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C.R.P.(NPD) No.5107 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2024

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THE HON'BLE JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.5107 of 2024

and

C.M.P.No.28648 of 2024

Mr.K.Balakumar

... Petitioner/Petitioner/3rd Party

-VS-

1. Mr.M.S.Shanmugam ... 1st Respondent/1st Respondent/Decree Holder

2. Mr.Ramakrishnan ... 2nd Respondent/2nd Respondent/Judgment Debtor

Prayer: Civil Revision Petition filed under Section 115 of the CPC to set aside the Fair and Decreetal Order dated 25.07.2024 in E.A.No.100 of 2019 in E.P.No.541 of 2018 in R.C.O.P.No.1530 of 1988 by the XVI Small Causes Court, Chennai

For Petitioner : Mr.L.Gavaskar

For R1 : Mr.M.Rajasekar

ORDER

Challenging the impugned order, dismissing the application filed by the revision petitioner, who is a third party to the execution petition



C.R.P.(NPD) No.5107 of 2024

in E.P.No.541 of 2018 in R.C.O.P.No.1530 of 1988, under Section 47 of the CPC, the present revision petition has been filed.

2. Originally, the 1st respondent had filed three R.C.O.P.No.1459 of 1988, 1482 of 1988 and 1530 of 1988 on the file of Small Causes Court, Chennai for eviction of tenants in various portions of the properties, on the ground of willful default and owners occupation. Both the Rent Court and Appellate Authority dismissed the RCOPs and challenging the dismissal order, the 1st respondent had filed C.R.P.Nos.947 to 949 of 1997 before this Court, in which, by an order dated 07.01.2011, this Court had set aside the findings of the Rent Court as well as Appellate Authority and ordered eviction on the ground of owners occupation. However, the finding with regard to the wilful default had been confirmed by this Court. Challenging the orders filed in the above CRPs., revision petitioner filed SLP Nos.10981-10983 of 2011 before the Supreme Court and the same was also dismissed by the Apex Court on 11.04.2016 itself.

3. Thereafter, an application has been taken out under Section 47 of CPC by the revision petitioner, contending that one Ramakrishnan,



C.R.P.(NPD) No.5107 of 2024

who was the original tenant of the premises, already vacated and handed over the vacant possession to the revision petitioner and therefore, the decree cannot be executed as against him.

4. Learned Executing Court, considering the fact that the revision petitioner is not a party to the proceedings in R.C.O.P.No.1530 of 1988 dismissed the application as not maintainable under Section 47 of CPC, against which, the present revision petition has been filed.

5. Learned counsel for the revision petitioner submitted that the revision petitioner impleaded himself in C.R.P.Nos.947 to 949 of 1997 and filed SLP and therefore, the finding of the Executing Court that he is a third party to the proceedings is not valid in the eye of law.

6. I have perused the material documents available on record.

7. It is seen that the revision petitioner was impleaded in C.R.P.Nos.947 to 949 of 1997, which arose out of R.C.O.P.No.1459 of



C.R.P.(NPD) No.5107 of 2024

1988 filed against one Ramakrishnan and only in that proceedings, the revision petitioner had been arrayed as respondent, whereas the issue in the present Execution Petition related to R.C.O.P.No.1530 of 1988, which was originally filed against one Ramakrishnan and in the said case, the revision petitioner was not a party. Though the revision petitioner filed SLP before the Supreme Court, challenging the common order dated 07.01.2011, he had not been impleaded in R.C.O.P.No.1530 of 1988. Hence, the contention of the learned counsel for the revision petitioner that the revision petitioner is a party to R.C.O.P.No.1530 of 1988 cannot be countenanced.

8. Be that as it may, the only contention raised by the revision petitioner in the application filed under Section 47 of CPC was that as the original tenant Ramakrishnan had already vacated and handed over the possession to him, therefore, he should not be evicted and the said contention has no force in the eye of law. It is pertinent to state here that when a person claims to be a representative of the judgment debtor, certainly, the judgment passed would be binding on that person. The application filed under Section 47 of CPC is nothing, but an attempt to stall the proceedings, which cannot be accepted. Even assuming that the



C.R.P.(NPD) No.5107 of 2024

revision petitioner claims rights from the original tenant, he should also be evicted from the premises and he cannot resist the execution.

9. Hence, finding no merits in the argument advanced by the learned counsel for the revision petitioner, this Civil Revision Petition is dismissed. The Executing Court shall expedite the execution proceedings and dispose of the same within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

11.12.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
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To:

XVI Small Causes Court Judge,
Chennai.



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C.R.P.(NPD) No.5107 of 2024

N.SATHISH KUMAR,J.,
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C.R.P.(NPD) No.5107 of 2024

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