



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.96 of 2023

and

C.M.P.No.709 of 2023

Selvaraj

... Petitioner

Vs.

Anjammal (Died)

1.A.V.M.Utharapathi

2.A.V.M.Marimuthu

3.A.V.M.Nagarajan

4.A.V.M.Sekar

5.Bhavani

6.Kaveri

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in Un-numbered E.A.No.....of 2022 in E.P.No.6 of 2021 in O.S.No.12 of 2016 dated 01.12.2022 passed by the Learned District Munsif-cum-Judicial Magistrate, Needamangalam.

For Petitioner : Mr.S.Parthasarathy

For Respondents : Mr.B.Jawahar

ORDER



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The Civil Revision Petition has been filed against the order passed in Un-numbered E.A.No.....of 2022 in E.P.No.6 of 2021 in O.S.No.12 of 2016 dated 01.12.2022 passed by the Learned District Munsif-cum-Judicial Magistrate, Needamangalam.

2. The revision petitioner is a tenant/judgment debtor and the respondents are the landlords/decreed holders. Admittedly, the revision petitioner/tenant is in occupation of the leased out premises for the past about 22 years.

3. However, the respondents/landlords disputed the said contentions by stating that the revision petitioner is an encroacher and there was not even an oral lease, which was in force during the relevant point of time. Thus, the respondents instituted a Suit in O.S.No.12 of 2016 and the Suit decreed in favour of the respondents/landlords.

4. The revision petitioner preferred an Appeal Suit in A.S.No.23 of



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2021, which is pending. During the pendency of the Appeal Suit, the decree holders filed Execution Petition in E.P.No.6 of 2021. During the pendency of the Execution Petition, the revision petitioner filed an E.A. to stay all further proceedings in the Execution Petition No.6 of 2021. The Execution Court passed the order impugned on 01.12.2022, stating that the revision petitioner preferred an Appeal Suit and therefore, the stay petition filed in the Execution Proceedings are untenable. When there is a stay granted in the appeal suit, any further stay petition cannot be entertained as far as the Execution Proceedings are concerned.

5. Mere preferring an appeal suit would not be a bar for a decree holder to institute Execution Proceedings. Pendency of the appeal suit is also not a bar for the Execution Court to execute the decree passed. Pendency of an appeal cannot be relied on for the purpose of staying the Execution Proceedings and therefore, this Court is of an opinion that the Execution Court has rightly rejected the E.A filed by the revision petitioner to stay all further proceedings in the Execution Proceedings. When an appeal suit has been already instituted, stay proceedings in the Execution Proceedings is not



entertainable and thus, the Execution Court has rightly arrived a conclusion and not entertained the stay application filed by the revision petitioner herein.

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6. Even on facts, the revision petitioner claims that he is in occupation of the subject premises based on the oral lease for the past about 22 years.

7. The learned counsel for the revision petitioner made a submission that even as per the oral lease, the lease period expired in the year 2016. After the expiry of the oral lease, even as per the revision petitioner, he is overstaying in the subject premises for the past about 6 years. Right of Property is a Constitutional Right under Article 300-A of the Constitution of India. Right of property can be taken away only by the authority of law and not otherwise. Right of a tenant / lease holder is a Statutory right and restricted to the extent of the terms and conditions of contract entered into between the lessor and the lessee. Thus, the restricted right of a tenant cannot be expanded for the purpose of allowing a tenant or lease holder to continue in the premises beyond the scope of the terms and conditions agreed between the parties. At the outset, right of a tenant is limited to the terms and



conditions of the contract. However, right of a landlord is a Constitutional right to enjoy the property. Thus, the Courts are expected to borne the basic principles in this regard, while dealing with the disputes between the landlord and the tenant.

8. The Constitutional Courts have repeatedly held that the Execution Proceedings are to be disposed of within a period of six months. While so, the Execution Courts are expected to ensure that the decree granted or executed within a reasonable period of time, if any Execution Proceedings are instituted.

9. In the present case, the learned counsel for the respondents brought to the notice of this Court that the revision petitioner is an encroacher and the respondents being decree holders, filed the Execution Proceedings and delivery has already been ordered initially on 20.06.2022 and thereafter, the revision petitioner filed an application to set aside the *ex-parte* delivery order and now after completing the proceedings, once again the delivery order was passed on 01.12.2022. Therefore, the revision petitioner is liable to be evicted



immediately without giving any further scope for prolonging the issues.

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10. With these observations, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.01.2023

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Index : Yes

Speaking order

Neutral Citation : Yes

To

The District Munsif-cum-judicial Magistrate,
Needamangalam.



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S.M.SUBRAMANIAM, J.

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