was issued to both the parties, including the tenant and the learned counsel for the respondent therein reported “no instructions”, but on the petitioner's side, notice returned with endorsement 'door locked'. Thereafter, notice was served to the learned counsel for the petitioner. But, there was no representation. Accordingly main E.P.No.199 of 2003 was dismissed for non-prosecution on 27.10.2014.

10. After 2 ½ years, the landlord came to know about dismissal of E.P.No.199 of 2003 for default. Immediately, he filed application to restore E.P.No.199 of 2003. But, there was a delay of 903 days. So he filed an application under Section 5 of the Limitation Act, and Section 151 of CPC, and that application was strongly contested by the Judgment debtor stating



CRP No. 4159 of 2017
and CMP.Nos.19505 of 2017 & 17618 of 2021

that he wantonly did not prosecute the executing proceedings. Besides, the landlord is not the real owner of the property. Furthermore, the application was also not properly filed and it is also barred by limitation. Since the decree was passed in the year 2014 itself, but only in the year 2017, the application was filed by the landlord to restore the EP and as such, he has not taken steps to execute the decree within three years, therefore, Court dismissed E.P.No.199 of 2003 for default on 27/10/2014.

11. The learned counsel appearing for the respondent submitted that the respondent had filed a petition to condone the delay, immediately upon coming to know of the dismissal of the Execution petition for default. It is further submitted that the inadvertence of the counsel to inform the dismissal of the Execution petition for default cannot be put against the landlord and it cannot be made to suffer. Therefore, Section 5 of the Limitation Act will not be attracted to the case on hand as the condonation petition has been filed well within the period, on which the landlord obtained knowledge about the order of dismissal. The above said fact was rightly appreciated by the Executing Court by allowing miscellaneous petition, no interference is wanted.



CRP No. 4159 of 2017
and CMP.Nos.19505 of 2017 & 17618 of 2021

12. Considering both sides' submissions, condone delay application in M.P.No.10 of 2017 in E.P.No.199 of 2003, was allowed on 10.10.2017, by the learned trial Judge stating that notice was served on the decree holder's counsel. But, he went abroad and so there was lack of communication, and the delay is neither wanton nor wilful. Further, after disposal of CRP proceedings in the year 2014, the landlord is entitled to proceed with EP and therefore, it is not barred by limitation, and the application was allowed on 10.10.2017. Challenging the same, the present Revision has been filed by petitioner.

13. The learned counsel for the Judgment debtor / tenant / revision petitioner submitted that the decree-holder was having knowledge about disposal of the earlier CRP proceedings, but they have not taken any steps immediately and wantonly allowed the case to be dismissed for default and without assigning proper reasons for the delay, the application was filed and the same was ordered to be allowed by the Executing Court and as such, there is mis-conception of law and facts.

14. Besides, the application under Section 5 of Limitation Act is not applicable to the facts of these proceedings. Without considering those legal



CRP No. 4159 of 2017
and CMP.Nos.19505 of 2017 & 17618 of 2021

aspects, the Executing Court allowed M.P. No.10 of 2017 on 10.10.2017 and it is unfair and hence, the impugned order dated 10.10.2017 is liable to be set aside.

15. On considering both sides' submissions and on a perusal of records, it is clear that the entire facts reveal that in original proceedings in Ejectment suit in E.S.No.75 of 1990, the revision petitioner / defendant / tenant / Judgment debtor remained ex-parte. But in executing proceedings, she filed application under Section 47 of CPC, in M.P.No.81 of 2004 in E.P.No.199 of 2003, which was allowed on 07.04.2004 by the Executing Court in her favour. But, in the CRPs proceedings before the High Court, the order was reversed, holding that landlord is entitled to evict the tenant and a direction was issued to the tenant to deliver the vacant possession. After that, there was lack of communication and the landlord / plaintiff is not able to follow the proceedings, since his counsel went abroad and the fact remains that the notice was served by the trial Court on the learned counsel for the landlord, but it was not properly intimated to the land lord. So, the Execution application was dismissed for default in the year 2014 itself, i.e., on 27.10.2014.



CRP No. 4159 of 2017
and CMP.Nos.19505 of 2017 & 17618 of 2021

16. Thereafter, in the year 2017, the landlord, after coming to know of the disposal of E.P.No.199 of 2003 in Ejectment Suit.No.75 of 1990, on 27.10.2014, he immediately filed an application to restore the EP proceedings, but there was a delay of 903 days. So, the decree holder filed application under Section 5 of the Limitation Act to condone the delay in M.P.No.10 of 2017. Admittedly, Section 5 of CPC cannot be invoked, but on the other hand, under Order XXI Rules 105 & 106 of CPC and Section 151 CPC, the decree-holder / landlord ought to have filed an application, but the procedural error was committed by the petitioner's counsel. The landlord ought not to be made to suffer for the reason that from the year 1990, he has been diligently prosecuting the issue before the Court of Law, and got order for delivery of the possession of the property from the tenant. All these years, the tenant also remained ex-parte before the trial Court and some how or the other, he managed to drag on the proceedings for nearly more than 20 years. Admittedly, there is no proof that the tenant paid the rent and the conduct of the tenant also shows that he dragged on the proceedings with mala-fide intention. Admittedly, notice was served on the counsel for the petitioner and there was lack of communication, and hence, the landlord is not able to proceed with the Executing proceedings, which was rightly appreciated by the learned trial Judge, while condoning the delay which needs no



CRP No. 4159 of 2017
and CMP.Nos.19505 of 2017 & 17618 of 2021

interference by this Court. Therefore, as there are no merits in the present CRPs, the same is liable to be dismissed. The Executing Court is directed to dispose of EP proceedings within 3 months from the date of receipt of a copy of this order

17. Accordingly, the present Civil Revision petition is dismissed as devoid of merits. Consequently, connected miscellaneous petitions are closed. No costs.

07.08.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

rri



CRP No. 4159 of 2017
and CMP.Nos.19505 of 2017 & 17618 of 2021

WEB COPY

To

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



WEB COPY



CRP No. 4159 of 2017
and CMP.Nos.19505 of 2017 & 17618 of 2021

T.V.THAMILSELVI, J.

rrr

Civil Revision Petition No.4159 of 2017
and
C.M.P.Nos.19505 of 2017 and 17618 of 2021

07.08.2023