



WEB COPY



C.R.P(NPD)(MD).No.1987 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.04.2023

Pronounced on : 12.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(NPD)(MD).No.1987 of 2017

and

C.M.P(MD)No.10017 of 2017

1.Arumugam

2.Muthupandi (Died)

3.Mariselvam

4.Lakshmi

5.Minor Anushka

(Minor represented through her next friend/
guardian/mother/4th petitioner Lakshmi)

6.Arumugathammal

...Petitioners

(Petitioners 4 to 6 are brought on record as LR's of
the deceased 2nd petitioner vide Court order dated
09.12.2022 made in C.M.P(MD)Nos.11749 & 11751
of 2022 in C.R.P(MD)No.1987 of 2017)

Vs.

Arumugam

... Respondent



C.R.P(NPD)(MD).No.1987 of 2017

PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code, to allow this Civil Revision Petition and to set aside the order dated 11.08.2017 made in Unnumbered E.A.No.....of 2017 in E.P.No.5 of 2014 in R.C.O.P.No.8 of 2009 on the file of the District Munsif Court, Vadipatti and to direct the District Munsif Court to number within a time frame fixed by this Court.

For Petitioners : Mr.M.Venkatesan

For Respondent : Mr.PT.S.Narendravasan

ORDER

This Civil Revision Petition is filed against the order dated 11.08.2017 passed in Unnumbered E.A.No.....of 2017 in E.P.No.05 of 2014 in R.C.O.P.No.8 of 2009 on the file of the District Munsif Court, Vadipatti.

2. The brief facts of the case:

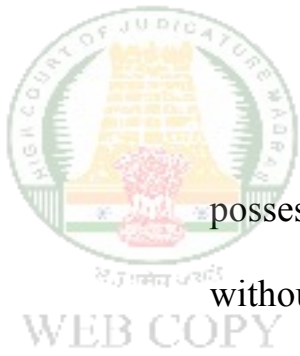
The revision petitioners are the respondents in E.P.No.05 of 2014 on the file of the District Munsif Court, Vadipatti. The respondent filed RCOP.No.8 of 2009 for eviction against the petitioners and the same was allowed. The respondent has filed E.P.No.5 of 2014 to execute the order of eviction and the said petition was also allowed and batta for possession was ordered. Thereafter, the petitioner has filed the present



unnumbered petition in E.A.No.....of 2017 in E.P.No.5 of 2014 to dismiss the petition in E.P.No.5 of 2014. The Executing Court considered the petition before numbering and dismissed the said petition on 11.08.2017 as there is no *prima facie* materials. Aggrieved by the order of the Executing Court, the petitioners moved this Court by way of this Civil Revision Petition.

3. Heard both side and perused the records in this Civil Revision Petition.

4. The learned counsel appearing for the petitioners has argued that the petitioners are tenants in the alleged property and main RCOP.No.8 of 2009 was filed for eviction by the respondent and the same was allowed. The respondent has filed E.P.No.5 of 2014 to execute the order of eviction and it was allowed. The property in dispute is situated at Solaikuruchi village and the Rent Control Act would not be applicable to the property and so, in the main RCOP itself eviction could not be ordered and if the respondent wants to evict the petitioners, he has to file a separate suit and the Rent Controller has no jurisdiction to order eviction. Therefore, the petitioners have filed the present petition under Sections 47 and 151 of the Civil Procedure Code, to adjudicate his



possession and to dismiss the E.P.No.5 of 2014, but the Executing Court without considering the facts, simply dismissed the petition before numbering. The impugned order is not sustainable in law and therefore, the same has to be set aside. In support of his argument, the learned counsel for the petitioners has relied on the citation as follows:

(1) (1990) 1 Supreme Court Cases 193 (Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his LRs, wherein it is held in paragraph No.26 as follows:

“26.A decree passed by a court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction lacks inherent jurisdiction. It is a coram non judice. A decree passed by such a court is a nullity and is not est...”.

(2) AIR 2003 Supreme Court 1475 (Sarwan Kumar and Another Vs. Madan Lal Aggarwal), wherein it is held in paragraph No. 19 as follows:

“19.....A decree passed by a Court having no jurisdiction over the subject - mater would be a nullity and the judgment debtor can object to the execution of such a decree being a nullity and non est. Its invalidity can be set up whenever it is sought to be enforced including the stage of execution of the decree or any other collateral proceedings...”



WEB COPY

C.R.P(NPD)(MD).No.1987 of 2017



5. The learned counsel for the respondent vehemently placed arguments that the respondent filed RCOP.No.8 of 2009 on the file of the District Munsif Court, Vadipatti against the petitioners for eviction. The petitioners filed their counter and the Trial Court allowed the petition on merits and thereby eviction was ordered. To execute the decree the respondent filed E.P.No.5 of 2014 and the same was also allowed and the petition is pending for payment of batta for possession. The petitioners have not preferred any appeal or revision against the orders passed in RCOP.No.8 of 2019 and E.P.No.5 of 2014. The matter is pending for 11 years. At this stage, the petitioners have filed the present petition under Section 47 of the Civil Procedure Code, which is not maintainable in law. The petitioners questioned the jurisdiction of the Court and the same could not be decided by the Executing Court after delivery was ordered. Only to drag on the proceedings, the petitioners have filed this vexatious petition and the Executing Court has correctly dismissed the petition before numbering and there is no illegality in the impugned order. A judgment debtor cannot be allowed to revert back to earlier stage of proceedings and cannot reagitate the decided subject matter. Hence, this Civil Revision Petition has to be dismissed.



6. On hearing both and on perusal of records, it is clear that the petitioners are respondents in RCOP.No.8 of 2009. It is admitted by the petitioners that they have filed counter in that petition and the said RCOP No.8 of 2009 was allowed and eviction ordered on 11.09.2012. Thereafter, the respondent filed E.P.No.5 of 2014 for executing the decree as the petitioners have not vacated the premises in question and the said E.P.No.5 of 2014 was also allowed on 27.10.2015. It is admitted that the petitioners have not preferred any appeal or revision against the orders passed in RCOP.No.8 of 2009 and E.P.No.5 of 2014. On perusal of records, it is clear that when the matter is pending delivery batta, the present petition under Section 47 of the Civil Procedure Code is filed by the petitioners stating that the property in dispute situated in Solakuruchi village, the Rent Control Act would not be applicable to that village and the decree for eviction is passed by the Trial Court without jurisdiction and hence, the E.P.No.5 of 2014 has to be dismissed. The case on hand is at the stage of delivery. While being so, the petitioners have filed present claim petition questioning the jurisdiction of the Trial Court. The citation relied on by the petitioners in **AIR 2003 Supreme Court 1475** is related to an ex-parte decree. But, in this case the decree was passed after contest and delivery order was also passed after contest. So, the citations are not applicable to the facts of this case. It is a settled



WEB COPY



C.R.P(NPD)(MD).No.1987 of 2017

principle of law that the Executing Court can only proceed to execute the decree and not go beyond the decree and the parties to the suit must obey the command of the decree, until the decree is set aside by the appellate Forum. The revision petitioners themselves admitted that they have not preferred any revision or appeal against the order of eviction and order of delivery. But, the revision petitioners have chosen to file present petition unnumbered E.A.No.....of 2017 in E.P.No.5 of 2014 questioning the jurisdiction of the Trial Court. As stated supra, the Executing Court cannot go beyond the decree, which is reached upon discussion after considering both side evidences adduced in the RCOP proceedings and E.P. proceedings. Therefore, the Executing Court has correctly passed the impugned order, which needs no interference by way of this Civil Revision Petition and thus, this Civil Revision Petition fails and the same is liable to be dismissed.

7. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

12.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
vsd



WEB COPY



C.R.P(NPD)(MD).No.1987 of 2017

To

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



WEB COPY



C.R.P(NPD)(MD).No.1987 of 2017

P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
C.R.P(NPD)(MD).No.1987 of 2017
and
C.M.P(MD)No.10017 of 2017

12.07.2023