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CRP.No.4682 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

CORAM:

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**C.R.P.Nos.4682 to 4687 of 2013**

CRP.No.4682 of 2013

R.Chandrasekaran

.. Petitioner

Versus

1.A.Jayakumar

2.Mohamed Shafi

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Order in RCA.No.28 of 2013 dated 08.10.2023 on the file of VIII Small Causes Court, Chennai.

In all CRPs

For Petitioner : Mr.D.Ashok Kumar

For Respondents : No appearance

**COMMON ORDER**

Challenging the judgment passed by the Executing Court in RCA.Nos.28 to 33 of 2013 by the learned VIII Judge, VIII Court of Small Causes at Chennai confirming the orders of the Executing Court in E.A.Nos.139 to 144 of 2012 by the learned XIII Judge, Court of Small



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Causes at Chennai, these revisions are filed.

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2. The brief facts leading to filing of these revisions are as follows:

2.a. The revision petitioner purchased the property in a public auction on 19.02.2005. According to him, he is the owner of the property, as the original mortgagor namely B.Gopalakrishnamurthi and B.Prathaban mortgaged the property and thereafter, the petitioner purchased in public auction conducted by Ganesh Auctioners. Therefore, he has become owner of the property and has filed rent control proceedings in RCOP.Nos.1177, 1178, 1175, 1200, 1176 and 1179 of 2017 for eviction of six tenants and obtained orders of eviction. The decree was sought to be executed in E.P.Nos.265, 266, 263, 268, 264 and 267 of 2010. When the amin went to execute the order of delivery, the same was objected by the persons who are in possession of the property. According to them, the RCOPs have filed collusively with some persons as if they are tenants without making the persons who are actually in possession of the property as the parties in the RCOP proceedings. However, the delivery has been recorded.



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2.b. Originally, the applications were filed by the persons who are in possession of the petition premises and the same were dismissed by the rent controller. Against which, RCA.Nos.684, 686, 688, 690, 692 and 695 of 2011 were filed and the same were allowed ordering re-delivery of property. Challenging the said order, revisions have been filed in CRP.(NPD).Nos.736 to 741 of 2012 before this Court.

2.c. This Court, by Order dated 19.04.2012 finding that on the date of delivery there are many persons in occupation of the property, instead of filing an application under XXI Rule 97 of CPC, recording the delivery is not fine. While dismissing the revisions, this Court also directed that re-delivery should be ordered on following conditions:

*44. At this juncture, the learned counsel for the revision petitioner raised a pertinent point as to which portion of the property is going to be restored to the six second respondents herein, for which, the answer is clear that here this revisional Court is ceased of only six revisions and there are six second respondents and they approached with their respective EAs, specifying their respective shop numbers, over which they are having their own identity and they could identify to the Court Bailiffs, at the time of redelivery, which cannot be disputed by the revision petitioner herein, and accordingly, with the help of the rent Controller-Executing Court directly, by all means, within a month, as per this order of High Court, should put the six second respondents herein in possession in those areas, subject to the following conditions:*



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(i) *They should maintain their respective shop premises as such without effecting any change.*

(ii) *On restoration they should not modify the structure or encumber or in any manner put the premises for any different use;*

(iii) *They should also undertake that in the event of them ultimately losing in the litigative process, could hand over possession, as per the Court order to the person concerned, without driving him to seek eviction through execution and to that effect necessary affidavit also should be filed within ten days.*

45. *The learned counsel for the revision petitioner would also raise a contention as to how the respondents could be allowed to occupy without any liability on their part to deposit any rent.*

46. *I could see that necessary orders also should be passed in that regard.*

47. *The learned counsel for the respondents herein would state that there is no evidence adduced regarding the quantum of the rent. In such a case, I am of the considered view that since each of the six second respondents herein were occupying small portions and that they were doing fish and also vegetable vending business, as an interim measure, each one could be directed to deposit Rs.500/-(rupees five hundred) per month in the lower Court from the date of they be put in possession of the premises concerned.*

48. *Accordingly, I am of the considered view that all the revision petitions should be disposed of with the aforesaid conditions and accordingly, it is ordered.*

49. *After redelivery in favour of the six second respondents herein, the revision petitioner herein could file an application under Order 21 Rule 97 of C.P.C., citing them as the respondents therein and the Rent Controller shall do well*



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*to see that those applications are treated like suits, as observed by me supra, and dispose them of within a time frame of four months from that date.*

*50. Redelivery shall be given by the Rent Controller directly as per this order without any more procedure to be adopted, as expeditiously as possible, preferably, within a month from the date of receipt of a copy of this order.*

*51. In the result, the civil revision petitions are disposed of accordingly. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.”*

2.d. Accordingly, revisions were disposed of and directed the revision petitioner to file an application under XXI Rule 97 of CPC and the rent controller shall decide like suit. Thereafter, applications have been filed by the decree holder under XXI Rule 97 of CPC. The rent controller on finding that in fact eviction has been obtained against the 6 respondents showing only six shops about each containing 1400 sq.ft., Despite the fact that there are many shops actually available in the occupation of the respondents and also held that there is no landlord and tenancy relationship and held that eviction order itself is obtained in collusion. Considering the oral evidence has held that there was collusion in obtaining eviction decree in RCOP proceedings and there is no landlord and tenancy relationship. The respondents are not tenants in the market property. The Appellate Court also confirmed the same. Hence, these revisions.



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3. The learned counsel for the petitioner would mainly submit that this Court while disposing the CRP in earlier round of litigation directed to deposit Rs.500 per shop, however, that amount has not been deposited. That ground itself is sufficient to remove the obstructors from the premises. Hence, seeks for allowing of these revisions.

4. Heard the learned counsel for the petitioner and perused the materials placed on record. There is no representation for the respondents.

5. The very issue with regard to the jural relationship has been decided in the application filed under Order XXI Rule 97 of CPC. On perusing the entire evidence, the Court below found that there is no jural relationship existing between the tenant and the landlord. The decree has been obtained collusively as against the six persons showing six shops each containing an extent of 1400 sq.ft. However, factually, there are many shops available, hence, landlord and tenant relationship has not been established. When there was no relationship existed between the parties and the parties are not in possession as tenant or sub tenant and they are not made as a party to the RCOP proceedings, this Court is of the view that



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Order XXI Rule 97 of CPC, as a matter of right cannot be invoked to remove the obstructors.

6. The respondents are, in fact, in possession of the property on their own claiming independent rights. Though the revision petitioner claimed to have purchased in a public auction, thereafter, he had also settled the property in favour of his wife. Therefore, even assuming that he became owner of the property, as long as there was no tenant and landlord relationship established and delivery appears to have obtained collusively, the only remedy to the revision petitioner is to file appropriate suit before the competent Civil Court for possession of the property in the occupation of the parties on their own.

7. Such view of the matter, let the petitioner file a suit for recovery of possession in a competent civil court for recovery of possession. It is to be noted that since the proceedings are pending before this Court all these years and the revision petitioner was bonafidely pursuing before this Court, time spent in this matter shall be excluded for filing suit for recovery of possession.



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**N.SATHISH KUMAR, J.,**

8. In view of the above, I do not find any merits in these revisions and accordingly, these revision stand dismissed. No costs.

22.11.2024

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Index : Yes/No

Internet : Yes/No

To

1. The VIII Judge  
VIII Small Causes Court, Chennai

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