



WEB COPY



CRP. No.2299 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM

THE HONOURABLE **MR.JUSTICE BATTU DEVANAND**

C.R.P. (NPD) No.2299 of 2021

& CMP Nos.17378 of 2021 & 1734 of 2022

Mrs.A.Mariya Ashwathy

... Petitioner

Vs.

M.J.Arun Raj(died)

Mrs.G.Magimai Selvarasi

.. respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 11.03.2021 made in E.A.No.9 of 2019 in EP.SR No.68328 of 2018 in RCOP No.1465 of 2017 on the file of the XV Small Causes Court, Chennai, and consequently dismiss E.A.No.9 of 2019 in EP SR No.68328 of 2018 in RCOP No.1465 of 2017 on the file of XV Small Causes Court, Chennai.

For Petitioner

: Mr.S.Viswanathan

For Respondent

: Ms.Deepa for Mr.S.S.Rajesh

ORDER

This Civil Revision Petition has been filed to set aside the fair and



CRP. No.2299 of 2021

decreetal order dated 11.03.2021 made in E.A.No.9 of 2019 in EP.SR No.68328 of 2018 in RCOP No.1465 of 2017 on the file of the XV Small Causes Court, Chennai.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the records.

3. The deceased M.J.Arun Raj is the son of the respondent and the petitioner herein is the wife of the deceased M.J.Arun Raj and daughter-in-law of the respondent. The respondent filed RCOP No.1465 of 2017 under Section 10(2)(i) of the Tamil Nadu Building (Lease & Rent Control) Act 1960 against the deceased respondent, who is none other her son. On 07.08.2018, RCOP was allowed on the ground of willful default. The deceased M.J.Arun Raj was set ex-parte on 22.01.2018 and an ex-parte order was passed on 07.08.2018. An order of eviction was passed against the deceased M.J.Arun Raj. After passing the eviction order, deceased M.J.Arun Raj passed away on 27.08.2018. The petitioner is the wife of the deceased M.J.Arun Raj. Hence, the respondent filed a petition /application in E.A. No.9 of 2019 seeking permission to file the execution petition



CRP. No.2299 of 2021

against the petitioner herein, who is the wife of the deceased M.J.Arun Raj and was in possession of the subject premises. The petitioner herein filed her counter before the Court below and resisted the claim of the respondent. However, the Court below allowed the application permitting the respondent herein to file EP against the petitioner herein being the legal heir of the deceased Judgment Debtor no.1 i.e., the deceased M.J.Arun Raj herein. Aggrieved by the same, the present CRP has been filed.

4.The learned counsel for the petitioner submits that the deceased M.J.Arun Raj is the son of the respondent and the petitioner is the wife of the deceased M.J.Arun Raj, who got married on 01.12.2004. After their marriage, they lead their life at matrimonial house at no.29, 3rd Floor, Thiruveedian Street, Gopalapuram, Chennai and thereafter, the petitioner's husband died on 27.08.2018 and the petitioner continued to reside in the matrimonial home till date. The learned counsel submits that in the mean time, the respondent filed a collusive RCOP in RCOP No.1465 of 2017, on the file of the XV Small Causes Court, Chennai against her son for eviction on the ground of willful default and got ex-parte order on 22.01.2018 and thereafter, an ex-parte decree was passed on 07.08.2018. Since the



CRP. No.2299 of 2021

deceased M.J.Arun Raj died on 27.08.2018, the respondent filed an execution petition in EPSR No.68328 of 2018 and further came up with EA No.9 of 2019 seeking permission to proceed with execution proceedings against the petitioner, who is in possession of the subject premises as the wife being the legal heir of the deceased M.J.Arun Raj and the same was allowed by its order dated 11.03.2021.

5.The learned counsel for the petitioner contends that the petitioner came to know about the execution proceedings only from the Lawyer's notice dated 24.12.2018 issued by the respondent in eviction proceedings. He contends that the respondent took law into her hands and deny the dwelling home to the petitioner who is a destitute woman leading her life even after the death of her husband at her younger age without any issues.

6.The learned counsel for the petitioner further contends that the Court below committed an error by passing the order dated 11.03.2021 granting permission to the respondent to proceed with the execution proceedings against the petitioner, which is unacceptable and the same is liable to be set aside. The learned counsel further contends that there was no



landlord and tenant relationship between the respondent and the deceased

M.J.Arun Raj, who are none other than the mother and son and there is no

rental agreement and therefore, eviction petition itself is not maintainable.

As the petitioner's husband died, all the consequential actions must fail

including the eviction proceedings. The learned counsel further submits

that the respondent with an intent to deny the petitioner's lawful share to

which, she is entitled to being the daughter-in-law, but the respondent is

very curious to pull out the petitioner from the subject premises. The

subject property being the joint family property and the deceased M.J.Arun

Raj's share is being represented by both the petitioner and the respondent,

the Court below has no jurisdiction to try this issue and the same has to be

adjudicated by the competent Court and as such, the main RCOP itself is not

maintainable and accordingly, the permission petition to include a stranger

in execution petition itself is non-est in the eye of law and accordingly, the

learned counsel sought to set aside the order dated 11.03.2021 made in

EA.No.9 of 2019 and prayed to allow the petition.

7.The Civil Revision Petition has been filed against the order dated

11.03.2021 made in E.A.No.9 of 2019. E.A.No.9 of 2019 was filed by the



respondent herein to permit her to file execution proceedings against the petitioner herein. The petitioner herein is the wife of the deceased M.J.Arun Raj, who is the son of the respondent. The respondent obtained decree against the deceased M.J.Arun Raj and the said decree was passed in RCOP No.1465 of 2017 on 07.08.2018 and ex-parte decree of eviction was passed on 07.08.2018. Subsequently he died on 27.08.2018. There is no dispute that the petitioner is the wife of the deceased M.J.Arun Raj/judgment debtor. The respondent has initiated execution proceedings by filing EPSR No.68328 of 2018. In the said execution proceedings, the respondent filed an application seeking permission to file EP against the petitioner herein who is the wife of the deceased M.J.Arun Raj.

8.It is the contention of the respondent that after the death of the deceased M.J.Arun Raj, the petitioner being the wife of the judgment debtor has to be evicted. As per the contention of the petitioner herein also, it is clear that she is staying at third floor in the premises in question, even after the death of the deceased M.J.Arun Raj. The respondent, to initiate execution proceedings as per the decree of eviction obtained by her, noted that it is necessary to implead the petitioner herein who is the legal heir of



CRP. No.2299 of 2021

the deceased M.J.Arun Raj to evict from the said premises, as per the decree passed by the competent Court. It is also to be noted that the petitioner herein can raise all her objections by way of counter in the execution proceedings. As the petitioner admitted that she is the wife of the deceased M.J.Arun Raj and is residing in the petition schedule property, to execute the decree obtained by the respondent it is her legal right to initiate execution proceedings to execute decree against the concerned and being the legal heir of the judgment debtor, the petitioner herein cannot object the initiation of execution proceedings.

9.For the reasons stated above, in the considered opinion of this Court the order of the Court below in permitting the respondent to file execution proceedings against the petitioner herein being the legal heir of the deceased judgment debtor is passed in accordance with law and as such, there is no illegality or infirmity in the said order.

10.Accordingly, this Civil Revision Petition is dismissed.

No costs.

Consequently, connected miscellaneous petitions are closed.

19.06.2024



CRP. No.2299 of 2021

dn

Index : Yes / No

Internet : Yes / No

WEB COPY

BATTU DEVANAND.J.,

dn

C.R.P. (NPD)No.2299 of 2021

19.06.2024