



CRP No.2614 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

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and MP No.1 of 2014

1. Saroja
2. Vardaraj
3. Kumudha

.. Petitioners

-VS-

1. K.Surya
2. Soundari
3. Suseela
4. Annadurai

.. Respondents

Prayer: Petition filed under Section 115 CPC against the order dated 13.06.2014 passed in M.P.No.170 of 2004 in E.P.No.491 of 2003 in RCOP No.1447 of 2002 on the file of X Judge, Small Causes Court, Chennai.

For Petitioners : Mr.T.S.Rajamohan

For Respondents : M/s.Warron & Sairam for R-1
: Ms.Nargees Farzana
for M/s.P.Mahalakshmi for R-4
: Not ready in notice reg. RR 2 & 3
* * * * *



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ORDER

This civil revision petition challenges the order of the learned X Judge, Court of Small Causes at Chennai in M.P.No.170 of 2004 in E.P.No.491 of 2003 in RCOP No. 1447 of 2002 dated 13.06.2014.

2. The civil revision petitioners, claiming that the fourth respondent is their tenant, presented RCOP No.1447 of 2002. They pleaded that the tenancy was oral and the fourth respondent herein had abandoned the premises and therefore, they are entitled for an order of eviction under Section 10 (2) (vi) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Summons was taken to the fourth respondent. He remained ex parte. Therefore, an order of eviction was passed by the Rent Controller on 17.12.2002.

3. Pursuant thereto, an execution petition was filed in E.P.No.491 of 2003 to take delivery of possession of the property. The Court Ameen went to the property on 05.03.2004 along with police personnel and took delivery of the property.



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4. On coming to know of the said fact, the first respondent herein presented M.P.No.170 of 2004 seeking for re-delivery of the property. Her plea was that the property originally belonged to two brothers, Murugesu Gramani and Krishnappa Gramani. Subsequently, the brothers partitioned the property. Murugesu Gramani got the southern side and Krishnappa Gramani took the northern side of the property. The legal heirs of Krishnappa Gramani, namely, Mariammal and Lakshmiammal had sold the property to the first respondent. The sale was by way of a registered document dated 20.04.1995. The first respondent pleaded that on the strength of the sale deed, she also obtained a patta in her name. She pleaded that she had removed the superstructure and was waiting to develop the property at a later date. She was taken aback that under the guise of the Executing Decree in RCOP.No.1447 of 2002, she had been dispossessed from the property. Hence, the petition for re-delivery.

5. Notice was issued to the civil revision petitioners/decreed holders. They filed a counter stating that there was no partition between Murugesu Gramani and Krishnappa Gramani and that they were not aware of the



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alleged sale by the legal heirs of Krishnappa Gramani in favour of the first respondent. They accepted that Murugesu Gramani died in the year 1960 and Mariammal and Lakhmiammal succeeded to his estate. They argued that between the very same parties, a suit had been presented earlier in O.S.NO.15055 of 1996 on the file of the III Assistant City Civil Court at Chennai and that suit came to be dismissed for default. They pleaded that since the first respondent is claiming title to the property, the appropriate remedy is to approach the civil Court and an application for re-delivery is not maintainable.

6. On the basis of these pleadings, the learned Executing Judge took up the application for trial. The first respondent examined herself as P.W.1 and marked Exs.P.1 to P.3, namely, the sale deeds and the revenue records, on the basis of which she claimed to be in possession of the property. The civil revision petitioners entered the witness box as D.W.1 and D.W.2, but failed to tender any documentary evidence. On an appreciation of the oral and documentary evidence and on considering the report of the Bailiff, the Court came to the conclusion that the first respondent had been



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dispossessed from the property under the guise of the rent control decree and therefore, ordered re-delivery. Hence, this revision.

7. Notice had been ordered in the revision and Ms.Nargees Farzana is appearing for the fourth respondent.

8. Mr.Rajamohan pleads that the first respondent herein cannot be treated as an aggrieved person as the eviction order had been passed only against the fourth respondent and that cannot give a cause of action for the first respondent to move the Executing Court for re-delivery. He points out that in the sale deed that had been executed, in favour of the first respondent by Mariammal and Lakshmiammal, it shows that the civil revision petitioners are occupying a portion abutting to the property purchased by the first respondent. He further refers to the judgment and decree in O.S.No.15055 of 1996 dated 30.11.1998 whereby the suit for permanent injunction that had been filed by the first respondent as against the civil revision petitioners had been dismissed for default. On these grounds, he pleaded that the order of the trial Judge requires interference.



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9. Ms.Nargees Farzana appearing for the fourth respondent/tenant cannot have much to this case because she remained ex parte in the rent control proceedings. The fourth respondent had engaged a counsel during the course of trial in M.P.No.170 of 2004. All that he pleaded was that there exists no relationship between the decree holders and himself. He also stated that he has no objection for the application for re-delivery to be allowed.

10. I have carefully considered the submissions of either side.

11. The purpose of a rent control proceedings is to enable a landlord to get possession of the tenanted property from a tenant. Under the erstwhile Act, the landlord should have proved that there exists a jural relationship between the petitioner and the respondent and acts of the respondent invite the wrath of the Court under Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. A perusal of the judgment passed by the Rent Controller in RCOP. No.1447 of 2002 shows no records have been produced by the civil revision petitioners to prove the jural



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relationship or that the sole respondent/fourth respondent herein had committed acts inviting the wrath of Section 10(2)(vi) of the Act. Be that as it may, since a decree has been passed and as the decree has not been challenged by the fourth respondent, I am not delving into the merits of that order.

12. The cause of action for filing M.P.No.170 of 2004 was that the first respondent herein was dispossessed under the guise of an executing decree in RCOP.No.1447 of 2002.

13. A person, who is not a tenant or in possession of the property under the tenant, cannot be dispossessed from the property under the guise of an executing a rent control decree. The plea taken in the counter to M.P.No.170 of 2004 clearly points out that the sale deed that had been executed by the legal heirs of Krishnappa Gramani in favour of the first respondent is not in dispute. The relationship between Krishnappa Gramani and Murugesha Gramani is also not in dispute. Whereas the first respondent pleaded that there had been a partition between the brothers, the civil



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revision petitioners pleaded that there is no such partition. Even if I were to agree to the best case pleaded by Mr.Rajamohan, the first respondent becomes a stranger purchaser of the property that belonged to the two brothers, Murugesu Gramani and Krishnappa Gramani. A stranger purchaser cannot be dispossessed from the property under the guise of an executing rent control proceedings.

14. Furthermore, the learned Rent Controller found on facts that the Court Ameen, at the time of taking delivery, found that the alleged superstructure which is said to have been in possession of the fourth respondent, was an abandoned one. It had no roof at all. It is the common knowledge that a tenant is not going to occupy a property which has no roof. The learned trial Judge has come to the conclusion that under the guise of executing decree as against the fourth respondent, the first respondent has been dispossessed. I should also point out that even during the course of enquiry in M.P.No.170 of 2004, no evidence worth its name had been let in by the civil revision petitioners to substantiate their case that there existed a tenancy between themselves and the fourth respondent. The



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plea that there was no partition between Murugesa Gramani and Krishnappa Gramani could not have obviously gone in by a Rent Controller, as the Rent Controller does not possess the jurisdiction to grant a decree for partition. The learned Judge has given cogent reasons for allowing the application for re-delivery. I do not find any reasons to interfere with the said order. In case, the civil revision petitioners want to prove that the property is undivided and want to take their share, their remedy is to file a suit for partition before the City Civil Court.

15. Leaving it open to the parties to work out their rights in an appropriately framed suit, this civil revision petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

15.11.2024

Index : Yes/No
Neutral Citation : Yes/No

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V.LAKSHMINARAYANAN, J.

(sra)

To

1. The X Judge,
Small Causes Court, Chennai.

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