



WEB COPY



C.R.P.(NPD).No.3718 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD).No.3718 of 2023
and C.M.P.No.23222 of 2023

C.Ponnusamy

... Petitioner

vs.

Muniammal (Decd.)

1.Renukadevi

Venkatesan (Died)

2.K.Govindhasamy

3.Ramani

4.Minor Yokesh

5.Minor Yava Sri

... Respondents

(4th and 5th respondents are minors represented through the legal heirs of 2nd respondent Plot No.F41, Pushpa Nagar, Nungambakkam, Chennai-600034)

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Fair and Decretal Order dated 27.09.2023 passed by the XVI Judge, Small Causes Court, Chennai in E.A.No.05 of 2023 in E.P.No.451 of 2018 in R.C.O.P.No.215 of 2001.



WEB COPY



C.R.P.(NPD).No.3718 of 2023

For Petitioner : Mr.S.Prem Raj Kumar

For Respondents : Mr.L.Prabakar
for M/s.R.Ravichandran

ORDER

This Civil Revision Petition challenges the order passed in E.A.No.5 of 2023 in E.P.No.451 of 2018 in R.C.O.P.No.215 of 2001 on the file of the learned XVI Judge, Small Causes Court at Chennai.

2. R.C.O.P.No.215 of 2001 was filed by one Muniammal against C.Ponnusamy, the civil revision petitioner. She presented the petition on the grounds of Sections 10 (2)(i), 10 (2)(ii)(a) and 10 (2)(vii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The said RCOP after contest came to be partly allowed on 25.06.2003. Aggrieved by the same, a rent control appeal was preferred by the tenant in R.C.A.No.889 of 2004.

3. It is the tenant's case that pending appeal proceedings, the said Muniammal passed away and therefore, the appeal was dismissed as abated. Thereafter, the respondents herein claiming to be the legal heirs of the said



C.R.P.(NPD).No.3718 of 2023

Muniammal, filed an application to bring themselves as legal heirs of the deceased Decree Holder and presented M.P.No.370 of 2007 in E.P.No.17 of 2011. The said application was allowed by the learned XVI Judge of Court of Small Causes at Chennai on 29.06.2011. Challenging the same, a civil revision petition in C.R.P.(NPD).No.4283 of 2011 was preferred to this Court by C.Ponnusamy/Judgment Debtor. His revision was allowed by this Court by order dated 31.10.2012 holding that the respondents herein cannot be treated as legal representatives of the deceased Muniammal.

4. Against the order passed in C.R.P.No.4283 of 2011, dated 31.10.2012, a Special Leave Petition was preferred by the respondents herein to the Supreme Court in S.L.P.(C).No.1125 of 2013. The Supreme Court was pleased to grant liberty to the petitioners/respondents herein to seek declaration of their status before the appropriate court.

5. Consequently, O.S.No.3194 of 2013 came to be presented for a declaration that the plaintiffs/respondents herein are the legal heirs of the deceased Muniammal. The said suit originally came to be dismissed on



C.R.P.(NPD).No.3718 of 2023

06.11.2013. Aggrieved by the same, the respondents herein as appellants therein preferred A.S.No.104 of 2014. The said appeal came to be dismissed on 25.09.2014. Against the concurrent findings of fact, the second appeal was preferred to this Court in S.A.No.1098 of 2015. The second appeal was allowed by the Hon'ble Mr.Justice S.NAGAMUTHU (as His Lordship then was) on 25.01.2016. The learned Judge set aside the judgment and decree dated 25.09.2014 made in A.S.No.104 of 2014 as well as the judgment and decree dated 06.11.2013 made in O.S.No.3194 of 2013 and remitted the matter to the Trial Court for fresh disposal after impleading the District Collector of Chennai.

6. Accordingly, O.S.No.3194 of 2013 stood restored on the file of the learned V Assistant Judge, City Civil Court at Chennai. A written statement was filed by the defendant namely the Tahsildar, Nungambakkam Taluk on behalf of the District Collector, Chennai. After a detailed trial, the suit came to be decreed on 07.09.2017.

7. On the strength of the decree of the Civil Court, the respondents



C.R.P.(NPD).No.3718 of 2023

herein presented execution petition in E.P.No.451 of 2018. In this execution petition, E.A.No.3 of 2019 was presented by the Judgment Debtor, questioning the right and interest of the respondents herein to continue the execution proceedings. According to him, the issue had been settled in C.R.P.(NPD).No.4283 of 2011 and therefore, the respondents herein cannot claim to be the legal heirs of the deceased Muniammal.

8. E.A.No.3 of 2019 questioning the maintainability of the execution petition came to be dismissed on 20.04.2023. Challenging the said order, a civil revision petition was preferred before this Court in C.R.P.No.1919 of 2023. The very same issue that is pleaded before me today that the respondents are not the legal heirs of the deceased Muniammal was argued in that revision. Rejecting the argument, this Court by an order dated 06.07.2023 held as follows:-

“11. The learned counsel for the petitioner/ Judgment Debtor was harp on the status of the respondents. After a long. legal battle over a period of 15 years, the issue was put to an end and the respondents were declared as legal heirs of the deceased Muniammal. It is a settled principle of law that the Execution



WEB COPY

Court cannot go behind the decree. The status of the respondents has been finalised, rather it has reached finality. Therefore, the Judgment Debtor is not permitted to raise the contention that the present respondents cannot seek for any order based on the order of eviction.

12. The learned counsel for the petitioner would stress upon the doctrine of merger and would state that the order of the Hon'ble Supreme Court of India is merged with order of the Hon'ble High Court. As mentioned supra, the SLP was dismissed as withdrawn before the Apex Court. When that be the case, when the order passed by this Court prevails and the doctrine of merger never applies. As per the Judgment passed in the Second Appeal No.1098 of 2015, the suit in O.S.No.3194 of 2012 was filed by the present respondents and decreed in their favour. The Judgment Debtor by raising one after other bald allegations in order to squat over the property since 2003 and has dragged on the same by not vacating from the premises. Yet another petition is presently filed with bald contentions again trying to protract the eviction proceedings. The Execution Court, taking into consideration of both sides entire averments and arguments, has chosen to dismiss the petition. Based on the above said discussion and observations, this Civil Revision Petition is liable to be dismissed and thereby dismissed.”



C.R.P.(NPD).No.3718 of 2023

WEB COPY

9. After the said civil revision petition had been dismissed, the order had been taken to the Supreme Court by way of Special Leave Petition once more in S.L.P.(C).No.22997 of 2023. The said Special Leave Petition was dismissed as withdrawn on 10.05.2024. After the order passed in C.R.P.No.1919 of 2023 had attained finality, an application was filed to set aside the *ex parte* order passed in E.P.No.451 of 2018.

10. From the order impugned in this case, it is clear that the said application was dismissed and an order was passed by the Execution Court directing break open and police aid and also a direction was given to deliver the possession of the property. This order is put in challenge before me.

11. Heard Mr.S.Prem Raj Kumar, learned counsel appearing for the petitioner and Mr.L.Prabakar, learned counsel appearing for the respondents. I have also perused the records.

12. Mr.S.Prem Raj Kumar, learned counsel appearing for the petitioner



C.R.P.(NPD).No.3718 of 2023

would contend that since this Court in C.R.P.(NPD).No.4283 of 2011 had held that the respondents are not the legal heirs of the deceased Decree Holder Tmt.Muniammal, the respondents cannot execute the decree. He would further point out that the suit that has been filed by the respondents herein had been dismissed and also the appeal had been confirmed. He would state that the decree passed by the Civil Court in O.S.No.3194 of 2013 on 07.09.2017 is contrary to the orders passed in C.R.P.(NPD).No.4283 of 2011 and therefore, a fraud has been played on the Court. The gist of his argument is since the issue of legal heirship had been decided by this Court in C.R.P.(NPD).No.4283 of 2011, the decree granted by the Civil Court cannot be countenanced.

13. Mr.L.Prabakar, learned counsel appearing for the respondents would contend that the issue of legal heirship had been raised before this Court *ad nauseam*. He would point out from the order passed in C.R.P.No.1919 of 2023, dated 06.07.2023, the very same issue had been agitated and rejected and a Special Leave Petition preferred therefrom had also attained finality. He would, therefore, seek for dismissal of this civil



C.R.P.(NPD).No.3718 of 2023

revision petition.

WEB COPY

14. From the facts set forth above, it is clear that one Muniammal was successful in obtaining a decree in R.C.O.P.No.215 of 2001. This was as early as 25.06.2003. During the pendency of appeal, the said Muniammal died and since a memo was filed by the Civil Revision Petitioner stating Muniammal does not have any legal heir, the same was dismissed as abated.

15. The respondents herein claiming to be the legal heirs filed a petition in M.P.No.565 of 2006, that petition came to be dismissed by the Trial Court on 22.06.2007. A revision preferred therefrom also came to be dismissed in C.R.P.No.2255 of 2007, dated 13.08.2007.

16. Thereafter, an application was filed in M.P.No.370 of 2007 for the purpose of impleading them as the legal representatives of the deceased Decree Holder-Muniammal. That application came to be allowed on 29.06.2011. The Judgment Debtor preferred revision before this Court, pleading that the respondents are not the legal heirs of the said Muniammal. That came to be accepted by this Court and civil revision petition came to be



C.R.P.(NPD).No.3718 of 2023

allowed in C.R.P.(NPD).No.4283 of 2011 on 31.10.2012. As the respondents herein were aggrieved over the order of the High Court, a Special Leave Petition had been preferred before the Supreme Court. The Supreme Court granted liberty to the respondents herein to seek for a declaration before the appropriate Civil Court. Thereafter, a suit came to be filed in O.S.No.3194 of 2013. Though the suit and appeal suit were dismissed, the second appeal was allowed and the matter was remanded.

17. On remand, after contest in which the jurisdictional Tahsildar was examined as D.W.1, the suit came to be decreed. It is thereafter, in order to execute the decree obtained by Tmt.Muniammal, a fresh execution petition came to be filed. In the fresh execution petition, the Judgment Debtor/Civil Revision Petitioner herein, took a plea that it is not maintainable as the persons claiming to be the legal heirs of deceased Muniammal, are infact not the legal heirs. This was rejected on the strength of the decree of declaration granted by the Civil Court in O.S.No.3194 of 2013. This was in E.A.No.3 of 2019.



C.R.P.(NPD).No.3718 of 2023

18. As against the dismissal of E.A.No.3 of 2019, a revision was preferred to this Court in C.R.P.No.1919 of 2023. That revision came to be dismissed finding that the respondents are the legal heirs of the deceased Muniammal. Infact, this Court had specifically held as follows:-

“The status of the respondents had been finalised, rather it has rejected finality. Therefore, the Judgment Debtor is not permitted to raise the contention that the present respondents cannot seek for any order based on the order of eviction”

19. This clear and categorical finding had attained finality when a SLP that had been preferred in S.L.P.(C).No.22997 of 2023 was withdrawn on 10.05.2024. I have to point out here *res judicata* does not only apply to two separate proceedings but also applies to two stages of the same proceedings. The plea that has been raised before me had been specifically raised before Hon'ble Mrs.Justice R.KALAIMATHI and had been rejected by her by an order dated 06.07.2023 in C.R.P.No.1919 of 2023. That order having attained finality, I am not in a position to permit the learned counsel for the petitioner to reagitate the very same issue before me.



C.R.P.(NPD).No.3718 of 2023

20. The learned counsel for the petitioner would state that the decree passed by the Civil Court in O.S.No.3194 of 2013 itself is a fraudulent one, because the tenant was not impleaded as a party to the proceeding. I fail to understand as to how in a suit for declaration of legal heirship status of a landlord, a tenant would be a proper and necessary party. The tenant does not claim to be a legal heir of deceased Muniammal. Infact, his interest is adverse to that of Muniammal. In such a proceeding, the necessity to implead a tenant does not arise at all. The learned Trial Judge had specifically found that the respondents in the civil revision petition are entitled to present a fresh execution petition on the basis of the decree of declaration they obtained in O.S.No.3194 of 2013, dated 07.09.2017. The decree of the Civil Court having reached a finality and when a competent Civil Court has declared the status of the party, I do not find any objection in the legal heirs executing the decree obtained by their predecessor.

21. In the light of the above direction, I do not find any merits in the civil revision petition. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.



WEB COPY



C.R.P.(NPD).No.3718 of 2023

01.07.2024
(1/2)

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The XVI Judge, Small Causes Court,
Chennai.



WEB COPY



C.R.P.(NPD).No.3718 of 2023

V.LAKSHMINARAYANAN, J.

dm

C.R.P.(NPD).No.3718 of 2023

01.07.2024
(1/2)