



C.R.P.No.3716 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

CORAM

THE HONOURABLE THIRU JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P.No.3716 of 2023
and CMP No.23223 of 2023

1.Natarajan
2.Mrs.Karpagam
3.Mrs.Bhavani
4.Mrs.Lakshmi

.... Petitioners

VS

1.Parthiban
2.Mrs.Indira

..... Respondents

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 28.07.2023 made in E.A.No.8 of 2023 in E.P.No.54 of 2018 in RCOP No.5 of 2014 on the file of Principal District Munsif, Poonamallee.

For Petitioners : Mr.Ravi Shankar Rao

For Respondents : Mr.T.Sathiyamoorthy
For R.1
Mr.V.Thiyagarajan
For R.2



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ORDER

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The Civil Revision Petition has been filed against the the fair and decreetal order dated 28.07.2023 made in E.A.No.8 of 2023 in E.P.No.54 of 2018 in RCOP No.5 of 2014 on the file of Principal District Munsif, Poonamallee.

2. The petitioners are the husband and children of the second respondent Mrs.Indira. The first respondent/landlord had filed a petition in RCOP No.5 of 2014 against the 2nd respondent on the ground of willful default in payment of rent and owner's occupation in respect of portion of land with Asbestos sheet shed bearing Door No.252, Trunk Road, Porur, Chennai-600 116, Ambattur Taluk, Thiruvallur District.

3. The Rent Controller/Principal District Munsif, Poonamallee by order dated 05.06.2016 in RCOP No.5 of 2014 allowed the petition and ordered eviction. The first respondent/landlord had filed an Execution Petition in E.P.No.54 of 2018 and the Rent Controller after putting the second respondent on notice, allowed the eviction petition on 21.06.2022 and ordered delivery of schedule mentioned property by 29.07.2022. At that stage, the petitioners, who



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are the husband and the children of the second respondent/tenant had filed E.A.No.8 of 2023 under Order 21 Rule 97 to 103 and Section 151 of Civil Procedure Code to record the obstruction and objection against the decree under execution in E.P.No.54 of 2018.

4. The case of the petitioners is that the petitioners are living in the adjacent property to an extent of 7849 sq.ft and that the landlord has not mentioned the details of property such as extent, nature and boundaries in the schedule. The petitioners also stated that the first respondent/landlord was owning 1800 sq.ft abutting Poonamallee Highway, in which, 1000 sq.ft was acquired by Highways Department and the landlord is entitled only for 800 sq.ft and it was rented out to the 2nd respondent for two wheeler parking business.

5. It is the further case of the petitioners that the property measuring 7849 sq.ft is classified as Grama Natham and comprised in S.No.188/30A and 188/28A of Porur Village and the property in S.No.188 is Grama Natham land and the first respondent by using political influence, has subdivided the property and got patta in his name. The petitioners further submit that the first respondent has no right over the property in SF Nos.188, 188/30A and 188/28A to an extent



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of 7849 sq.ft. Therefore, the petitioners have filed a suit for declaration in O.S.No.194 of 2022 to declare the Release Deed dated 01.12.2004 as null and void and the first respondent/landlord has no right to execute the decree without establishing his right in O.S.No.194 of 2022.

6. The first respondent/landlord had filed counter contending that all the averments in the petition are false. The first respondent submitted that he filed RCOP against the second respondent/wife for eviction and the same was allowed by the Rent Controller on 05.06.2016 and the petitioners are unnecessarily filing the petition to record the obstruction and objection against the decree under execution. The first respondent further submit that the entire property to an extent of 11484 sq.ft belonged to him and the Government acquired 2500 sq.ft from him and out of the remaining portion of 8554 sq.ft, he rented out 800 sq.ft to the second respondent for two wheeler parking business and the second respondent is running the business under the name and style of “J.R.Parking” in the petition property. The first respondent had further contended that the 2nd respondent has also admitted the landlord/tenancy relationship in the suit filed by her in O.S.No.400 of 2013 for bare injunction and also in the counter filed by her in RCOP No.5 of 2014 and submitted that the petitioners have no right to obstruct



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the execution of decree and therefore sought for dismissal of the petition on the ground of maintainability.

7. The Executing Court found that the decree in RCOP shows that the petition schedule property is described as a portion of land with Asbestos sheet shed bearing Door No.252, Trunk Road, Porur, Chennai-600 116 and the landlord has specifically mentioned about the shed bearing Door No.252 in the main RCOP and obtained decree in respect of that portion. The petitioners have filed objection stating that the land measuring to an extent of 7849 sq.ft adjacent to petition property belongs to them and the first respondent/landlord with an intention to grab the property, has not mentioned the extent, nature and boundary of the petition schedule property. The Executing Court further found that the petitioners filed a suit in O.S.No.194 of 2022 with regard to property measuring to an extent of 7849 sq.ft comprised in S.Nos.188, 188/30A, 188/28A of Porur Village and they marked the plaint copy as Ex.P.1 and the petitioners in the petition itself admitted about the tenancy of the second respondent over 800 sq.ft which has been taken for two wheeler parking business.

8. The executing court further found that the 2nd respondent had initially



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instituted a suit in O.S.No.400 of 2013 against the first respondent for the relief of permanent injunction not to evict her except by due process of law and the copy of the plaint in O.S.No.400 of 2013 has been marked as Ex.R.1 in which the suit schedule property is mentioned as non residential premise bearing Door No.252, Trunk Road, Porur, Chennai-600 116. The executing court further observed that the dispute pertaining to the property claimed by the petitioners are beyond the scope of execution petition and even after the petitioners admitted about taking the petition property on rent by the second respondent, they are not entitled to raise objection for execution of decree pertaining to petition property and dismissed the petition in E.A.No.8 of 2023. Challenging the same, the present civil revision petition has been filed.

9. Learned counsel for the petitioners submits that the petitioners are the husband and children of the second respondent/tenant. He submits that the petitioners have right over the property measuring to an extent of 7849 sq.ft comprised in S.Nos.188/30A and 188/28A of Porur Village and that under the guise of the order in RCOP No.5 of 2014, the first respondent/landlord is attempting to evict them from the area in which they are in possession, whereas, the Rent Controller has not appreciated the facts properly and had dismissed the



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petition, thereby, the petitioners pray to allow the revision.

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10. Per contra, learned counsel for the first respondent/landlord would submit that the tenancy is admitted by the second respondent. The Rent Controller, on the ground of willful default in payment of rent and owner's occupation had decreed RCOP No.5 of 2014 and ordered eviction and no appeal has been filed by the second respondent/tenant against the order passed in RCOP No.5 of 2014 on 05.06.2018. Subsequently, after eviction was ordered, the petitioners have filed a suit in O.S.No.194 of 2022 challenging the title of the landlord/first respondent. However, in the suit, the petitioners have admitted about the tenancy of the second respondent in 800 sq.ft of land which is the scheduled property in RCOP No.5 of 2014. In addition to this the second respondent/tenant had also filed a suit in O.S.No.400 of 2013 on the file of Additional District Munsif, wherein, she had admitted about the tenancy in respect of premises bearing Door No.252, Trunk Road, Porur, Chennai-600 116. The petitioners have marked a copy of the plaint in O.S.No.194 of 2022 as Ex.P.1 and the first respondent/landlord has marked a copy of the plaint in O.S.No.400 of 2013 as Ex.R.1. The executing court finding that the dispute pertaining to the property in O.S.No.194 of 2022 is different from that of the order sought to be



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executed had dismissed the petition, filed to record the obstruction and objection against the decree and the learned counsel submits that there is no error in the order passed by the learned Judge and the petitioners, in order to defeat the execution, have filed the petition in E.A.No.8 of 2023 and therefore, seek to dismiss the revision.

11. Learned counsel for the second respondent would submit that the second respondent has filed an affidavit, undertaking to vacate the premises, more fully described in RCOP No.5 of 2014 i.e., a portion of land with Asbestos sheet shed bearing Door No.252, Trunk Road, Porur, Chennai-600 116, Ambattur Taluk, Thiruvallur District on or before 18.09.2024.

12. Heard both sides and perused the materials available on record.

13. The petitioners are the husband and children of the second respondent/tenant, who had suffered a decree in RCOP No.5 of 2014 for eviction. The petitioners have filed E.A.No.8 of 2023 to record the obstruction and objection against the decree under execution in E.P.No.54 of 2018. The petitioners claim that the scheduled property in O.S.No.194 of 2022 is different



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from the property in which the eviction is ordered and in the guise of the order in RCOP No.5 of 2014, the Decree Holder is attempting to evict them.

14. The Executing Court has held that even the suit in O.S.No.194 of 2022, filed by the petitioners, in plaint copy marked as Ex.P.1, they have admitted about the tenancy of the second respondent over 800 sq.ft and that they have taken the same for two wheeler parking business. The second respondent/tenant had also filed a suit in O.S.No.400 of 2013 on the file of Additional District Munsif, wherein, she had admitted about the tenancy in respect of premises bearing Door No.252, Trunk Road, Porur, Chennai-600 116 and the plaint has been marked as Ex.R.1. The executing Court, finding that the dispute pertaining to the property in O.S.No.194 of 2022 is different from that of the order sought to be executed and that the causes also are different, had dismissed the petition. I do not find any infirmity or irregularity in the order passed by the Principal District Munsif, Poonamalee dated 28.07.2023 in E.A.No.8 of 2023 in E.P.No.54 of 2018 in R.C.O.P.No.5 of 2014. Hence the Civil Revision Petition is liable to be dismissed.



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sr

15. Accordingly, the Civil Revision Petition is dismissed. However, an affidavit of undertaking has been filed by the 2nd respondent (wife of the 1st petitioner and mother of the petitioners 2-4) agreeing to vacate and hand over possession of the premises occupied by her on or before 18.09.2024. No costs. Consequently, connected miscellaneous petition is closed.

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Index:yes/no

Website:yes/no

To

The Principal District Munsif, Poonamallee

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