



C.R.P.(NPD)No.388 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.388 of 2019
and C.M.P.Nos.2674 & 2675 of 2019

1.Shilpa Arkachar
2. Hemalatha Diwakara
3. Pradeep Diwakara Arkachar
(Petitioners 2 & 3 represented by their
Power of Attorney Shilpa Arkachar) .. Petitioners

Vs.

1.Balaji Subramanian
2.S.Kalpana .. Respondents
(Represented by her power agent
Balaji Subramanian)

PRAYER: Civil Revision Petition is filed under Article 227 of the
Constitution of India against the fair and decretal order dated 15.02.2016

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made in R.C.O.P.No.1631 of 2015 on the file of XIII Judge, FAC, XIV

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Small Causes Court (Rent Controller) at Chennai.

For Petitioners : Mr. George Graham

For Respondents : Mr. S.Ganesh

ORDER

This revision arises against an order passed in R.C.O.P.No.1631 of 2015, dated 15.02.2016.

2. The admitted case is that one Balaji Subramanian, the 1st respondent before me is the owner of the property, who had put in one A.M.Diwakara into possession of the property as a tenant. As A.M. Diwakara failed to pay the rent and also ceased to occupy the premises, a petition was filed in R.C.O.P.No.1631 of 2015 on 15.05.2015. Unfortunately, the said A.M.Diwakara passed away on 02.11.2015. Without bringing the legal representatives of the deceased A.M.Diwakara



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on record, R.C.O.P. was proceeded further and a decree for eviction was passed against a dead person on 15.02.2016.

3. In order to execute the decree, the eviction petition was filed in E.P.No.177 of 2016, which ended in delivery being taken on 08.11.2016. Both the orders of eviction passed in the rent control proceedings as well as the execution proceedings are against a dead person and hence, consequently, void. However, on the date of institution of R.C.O.P.No.1631 of 2015, the said A.M.Diwakara was alive. Therefore, the presentation of the petition is valid.

4. Mr. S.Ganesh, learned counsel appearing for the respondents would contend that as against the order of eviction passed, there is a statutory appeal available under Section 23 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and therefore, the revision under Article 227 of the Constitution of India, is not maintainable.



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5. The power under Article 227 of the Constitution of India is unbridled, but it is only circumscribed by self imposed restrictions, which has to be applied on the facts and circumstances of each case. In the present case, a decree having been passed against a dead person and it being void, if I were to turn a Nelson's eye to such a decree, then the reason for conferment of the power under Article 227 of the Constitution of India on this Court would be rendered otiose.

6. Therefore, in exercise of the power under Article 227 of the Constitution of India, I declare the order of eviction in R.C.O.P.No.1631 of 2015 dated 15.02.2016 as void. The order dated 15.02.2016 made in R.C.O.P.No.1631 of 2015 is set aside. Consequently, the order passed by the Executing Court in E.P.No.177 of 2016 also stands set aside. R.C.O.P.No.1631 of 2015 is restored to the file of the learned XIV Judge, Small Causes Court, Chennai. The respondents shall implead the legal representatives of the deceased A.M.Diwakara as a party to the proceedings and proceed with the R.C.O.P. in accordance with law.



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7. With the above directions, the Civil Revision Petition stands allowed. Both the parties are entitled to raise all their defences in the R.C.O.P. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

XIII Judge, FAC, XIV Small Causes Court
(Rent Controller) at Chennai.



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V.LAKSHMINARAYANAN,J.

Kj

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