



C.R.P(MD)No.1034 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1034 of 2021

and

C.M.P(MD)Nos.6030 of 2021 and 1933 of 2022

M.Somasundaram

... Revision Petitioner/Petitioner/
Respondent/Defendant

Vs.

Kasthuri

... Respondent/Respondent/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order dated 31.03.2021 passed in unnumbered E.A.No. of 2021 in E.P.No.117/2017 in O.S.No.250/2006 on the file of the District Munsif, Melur.

For Petitioner : Mr.N.Vallinayagam

For Respondent : Mr.R.Prabhakaran

ORDER

The present Civil Revision Petition has been filed against the order dated 31.03.2021 passed in unnumbered E.A.No. of 2021 in E.P.No.



C.R.P(MD)No.1034 of 2021

117 of 2017 in O.S.No.250 of 2006 on the file of the District Munsif, Melur.

2. The petitioner is the unsuccessful tenant in the suit filed by the respondent/plaintiff in O.S.No.250 of 2006. The suit was filed by the respondent/plaintiff for recovery of possession of the suit schedule property, which was leased to the petitioner and for arrears of rent. The suit was decreed as early as on 28.07.2009.

3. Against the aforesaid judgment and decree of the District Munsif Court, Melur, the petitioner has filed an appeal in A.S.No.207 of 2009. The appeal was dismissed for non-prosecution and no steps were taken to restore it. Thereafter, the respondent/landlord filed E.P.No.117 of 2017. In the aforesaid proceedings, the petitioner has filed E.A. under Section 47 of C.P.C., which has been rejected by the District Munsif Court, Melur. The relevant portion of the order reads as under:

"This petition has been filed for the relief of deciding the question relating to execution and to dismiss the main Execution Petition No.117 of 2017. The main ground raised in this petition is that the decree is non-executable and that so it has to be decided, the other ground on which this petition has been filed is that RCOP proceedings ought to have been invoked by respondent since Special Act would apply, because



C.R.P(MD)No.1034 of 2021

the suit property is at present in Madurai Corporation ward No.49.

WEB COPY

The executing Court cannot go beyond the decree. Also, the Civil Court jurisdiction is not ousted, just because rent control jurisdiction can be invoked.

If at all the petitioner is aggrieved, he has to work out his remedy in the appropriate forum, in the manner known to law.

It is also pertinent to note that this petitioner who is the respondent in main E.P.No.117 of 2017, is exparte as an date in said E.P.

So, this petition is not maintainable. Hence rejected."

4. The learned counsel for the petitioner submits that the property is located in Naganakulam Panchayat and thus fall within the purview of the Madurai City Municipal Corporation Act, 1971 and therefore, the respondent ought to have filed rent control proceedings under the provisions of the erstwhile Tamil Nadu Buildings (Lease and Rent) Control Act. In this connection, the learned counsel for the petitioner has placed reliance on the notification of Municipal Administration and Water Supply Department in Tamil Nadu Gazette Notification No.321, dated 20.10.2010. It is also submitted that the learned District Munsif Court, Melur has committed a grave error in dismissing the application without numbering the same.



C.R.P(MD)No.1034 of 2021

WEB COPY

5. It is submitted that an application filed under Section 47 of C.P.C., has to be heard and without opportunity to adduce evidence, the order cannot be sustained. It is submitted that the revision is also maintainable and that rent controller ought not to take the application without numbering the same.

6. The learned counsel for the respondent submits that it is not open for the petitioner to once again question the jurisdiction at the stage of the execution of the decree that came to be passed on 28.07.2019. That apart, it is submitted that the judgment and decree of the District Munsif Court, Melur in O.S.No.250 of 2006, dated 28.07.2009 was also dismissed for non-prosecution. At the stage of execution, the petitioner cannot file an application by placing reliance on the notification, which has been issued subsequently to the judgment and decree of the rent control, dated 28.07.2009.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent. I have also perused the Government notification of the Municipal



C.R.P(MD)No.1034 of 2021

Administration and Water Supply Department in Tamil Nadu Gazette

Notification No.321, dated 20.10.2010.

8. The said notification cannot be made applicable retrospectively for the period covered by the decision of the civil suit of the District Munsif Court, Melur in O.S.No.250 of 2006. Therefore, there is no merit in the argument advanced by the learned counsel for the petitioner. Although, the petitioner has filed an application under Section 47 of C.P.C., it requires to be decided on merits. If it is filed to prolong the litigation and to defeat the rights of the decree holder, it can be rejected *inlimine*.

9. In my view, the Municipal Administration and Water Supply Department in Tamil Nadu Gazette Notification No.321, dated 20.10.2010 is much after the suit was filed by the respondent and much after the decree came to be passed on 28.07.2009. Therefore, the application filed by the petitioner has to be construed as an abuse of the Court proceedings. Therefore, there is no merit in the present Civil Revision Petition.



C.R.P(MD)No.1034 of 2021

WEB COPY

10. The present Civil Revision Petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

27.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sn

To

- 1.The District Munsif,
Melur.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.SARAVANAN,J.



WEB COPY



C.R.P(MD)No.1034 of 2021

SN

C.R.P(MD)No.1034 of 2021

27.04.2023