



CRP.No.113 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.02.2024

PRONOUNCED ON : 15.03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP.No.113 of 2024

and

CMP.No.552 of 2024

K.Balakumar

...

Petitioner

vs.

1.M.S.Shanmugam

2.Krishnaswamy

...

Respondents

PRAYER : This civil revision petition has been filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order dated 04.11.2023 in E.A.No.2 of 2021 in E.P.No.539 of 2018 by the XI Small Causes Court at Chennai.

For Petitioner

...

Mr.L.Gavaskar

For Respondent

...

Mr.M.Rajasekhar

No.1

ORDER

This civil revision petition has been filed to set aside the fair and decreetal order dated 04.11.2023 in E.A.No.2 of 2021 in E.P.No.539 of 2018 by the XI Small Causes Court at Chennai.



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2.The revision petitioner is the petitioner in E.A.No.2 of 2021 in E.P.No.539 of 2018 in RCOP No.1459 of 1988. The revision petitioner, challenging the execution petition in E.P.No.539 of 2018 in R.C.O.P.No.1459 of 1988, filed a petition in E.A.No.2 of 2021 under Section 47 CPC on the ground that he is in absolute possession and enjoyment of the premises as a owner.

3.The learned counsel appearing for the petitioner submitted that the property and premises consisting ground and first floor bearing Old Door No.27, New Door No.8, situated at Muthu Street, Purasawalkam, Chennai – 600 007 belonged to Narasammal, who is the adopted mother of the petitioner. The 1st respondent /Decree holder had allegedly purchased the property bearing Door No.27, situated at Muthu Street, Purasawakam, Chennai – 600 007 by public auction in mortgage suit. The 1st respondent/decreed holder filed a suit in O.S.No.6473 of 1975 against his adopted mother namely Narasammal for recovery of possession only to an extent of 600 sq.feet consisting of two rooms and hall in the ground floor out of the property measuring to an extent of 1994 sq.feet including plinth area of 4440 sq.feet.



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4.Further, the learned counsel appearing for the petitioner submitted that the adopted mother of the petitioner had delivered the possession only to an extent of 600 sq.feet pertaining to a portion of the ground floor of the above referred property. So far as the other portion of ground floor and entire first floor of the property bearing Old Door No.27, New Door No.8, situated at Muthu Street, Purasaiwalkam, Chennai – 600 007, she had not delivered the possession to the 1st respondent/decreed holder. In respect of the other portion of the ground floor and the entire first floor, the petitioner is in absolute possession and enjoyment. The 2nd respondent/judgment debtor was occupying two rooms in the ground floor of the above referred property as tenant under his adopted mother namely Narasammal and he was paying the monthly rent to the adopted mother of the petitioner namely Narasammal. Further, the 2nd respondent Krishnaswamy had vacated and handed over the vacant possession of the two rooms on 28.05.1988 to the adopted mother of the petitioner and the adopted mother of the petitioner died on 28.11.1989. Since 28.05.1988 the adopted mother of the petitioner was in possession and enjoyment of petition premises, after demise of his adopted mother, the petitioner is in absolute possession and enjoyment of



the two rooms in the ground floor of the premises. The 1st respondent/decree holder has taken over the possession only to an extent of 600 sq.feet consisting two rooms and hall in the ground floor out of total extent of 1994 sq.feet including plinth area of 4440 Sq.feet. He further submitted that there is no jural relationship between the 2nd respondent/judgment debtor namely Krishnaswamy and 1st respondent/decree holder namely S.Shanmugam. However, the first respondent/decree holder namely S.Shanmugam had filed a RCOP No.1459 of 1988 against the 2nd respondent/judgment debtor before the Court. After an elaborate enquiry, the Court was pleaded to dismiss the said RCOP against which, the 1st respondent/decree holder has preferred an appeal in R.C.A.No.252 of 1992 to set aside the dismissal order passed in RCOP No.1459 of 1988. After hearing the matter, the appellate Court dismissed the said R.C.A. The 1st Respondent/Decree Holder has preferred a civil revision petition in C.R.P. (NPD)Nos.947 to 949 of 1997 before the this Court to set aside the decree and judgment passed in R.C.A.No.252 of 1992 and this Court allowed the civil revision petition in part. The 2nd respondent/judgment debtor has already vacated and handed over the



vacant possession of the petition premises to the adopted mother of the petitioner, after demise of her, the petitioner is in absolute possession and enjoyment of the petition premises. The 2nd respondent/judgment debtor was not a tenant under the 1st respondent /decree holder in respect of the petition premises at any point of time. The 1st respondent/decree holder knowing all these facts, deliberately omitted to implead the petitioner in the above execution petition in E.P.No.539 of 2018, against which, the petitioner filed E.A.No.2 of 2021 under Section 47 CPC and the Executing Court failed to consider the fact and dismissed the petition. Hence, the petitioner reiterated the other grounds raised in the grounds of appeal and pleaded to set aside the impugned order and to allow the civil revision petition.

5.The learned counsel appearing for the respondent supported the impugned order and the pleadings raised in this petition by the petitioner had already been raised in CRP.(NPD).Nos.947 to 949 of 1997 before this Court, which was rejected by its order dated 07.01.2011, which was also confirmed by the Supreme Court in special Leave to Appeal (C) Nos.10981



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to 10983 of 2011. Therefore, again raised the same contention, the petitioner filed a petition in E.A.No.2 of 2021 under Section 47 CPC is unsustainable. The Executing Court rightly dismissed the petition. Therefore, the principle of res-judicata is to be applied and there is no illegality in the order passed by the trial Court and there is no ground for interference and thus, pleaded to dismiss the civil revision petition.

6.To support of his argument, the learned counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court in Civil Appeal No.6375 of 2023 and also placed the judgment of this Court in CRP (NPD).Nos.947 to 949 of 1997 and the order of the Hon'ble Supreme Court in Special Leave to Appeal (C) Nos.10981-10983 of 2011.

7.I have considered the matter in the light of the submission made by an either side and perused the materials available on record.

8.On perusal of the records, it is noticed that the first respondent/decree holder had filed RCOP No.1459 of 1988 before the Rent Control



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Court for eviction on the ground of wilful default and owner's occupation, which was dismissed by the Rent Controller, against which, RCA No.252 of 1992 has been preferred by the first respondent/decreed holder and the same was confirmed by the Rent Appellate Court. Thereafter, the first respondent/decreed holder filed a civil revision petition in CRP.Nos.947 to 949 of 1997 before this Court, which was allowed in part and the concurrent findings of the Courts below as regards the claim for eviction on the ground of owner's occupation was reversed and eviction was ordered on the said ground. In respect of the ground relating to wilful default, the findings of the Courts below are confirmed against which, the petitioner preferred Special Leave to Appeal (C).No.10981 to 10983/2011, which was dismissed and thus, eviction order is confirmed. In pursuance of the execution petition in E.P.No.539 of 2018 filed by the first respondent/decreed holder, this petitioner is a third party and he filed the application in E.A.No.2 of 2021 under Section 47 CPC and raised the abovesaid claim as he is in possession and enjoyment of the property and he is an absolute owner of the property. The contention of the learned counsel for the petitioner is, though the petitioner has been impleaded as a



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party in CRP (NPD).Nos.947 to 949 1997, the executing Court in E.A.No.2 of 2021 dismissed the application filed under Section 47 CPC as the petitioner is the third party in the proceedings and the petition is not maintainable, which is erroneous one. The trial Court failed to consider the petition filed by the petitioner in E.A.S.R.No.44034 of 2023 to reopen the petitioner's side evidence along with petition with E.A.S.R.No.44033 of 2023 to issue Subpoena to the 1st respondent/decreed holder to examine him for certain factual aspects. Since he did not come to witness box for deposing evidence, the trial Court has erroneously rejected the petitions in E.A.SR.Nos.44034 & 44033 of 2023 without hearing on maintainability.

9.I have gone through the affidavit filed by the petitioner in E.A.No.2 of 2021, in which, the petitioner raised the contention that after the death of his adopted mother, he is in absolute possession and enjoyment of premises as a owner. The first respondent/decreed holder cannot be executed as against the petitioner. With regard to the defence raised by the 2nd respondent/judgment debtor in CRP (NPD).Nos.947 to 949 of 1997, there is no landlord and tenant relationship between him and the first respondent.



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This Court confirmed the findings of the Rent Court in this regard. The contention of the first respondent that the first respondent /decree holder filed a suit in O.S.No.6473 of 1975 for recovery of one portion of the ground floor in occupation of the adopted mother of the petitioner Narasammal and the suit was decreed on 15.02.1980. The appeal preferred by Narasammal in A.S.No.157 of 1981 was dismissed on 27.08.1981 and the second appeal preferred by her in S.A.No.1713 of 1981 was also dismissed on 06.08.1985 and there was no appeal against those findings.

10.Under these circumstances, the petitioner could not raised the same point to contend that the decree is not an executable one. Further, the application in E.A.No.2 of 2021 filed under Section 47 CPC, the executing Court can consider about the objection relating to the Execution, discharge or satisfaction of the decree and it cannot go behind the decree to entertain the objection about the validity of the decree unless want of jurisdiction of the Court passing the decree is apparent on the face of the record. I find no infirmity or illegality and there is no ground to interfere with the order



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passed by the trial Court. I find no merit in the civil revision petition.

Accordingly, the civil revision petition is dismissed. No costs.

Consequently, the connected miscellaneous petition is closed.

Index : Yes/No

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Internet : Yes/No

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To

The XI Small Causes Court, Chennai.



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Pre-delivery Order made in
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