



C.R.P(MD)No.1664 of 2018 (NPD)

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(MD) No.1664 of 2018 (NPD)

and

C.M.P.(MD).No.7286 of 2018

Arulmigu Uchi Pillaiyarkoil,

Kumbakonam by its Executive Officer,

S.Nirmaladevi

...Petitioner

Vs.

1.T.G.Chandrapandiyan

2.T.G.Thulasiraman

3.T.G.Balamurali

Thangarasu(died)

4.Kousalya

5.Bhoopalan

6.Suresh

7.Vijaya

8.Anusya

...Respondents



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the same fair and decreetal order dated 07.04.2018 made in E.A.No.115 of 2011 in E.P.No.25 of 2008 in R.C.O.P.No.1 of 2003 on the file of the Principal District Munsif Court, Kumbakonam and allow this revision with costs.

For Petitioner : Mr.M.Gnanagurunathan

For R-1 to R-3 : Mr.G.Mohan Kumar

For R-4 to R-8 : No Appearance

ORDER

The revision petitioner, aggrieved by dismissal of this claim petition in E.A.No.115 of 2011 in E.P.No.25 of 2008 in R.C.O.P.No.1 of 2003 on the file of the Rent Controller cum the Principal District Munsif Court, Kumbakonam, has preferred the present Civil Revision Petition.



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2. It is the case of the revision petitioner that the revision petitioner / Temple is the owner of the property, which is the subject matter of R.C.O.P.No.1 of 2003, before the learned Principal District Munsif, Kumbakonam. The said R.C.O.P.No.1 of 2003 has been filed by respondent Nos.1 to 3 as decree-holders to recover the vacant possession from respondent Nos.5 to 9 in R.C.O.P.No.1 of 2003, who are the judgment-debtors / tenants under respondent Nos.1 to 3.

3. It is the case of the revision petitioner / Temple that the revision petitioner / Temple is the owner of the property and the petitioners in R.C.O.P.No.1 of 2003 have no right to claim any title to the said property. It is also the case of the revision petitioner / Temple that they have already filed O.S.No.29 of 2008 before the learned Additional Subordinate Judge, Kumbakonam and the said suit has been decreed on 17.09.2019. It is not known as to whether the said Decree has been challenged by respondent Nos.1 to 3. Be that as it may, the execution proceedings in E.P.No.25 of 2008 was



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filed to execute the order of eviction in R.C.O.P.No.1 of 2003 filed by respondent Nos.1 to 3 against respondent Nos.4 to 9 claiming respondent Nos.4 to 9 to be their tenants. The Court below has elaborately discussed the rival contentions put forth by the revision petitioner as well as respondent Nos.1 to 3 and ultimately, the trial Court has dismissed the claim petition filed by the revision petitioner on the ground that they have not proved their right or interest over the petition property and therefore, for want of sufficient oral and documentary evidence, the application was dismissed.

4. Pending the revision, it is brought to the notice of this Court that the suit filed by the Temple as against respondent Nos.1 to 3 and the tenants came to be decided. On perusal of the said Judgment and Decree, I find that the suit has been filed for declaring the Temple's rights over the suit property which is the petition premises involved in the rent control proceedings as well as in the suit. Not only are the respondent Nos.1 to 3 herein parties, but also



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the tenants, who are the respondents in R.C.O.P.No.1 of 2003 and also parties in the said suit. Ultimately, the Trial Court has decreed the suit declaring the Temple to be the owner of the property and also consequently, directed the defendants 5 to 9, who are the tenants to pay rents to the plaintiff / Temple.

5. The learned counsel appearing for respondent Nos.1 to 3 is unable to readily inform the Court as to whether any appeal has been preferred against the said Judgment and Decree in O.S.No.29 of 2008. However, a competent Civil Court has declared the right of the revision petitioner, who filed the claim petition in the E.P. proceedings before the Rent Control Court.

6. In view of the said subsequent development, I am of the opinion that the Temple is a proper and necessary party and their claim is also to be enquired into under the provision of Order 21 of Code of Civil Procedure.



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7. The learned counsel appearing for respondent Nos.1 to 3 would submit that though the original claim petition was filed invoking Order 21 Rule 58 C.P.C., pending further proceedings, the revision petitioner has chosen to voluntarily amend the said provision from Order 21 Rule 58 C.P.C. to Section 47 and 151 C.P.C. which was also allowed by the Executing Court by an order dated 19.07.2017. Unfortunately, the Executing Court has proceeded to decide the said application under Section 47 r/w 151 C.P.C and ultimately, held it to be not maintainable. From a reading of the case advanced by the revision petitioner, it is clear that being a third party to the proceedings, the Temple cannot invoke Section 47 C.P.C.. The Executing Court has, therefore, committed an error, first of all, in allowing the amendment application and permitting the revision petitioner to invoke Section 47 and 151 C.P.C. In any event, in view of the subsequent development, viz., the Decree passed by the Civil Court in O.S.No.29 of 2008, the trial Court having declared the revision petitioner to be the owner, not only the site, but also the building and also having consequently, directed the tenants, who are



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the respondents in R.C.O.P.No.1 of 2003 and judgment-debtors in E.P.No.25 of 2008 to pay rents to the Temple, the Temple is entitled to resist execution of the Decree in favour of respondent Nos.1 to 3.

8. I find that the originally applied provision viz., Order 21 Rule 58 C.P.C., as well as Section 47 and 151 C.P.C., subsequently amended, would not come to the aid of the revision petitioner. Firstly, Order 21 Rule 58 C.P.C. only deals only with the attachment of property. Here, there is no attachment of property involved. Section 47 C.P.C. also cannot be invoked by the revision petitioner, since the revision petitioner was not the sufferer of a decree in the rent control proceedings, which admittedly came up to this Court by way of revision. The proper remedy only is to invoke under Order 21 Rule 97 C.P.C. and get the claim attached under Order 21 Rule 98 C.P.C.

9. In view of the above and also taking into account the subsequent development, viz., the Judgment and Decree passed in



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O.S.No.29 of 2008, dated 17.09.2019, this Civil Revision Petition is dismissed, by giving liberty to the revision petitioner to take out the appropriate application before the Executing Court. If the revision petitioner takes out necessary application under Order 21 Rule 97 C.P.C., within a period of four (4) weeks from the date of receipt of a copy of this order, the Executing Court shall entertain the same and proceed further in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

30.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
tsg

To

1.The Principal District Munsif Court, Kumbakonam.

2.The Record Keeper,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI, J.

tsg

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