



C.R.P. No.4165 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.04.2023

Pronounced on : 28.04.2023

CORAM: JUSTICE N.SESHASAYEE

C.R.P. No.4165 of 2017

K.Shanmughavel

... Petitioner

Vs.

Mrs.K.Shantha

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 CPC to set aside the fair and decretal order dated 14.07.2017 dismissing E.A. No.102/2017 in E.P. No.168 of 2010 in O.S. No.608 of 2005 on the file of Principal District Munsif Court, Alandur and consequently direct the trial court to dispose of EP by effecting the decree within a time frame that may be fixed by this court.

For Petitioner	:	Mr.S.K.Shanmughavel
For Respondent	:	No Appearance (served)



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ORDER

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The decree holder in a suit for recovery of vacant possession of the property in O.S.No.608 of 2015, which he had laid for evicting the tenant is before this court in this civil revision petition, wherein he challenges an order dismissing his application in E.A.No.102 of 2017 by the Execution Court.

2. The facts that led up to the filing of the present civil revision petition may now be bullet pointed:

- A suit in O.S. No.608 of 2015 was laid *inter alia* for delivery of vacant possession of the suit property from the tenant. While the *lis* is pending, the tenant appears to have constructed some building therein. He remained ex-parte and on 31.10.2007, the trial court decreed the suit ex-parte.
- Thereafter on 22.09.2011, the decree holder laid E.P.No.165 of 2010 before the Principal District Munsif Court, Alandur under Order XXI Rule 35 CPC. On 27.01.2012, delivery was ordered and on 04.07.2012, the bailiff went to the property to effect delivery. That however could not be achieved, since the judgment debtor obstructed the delivery.
- In this scenario, the decree holder took out E.A.No.216 of 2013 to



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remove the obstruction and to break open the building. This was ordered.

Thereafter he took out E.A. No.141 of 2015 for police aid and that was also ordered vide order of the Execution Court dated 26.10.2015.

Thereafter, the bailiff went yet another time to effect delivery. However he could not do it, since there is a building put up by the tenant in the property and there is no decree for demolishing the building.

3. The decree holder would now take out an application in E.A.No.102 of 2017 for demolishing the construction put up by the tenant. This was dismissed by the Execution Court on the ground that inasmuch as there is no decree for demolishing the building put up by the tenant, the prayer for demolishing it cannot be granted.

4. Heard the party who appeared in person and perused the materials available in the form of typed set of papers. Placing reliance on the ratio in ***Duraisami Mudaliar Vs Ramasami Chettiar & another*** [(1979) 1 MLJ 380], ***Madaswamy Vs Govindaraj*** [2007 (1) CTC 217]; ***K.Arumugham Naicker & another Vs Tiruvalluva Nainar Temple*** [AIR 1954 Mad 985], and the order of this Court in ***G.Vanaja & others Vs K.Ramasamy & others*** [C.R.P. (NPD)



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Nos.3499 to 3501 of 2014, dated 17.10.2014], the revision petitioner submitted that the decree itself is for delivery of vacant possession and when an uncontested decree is passed for vacant possession, demolishing the building put up by the tenant is implied in the very decree, and that need not be specifically spelt out. If at all the defendant was aggrieved, he ought to have contested the suit, which he did not do.

5. The authorities relied on by the revision petitioner makes a strong statement in unequivocal terms that the Executing Court has every power to order demolition of any building which the tenant had put up. Indeed, this aspect gets amplified in Section 108 (h) of the Transfer of Property Act, which reads as below :

Section 108 (h) : *the lessee may [even after the determination of the lease] remove, at any time [whilst he is in possession of the property leased but not afterwards] all things which he has attached to the earth: provided he leaves the property in the state in which he received it;*

6. This Court directs the Registry to forward a copy of this Order to Tamil Nadu State Judicial Academy for it to address that which is intended to be conveyed by this order.



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7. In the result, this revision is allowed and the fair and decretal order dated 14.07.2017 in E.A.No.102/2017 in E.P. No.168 of 2010 in O.S. No.608 of 2005 on the file of Principal District Munsif Court, Alandur, is set aside. No costs.

28.04.2023

Index : Yes / No

Speaking order / Non-speaking order
ast/ds

To:

- 1.The Principal District Munsif
Alandur.
- 2.The Section Officer
VR Section, High Court, Madras



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N.SESHASAYEE, J.,

Asr/ds

Pre-delivery order in
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