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A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

A.S.No.397 of 2024
and
C.M.P.No.11918 of 2024

M.S.Eva Laberibe,
Director Maison des Arts Private Limited,
Represented by her Power of Agent
Saumitra Krunchandra Srivastava,
S/o.Karunchandra Srivatsava,?
No.43/3A, Auroville Road, Chinna Kottakuppam,
Vanur Taluk, Tamil Nadu. ... Appellant/petitioner/objector

Vs.

1.S.Radhakrishnan ...Respondent/Respondent/Decree Holder

Ms.Dunand Evelyne Christiane (died)
Represented by her legal representatives,
4th and 5th respondents

2. P.Sagayaraj
3.L.Periyamayagasamy @ Arulraj
4.Mom.Jesseline Cecile Dunand
5.Mr.Albert Rene Paul Dunand
...Respondents/Respondents/Judgment Debtors



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

WEB COPY

Prayer: This First Appeal is filed under Section 96 of C.P.C., against the order passed by the learned II Additional District Judge, Pondicherry in E.A.No.88 of 2021 in E.P.No.383 of 2019 in O.S.No.23 2007 dated 26.03.2024.

For Appellant : Mrs.Hema Sampath,
Senior Counsel
For Mr.B.Balavijayan

For Respondents : Mr.N.Suresh
For Mr.Preeth Mohan, Caveator

J U D G M E N T

After hearing the arguments of Mrs.Hema Sampath, learned Senior Counsel appearing for the appellant and Mr.N.Suresh, learned counsel appearing for the respondents-Caveator, the main case itself is taken up since argument in C.M.P and Appeal Suit are being one and the same.

2. The brief facts necessary for determination of this case are as under:-

(a) The respondents herein filed a suit in O.S.No.23 of 2007 for the specific performance of the suit sale agreement dated 27.03.2006 against one



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

WEB COPY

Dunand Evelyne Christiane - the original first defendant. On her death, the respondents 4 & 5 were brought on record. The suit is based upon the sale agreement entered between the first respondent and the said Dunand Evelyne Christiane on 27.03.2006. The lower Court records reveals that, on 25.04.2007, an interim injunction was granted against the respondent-landlord and the same was made absolute on 05.09.2007.

(b) Pending suit, the first defendant has filed a written statement and the second defendant also filed a separate written statement.

(c) As the first defendant died and his brother and sister were impleaded as defendants 4 & 5 in the suit and D2 was cross examined the P.W.1. The first round of litigation has completed and on appeal the case was remitted back.

3. Based upon the evidence let in by the parties during the trial P.W.1 and Exs.A1 to A12, the trial Court has come to the conclusion that the sale agreement is related to the year 2006 and accordingly, while accepting the case of the plaintiff that he is ready and willing to perform his part of the contract.

4. Taking note of the passage of time has enhanced the balance of the



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

WEB COPY

sale consideration to Rs.45 lakhs, however, it was after deducting of Rs.30 lakhs paid in the year 2006 as advance received by the original first defendant during her lifetime and the balance of Rs.45 lakhs was ordered to pay along with interest of 12% from the date of the sale agreement till the date of the decree for getting the sale deed.

5. Against the judgment and decree passed in O.S.No.23 of 2007 dated 07.11.2019, no appeal has been filed and decree has become absolute as final.

6. Lower Court records reveals that E.P.No.383 of 2019 was filed for execution of the sale deed and for handing over the possession. The sale deed was executed by the Court and the same was registered on 03.09.2019. Another Execution Petition No.383 of 2017 was filed on 23.09.2019 for delivery of possession. It appears that the present appellant filed in E.A.No.88 of 2021 on 17.08.2021 raising objection.

7. Counter was filed by the decree-holder on 25.09.2021. A power of attorney appears to have been executed by the appellant-objector on 02.12.2021 after filing the objection petition.

8. After contest, the Execution Court has come to the conclusion that since the tenancy agreement was entered between the original land owner-



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

WEB COPY

original first defendant during the pendency of the specific performance suit in O.S.No.23 of 2007 and in gross violation of injunction order dated 25.04.2007, the Execution Court has held that since the lease agreement is dated 01.12.2012 which was came into existence during the pendency of the suit and as well as during the injunction order being in force has held that the person who claims to be in possession is not entitled for the benefit of protection under Order XXI Rule 97 of C.P.C and dismissed the application and hence this Appeal Suit.

9. It is seen that initially this appeal appears to have been filed as Civil Miscellaneous Appeal No.397 of 2015. The roaster Judge, by an order dated 06.06.2024 has observed that in view of the decision of the Hon'ble Supreme Court in Sameer Singh and another V. Abdul Rab and others reported in 2014 6 CTC 98. This was subsequently followed in C.Murugan v. Dr.Thilagavathy and others reported in 2015 1 CTC 516, the application which was adjudicated upon under Order XXI Rule 97 C.P.C will not come under the Miscellaneous Appeal category and it has to be numbered as a regular appeal. Accordingly, directed the Registry to convert the Civil Miscellaneous Appeal into a regular appeal and C.M.A was re-numbered and



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

assigned a new number as A.S.No.397 of 2024.

WEB COPY

10. The learned Senior Counsel appearing for the appellant contended that the appellant herein is a statutory tenant by virtue of the lease agreement dated 01.12.2012. It was entered between the appellant herein and original land lady - Dunand Evelyne Christiane. Thereafter, they are running a business establishment in the name and style of CAFE DES ARTS, a unit of MASON DES ARTS PRIVATE LIMITED for the last 12 years, employing approximately 20 staff members and has been operating in this said location from the date of lease and she is a law abiding citizen and she is entitled for protect her possession by way of objecting the possession as a statutory tenant and contended that Order XXI Rule 96 objector petition has been improperly dealt with and it ought to have considered under Order 101 of C.P.C.

11. The learned counsel appearing for the respondents-caveator has denied that she is not a bonafide statutory tenant. On the date of alleged agreement in favour of the appellant-tenant, the suit is pending for consideration. Besides, there is an injunction order not to encumber the property and hand over the possession, status quo order was given by the trial



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

WEB COPY

Court. In violation of the order, the agreement was entered and the appellant was let in possession and hence, the appellant is not entitled for any statutory right and hence, the case has to be rejected under Order XXI Rule 101 C.P.C.

12. In sum and substance, the appellant/obstructor has been inducted into the petition schedule property for the sole purpose of defeating the defendant-decree holder right to get the specific performance of the lawful legal agreement accrued to him by virtue of the judgment and decree dated 11.07.2019 and the sale deed dated 03.09.2019 executed by this Court pursuant to the said judgment and decree.

13. After hearing the rival submissions, the following points arises for determination in the appeal.

(i) Whether the appellant/obstructor is a statutory tenant is entitled for protection under Order XXI Rule 97 of C.P.C

(ii) Whether order XXI Rule 102 C.P.C shall come into rescue of the respondent-decree holder .

14. On perusal of dates and events narrated supra that the suit sale agreement dated 27.03.2006. Suit in O.S.No.23 of 2007 was filed by the respondent-decree holder on 23.04.2007, the interim injunction was granted and ex-parte order was granted on 25.04.2007. Interim order was made



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

absolute on 05.09.2007.

WEB COPY

15. Admittedly, the appellant had entered into a lease agreement on 01.12.2012. So to say, it is only after the injunction order and during the pendency of the suit and hence, on the above admitted factual matrix, I have no hesitation to hold that the lease in favour of the petitioner herein is created pendant lite and was let in possession of the suit property only pendant lite. More so, when the order of injunction against the land lady was made absolute as early as on 05.09.2007 assumes significance.

16. This application has been filed by the appellant/obstructor under Order XXI Rule 97 C.P.C to record the resistance and objections to the possession of immovable property. Such an application has to be dealt with by the Execution Court after following the procedure contemplated under Order Rule 98 of C.P.C.

17. It remains to be stated that the questions that are to be decided are whether the appellant, who is the petitioner in E.A.No.88 of 2021 in E.P.No.383 of 2019 is entitled for protection under Order XXI Rule 97 of C.P.C and whether Rule 102 will come into operation or Rule 97 will come into operation.



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

WEB COPY

18. Perused the relevant provision Order 21 Rule 101 of C.P.C and the exemption to Rule 101 are stated in Order 21 Rule 102 of C.P.C.

19. In respect of question that has to be decided in an application filed under Order XXI Rule 97 of C.P.C, it has been dealt with under Rule 101 of C.P.C. Under Rule 102 of C.P.C, Order XXI makes it clear that Rule 98 and Rule 100 are not applicable in respect of person who claims to be possession of the immovable property against the decree holder who was let in possession pendente lite and further explanation to the said 102 Rule makes it clear that transferee by operation of law is entitled for benefit.

20. Hence, in the instant case, the Execution Court, on deposit of the balance of Rs.1,17,77,425/- has executed the sale deed in his favour and stamp duty of Rs.41,95,000/- has been paid and Rs.2.10 lakhs for the registration of the sale deed has also been paid and the sale deed has also been executed and hence, on the above factual matrix, I have no hesitation to hold that on the factual matrix of the case, as demonstrated by the respondent-decree holder that after paying the balance of the sale consideration along with the increased rate of interest as awarded under the



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

WEB COPY

decree, he has paid the entire amount by depositing in Court and obtained the sale deed through the Court and hence the case of the respondents -decree holder falls under explanation to Rule 102 order XXI and hence the lower Appellate Court has rightly rejected the case of appellant herein.

21. The learned Senior Counsel appearing for the appellant has relied upon the judgment of this Court reported in 2002 3 LJ 256 in Rajendran. Gnanaolivu rep.by Power Agent Veinu Gnanavolivu Vs.Sundar Gnanaolivu. (Given up) and another wherein it is held as under:-

17. In the light of the legal position as well as the procedure prescribed in the Code and also of the fact that the second respondent - Obstructor became a tenant even prior to the date of the decree, I hold that this application in E.A.No.3919 of 2000 to declare him as an Obstructor is valid and the Executing Court is fully justified in adjudicating the matter...."

22. Per contra, the learned Senior Counsel appearing d Senior Counsel appearing for the respondents has relied upon the Hon'ble Supreme Court in. Usha Sinha v. Dina Ram in A.I.R 2008 S.C 1997: (2008) 7 SCC 144 wherein it has held that Rule 102 of Order 21 of the Code takes into account the



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

WEB COPY

ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a decree-holder will never be able to realize the fruits of his decree. Every time the decree-holder seeks a direction from a Court to execute the decree, the judgment debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the rule has been enacted.

23. It is to be stated that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendent lite of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order 21.

24. In view of the decision relied upon by the Supreme Court, I have no hesitation to hold that in respect of the person who get into possession during the pendente lite or in transferee pendente lite, unreserved protection cannot be offered to the transferee pendente lite and hence, he is not entitled for any



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

protection under Order XXI Rule 98 and also Order 21 Rule 102 of C.P.C.

WEB COPY

Accordingly, on the above factual finding that this Court comes to the conclusion that the appellant is a transferee pendente lite and hence, he is not entitled for protection under Rule 97 Rule 21 of C.P.C and in the case in hand since the sale deed has been executed by the Court, it was duly protected under Order 21 Rule 102 C.P.C. Thus, the unreserved protection cannot be offered to the transferee pendente lite and hence, the resistant petition dismissed by the Execution Court does not suffer from any illegality or irregularity warranting interference at the appellate stage and hence both the points are held against the appellant and held in favour of the respondent-decree holder.

25(a). In view of the decision of the Hon'ble Supreme Court, I have no hesitation to hold that the judgment cited by the learned Senior Counsel for the appellant in Rajendran Gnanaolivu's case is no longer holds the field and stands diluted by the subsequent judgment of the Hon'ble Apex Court in Usha Sinha's case cited supra.

(b) Hence, I have no hesitation to hold that in respect of person who get into possession during the pendente lite or a transferee pendente lite



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

WEB COPY

unreserved protection cannot be granted or offered who such a transferee pendente lite and hence the appellant is not entitled for any protection under Order 21 Rule 97 of C.P.C and also in view of the Order XXI Rule 102 of C.P.C.

26. The learned Senior Counsel has contended that since they are running a shop and she needs 90 days for vacating the same.

27. (a). The learned counsel for the respondents-caveator contended that due to the long pendency of the case from the year 2007 is fighting the litigation and this litigation is fourth round of litigation and hence contended that not more than 30 days can be granted and strongly opposed for grant of time for vacating, over and above 30 days.

(b) It is represented by the both members of the Bar that the Execution Petition for delivery case is posted before the Execution Court on 20.06.2024.

28. After hearing the submissions of the respective counsel and also considering the long legal battle and the matter in the fourth round of litigation, I am inclined to pass the following orders:-

(i) I hereby direct the appellant to file an affidavit of undertaking before the Execution Court on 20.06.2024 (hearing date for the E.P) whereby



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

WEB COPY

undertaking to vacate the premises and hand over vacant possession and the report to the Court on or before 31.07.2024.

(ii) In the said affidavit of undertaking, the appellant shall give a specific undertaking that he will vacate and hand over vacant possession on or before 31.07.2024.

(iii) That such an affidavit has to be filed by the appellant on coming hearing date on 20.06.2024.

(iv) It is hereby made clear that if such affidavit of undertaking as stated in Clause 1&2 has not filed on 20.06.2024, the Execution Court need not considered the time for vacating and ordered the Execution Application as per law.

(v) In the event of any affidavit of undertaking as stated supra, time for vacating the premises can be granted that too only upto 31.07.2024. On further condition such an affidavit of undertaking to be filed on the next hearing date namely 20.06.2024. Failing of both conditions, the Execution Court at liberty to pass an order of delivery on 20.06.2024 and it is also made clear that no further extension of time will be granted to the appellant beyond 31.07.2024.



WEB COPY



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

29. With the above directions, **this Appeal Suit is dismissed.** The order passed by the learned II Additional District Judge, Pondicherry in E.A.No.88 of 2021 in E.P.No.383 of 2019 in O.S.No.23 2007 dated 26.03.2024, is hereby confirmed. No costs. Consequently, connected C.M.P is closed.

18.06.2024

Index : Yes / No

Neutral Citation : Yes/No

nvi

Note: Issue Order Copy on 19.06.2024

To

1.The II Additional District Judge, Pondicherry.

2.The Section Officer,

VR Section, High Court, Madras.



WEB COPY



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

RMT.TEEKAA RAMAN, J.

nvi

Judgment in
A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024



WEB COPY



A.S.No.397 of 2024 and
C.M.P.No.11918 of 2024

18.06.2024