



C.R.P (NPD) No.1725 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P (PD) No.1725 of 2024

&

C.M.P.No.9076 of 2024

G.Krishna Bhaskar

.. Petitioner

vs.

Mr.G.Lakshmi Narasimalu @ G.Kannan (Deceased)

1. Mr.Arjun

2.Mr.G.Sudharsan

3. Mr.G.Supraja Vaibhavi

..Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India as against the fair and decretal order dated 20.11.2023 made in R.C.A.No.339 of 2015 passed by the VIII Court of Small Causes at Chennai by confirming the order dated 23.06.2015 passed in E.A.No.100 of 2014 in E.P.No.261 of 2014 in R.C.O.P.No.1987 of 2011 passed by XV Court of Small Causes, Chennai.

For Petitioner : Mr.K.Venkateswaran

For Respondents : Mr.M.Venkateswaran



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ORDER

WEB COPY The present Civil Revision Petition challenges the order passed in R.C.A.No.339 of 2015 dated 20.11.2023 in confirming the order passed in E.A.No.100 of 2014 in E.P.No.261 of 2014 in R.C.O.P.No.1987 of 2011 dated 23.06.2015.

2. The parties will be referred to as per their ranks in the obstruction petition.

3. The obstruction petition was filed by the decree holder for the removal of obstruction caused by the second respondent. The first respondent is the judgment debtor.

4. The petitioner before me is an obstructor in the proceedings and the first respondent is the landlord. The landlord was successful in obtaining a decree against his tenant, one Arjun, in R.C.O.P.No.1987 of 2011. In order to take delivery of possession, he filed E.P.No.261 of 2014. The Court also ordered delivery on 07.08.2014. When he accompanied the bailiff to execute the warrant, the Civil Revision Petitioner obstructed the bailiff. Since the obstructor was not a tenant,



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landlord filed E.A.No.100 of 2014. It is the case of the obstructor that he was inducted as a tenant by the landlord's grandmother (who is also the grandmother of the obstructor), Late Subburathnamma, who passed away on 23.01.2010. One of the legal heirs of Subburathnamma had filed a suit for partition in C.S.No.43 of 2012, wherein the landlord and the obstructor are also impleaded as parties. However, he admitted that he approached the landlord to tender the rents due but the same was refused by the landlord. Therefore, the plea of the obstructor was that the appropriate remedy for the decree holder was only to approach the civil Court and file a fresh suit for recovery of possession and not to execute the decree already obtained as against the second respondent. On the side of the landlord, he produced one settlement deed executed by Subburathnamma in his favour. On the side of the obstructor, he entered the witness box and marked Exs.R1 to R11.

5. Upon consideration of the case projected before him, the learned Rent Controller allowed the obstruction petition and directed removal of the petitioner. Challenging the same, the obstructor filed an appeal and learned Appellate Authority also dismissed the appeal. Aggrieved by the same, the present revision has come before this Court.



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6. Heard Mr.K.Venkateswaran for petitioner and Mr.M.Venkateswaran for respondents.

7. This is an obstruction proceeding under Order XXI Rule 97 of the Code of Civil Procedure. In order to succeed in such an obstruction proceeding, the person who is sought to be removed as an obstructor, must prove that he is having an independent right or title or interest in the property, and that he is not bound by the decree. In the case on hand, the obstructor has filed a counter wherein he has stated as follows:

“ The 2nd respondent states that during the life time of the said late G.Subburathnamma, he has sub let the above premises to his tenants. His sub tenancy was accepted by the said Late G.Subburathnamma. Now the 1st respondent vacated and handed over the schedule premises to the 2nd respondent. Now one Mr.J.Posaram (M/s.Rajeshwar Mobile) is inducted as Tenant. The petitioner himself admitted in his notice that the 2nd respondent has been collecting rent. Thereby admitted the possession of the property by the 2nd respondent. The petitioner has two choices either



admits the tenancy of the 2nd respondent and file petition against him in Rent control proceedings or accept him as tress passer and file suit for recovery possession against him in Civil Court by paying necessary court fee. Here he denied the relationship of the landlord and tenant with the 2nd respondent. Hence his only option is to approach the civil court for the relief.”

8. This shows that the possession of the obstructor is not independent, but through the tenant. The person who claims his right through the tenant as rightly been held by the Trial Court as well as the Lower Appellate Court is bound by the decree and is liable to be evicted from the premises.

9. Apart from the said fact, the obstructor before the trial court has filed 11 documents. Ex.R1 and Ex.R2 relate to a period when the original owner of the property late Thirumathy. Subburathnamma was alive. These documents predate the RCOP proceeding, and hence, they are irrelevant. The claim of the decree holder is that Subburathnamma had executed a settlement deed in his favour and therefore, he became the owner of the property. It is on the strength of the settlement deed



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executed in his favour, he had presented the rent control eviction proceedings and became successful. Therefore, the documents prior to 2010 are of no use to sustain the claim of the obstructor.

10. Insofar as Ex.R3 and Ex.R4 are concerned, they are also the documents standing in the name of Subburathnamma and are prior to the execution of the settlement deed in the year 2010. The crucial document, Ex.R7, is a reply notice issued by the decree holder stating that he is not accepting rents from the obstructor for the demised premises.

11. The other documents filed by the obstructor are documents under Ex.R6, Ex.R9 to Ex.R11. These documents have all come into existence after the RCOP was filed in the year 2011 and therefore, they have to be ignored. In other words, there is absolutely no evidence let in by the obstructor to prove that he has been in independent possession of the property.

12. Mr.K.Venkateswaran attempted to question the settlement deed executed by the predecessor in title viz., Subburathnamma in favour of the decree holder. This aspect had been considered by the rent controller. The evidence given by the obstructor reads as hereunder:



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“மனு கட்டிடம் என் பாட்டிக்கு சொந்தமானதாகும். அவர் கடந்த 23/1/2010 இறந்து போனார். அவர் இருக்கும் வரையில் அவர்தான் வாடகை வாங்கினார் என்றால் சரிதான். மனுசொத்து மனுதாரருக்கு என் பாட்டி எழுதி வைத்தார் என்றால் உயர்நீதிமன்றத்தில் வழக்கு போட்ட பின்பு தான் தெரியவந்தது. மனுதாரர் பெயர் எழுதியது எனக்கு ஏற்கனவே தெரியாது.”

13. From this evidence, it is clear that the settlement deed has been executed in favour of the decree holder and the obstructor is merely relying upon some proceeding pending before this Court for the purpose of defeating the eviction proceeding that has been passed against the judgment debtor.

14. Though the judgment debtor would plead that he had put in some third party in possession of the property, in order to substantiate the same, no document or evidence has been let in.

15. An overall analysis of the pleadings, oral and documentary evidence makes me to conclude that the civil revision petitioner/obstructor had taken possession of the property from the judgment debtor and therefore, he is equally bound by the decree.



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16. This is a revision under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, I am only called upon to decide whether there is any illegality or impropriety that had been committed by the courts below. Being the concurrent finding of facts, I am not in a position to re-appreciate the evidence. Nonetheless, since Mr.K.Venkateswaran had vehemently pleaded the cause of his client, I have analysed the evidence and the only conclusion that I can come to is that the obstruction caused by the civil revision petitioner is without any foundation.

17. In the light of the above discussion, I find no reason to interfere with the order passed by the Appellate Authority in R.C.A No.339 of 2015 in E.A.No.100 of 2014 in E.P.No.261 of 2014 in R.C.O.P.No.1987 of 2011 on the file of the XV Small Causes Court, Chennai. At this stage, Mr.K.Venkatesawaran for the petitioner would state that he is in occupation of the property for a decade and he would require a reasonable time to handover possession. Learned counsel for the landlord would state that if 3 months is granted, it would do ends of justice. I feel a midway approach can be taken and a time period of six months can be granted to the petitioner. This time is granted on the



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following conditions:

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i) the petitioner shall pay all the rents which are due and continue to pay the rents as and when they fall due to the landlord;

ii) the petitioner will not put in any third party in possession of the property;

iii) the petitioner will handover the property to the landlord without pushing him to eviction proceedings.

18. The petitioner shall file an affidavit to the aforesaid effect before this Court on or before 29.04.2024. If any one these conditions are violated, the time granted will automatically stand extinguished without notice to the Court. The landlord will be entitled to proceed for eviction.

19. With the above observation, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

12.04.2024

Index:Yes/No

Neutral Citation:Yes/No

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To
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1. VIII Court of Small Causes at Chennai
2. XV Court of Small Causes, Chennai
3. The Section Officer
VR Section
Madras High Court



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V. LAKSHMINARAYANAN, J.

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