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C.R.P.[NPD].Nos.5096 to 5098 of 2024
and C.M.P.Nos.28560, 28563 & 28564 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.12.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD]Nos.5096 to 5098 of 2024
and C.M.P.Nos.28560, 28563 & 28564 of 2024

J.Vijayakumar

.. Petitioner
in all C.R.Ps

Vs.

1.Kadiresan Chidambaram
S/o. Late KT Chidambaram,
No.761, Rock Lane,
MC Donough Georgia,
USA 30253, Rep. by its POA,
Sivagami Ramanathan,
D/o. Late S.A.R.M. Kadiresan Chettiar,
Old No.167, New No.84, Kutcheri Road,
Mylapore, Chennai – 004.

.. 1st Respondent
in all C.R.P

2.K. Ahamed Malick
S/o. K. Mohamed Ahamed,
Authorized representative of Evergreen Coatings,
Civil Project India,
NO.253, MTH Road,
Villivakkam, Chennai – 049.

.. 2nd Respondent
in C.R.P[NPD].No.5096& 5098 of 2024



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3.A.M.Syedda Begam

.. 2nd Respondent
in C.R.P[NPD].No.5097 of 2024

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Prayer in C.R.P[NPD].No.5096 of 2024: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, pleaded to pass an order of stay of all further proceedings in E.A.No.4 of 2022 in E.P.No.422 of 2014 in R.C.O.P.No.1471 of 2012 on the file of the XVI Court of Small Causes, Chennai, pending disposal of the above Civil Revision Petition.

Prayer in C.R.P[NPD].No.5097 of 2024: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, pleaded to pass an order of stay of all further proceedings in E.A.No.5 of 2022 in E.P.No.421 of 2014 in R.C.O.P.No.1470 of 2012 on the file of the XVI Court of Small Causes, Chennai, pending disposal of the above Civil Revision Petition.

Prayer in C.R.P[NPD].No.5098 of 2024: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, pleaded to pass an order of stay of all further proceedings in E.A.No.1 of 2022 in E.P.No.422 of 2014 in R.C.O.P.No.1471 of 2012 on the file of the XVI Court of Small Causes, Chennai, pending disposal of the above Civil Revision Petition.

For Petitioner : Mr.Rahul Jagannathan



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COMMON ORDER

Questioning the orders, dated 11.09.2024 passed by the Executing Court in E.A.No.4 in E.P.No.422 of 2014 in RCOP No.1471 of 2012 and in E.A.Nos. 1 and 5 in E.P.No.421 of 20214 in RCOP No.1470 of 2012, these Civil Revision Petitions have been filed by the petitioners.

2. Since the Civil Revision Petitions arising out of the same issue, this Court is inclined to take up them together and dispose of the same vide this common order.

3. The brief facts are as follows:

One Thiru Kadiresan Chidambaram is the original owner of the tenanted premises, has moved Rent Controller by filing two petitions in RCOP Nos.1470 and 1471 of 2012, seeking for eviction of the tenants, who are the husband and wife, viz., K.Ahamed Malik and A.M.Sayeda Begam, and also for fixation of fair rent. Both the petitions were contested and finally, eviction was ordered by common order 07.12.2013 passed by the



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Rent Controller. Aggrieved against the same, the tenants have preferred appeals in RCA Nos.36 and 38 of 2014, which also came to be dismissed by the Rent Control Appellate Authority while confirming the eviction ordered by the Rent Controller. Thereafter, it appears that the tenants have approached this Court by filing Revision Petitions in C.R.P.(NPD) Nos.2258 and 2318 of 2019, which were also dismissed by this Court vide common order dated 01.10.2020. Thereafter, since the rent control proceedings have reached finality, the landlord has moved two Execution Petition in E.P.Nos.421 and 422 of 2014 for execution of the eviction order, wherein, a report dated 08.10.2021 filed by the Bailiff stating that he was unable to execute the warrant since there was obstruction and sought for removal of the obstructor. Pursuant to the same, the decree holder/landlord moved an application E.A.No.1 of 2022, seeking for removal of the obstruction/resistance caused by the obstructor, who is the petitioner herein. At this stage, the petitioner moved applications in E.A.Nos.4 and 5 of 2022, praying to dismiss the E.P. By order, dated 11.09.2024, the Executing Court dismissed the applications E.A.Nos.4 and 5 filed by the petitioner herein and allowed the application in E.A.No.1 of 2022 filed by the



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landlord. Questioning the same, the petitioner has come forward with the present Revision Petitions.

4. On perusal of the records placed before this Court, particularly, counter affidavit filed by the petitioner herein in E.A.No.1 of 2022, the case of the petitioner is that one Vijayabaskar was the tenant of the 2nd respondent herein, namely, Ahamed Malick and in order to evict the tenant, 2nd respondent offered to lease out the premises to the petitioner on payment of security deposit of Rs.8,00,000/- which in turn to be paid to Vijayabaskar and the petitioner agreed for the same and inducted as tenant and he also entered into a lease agreement with the 2nd respondent dated 03.04.2019. It is pertinent to note here that at the time of entering this lease agreement, the landlord/decreed holder had already obtained eviction order against the tenant, Ahamed Malick and his wife, who challenged the eviction order in CRP Nos.2258 and 2318 of 2019 before this Court.

5. Further, it is also the case of the petitioner that later he came to know that the 2nd respondent Ahamed Malick is not the owner of the



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premises, but the present landlord/decree holder is the owner. However, one Ms.Nachammai came to the premises and introduced herself that the property belongs to her father and the landlord/decree holder is her own brother and she has 1/3rd share in the tenanted premises and she offered her 1/3rd share for lease on payment of Rs.42,00,000/- and hence, he entered into a lease agreement with her on 25.08.2021 and thereby, the petitioner has occupied the entire premises. Later, the said Nachammai offered to sell her 1/3rd share to the petitioner, who in turn accepted the same and also made part payment of Rs.31,00,000/- to her. Therefore, according to the petitioner, he has been inducted as a tenant with the said Nachammai and the present landlord/decree holder is not the lawful and absolute owner of the tenanted premises and he played fraud on the Court and obtained the decree and the Executing Court has not failed to appreciate the case of the petitioner, particularly, the lease agreements, dated 03.04.2019 and 26.08.2021 with the 2nd respondent, Ahamed Malick and Ms.Nachammai respectively.

6. In fact, the Executing Court has not evinced interest to make adjudication of the obstruction application by way of conducting an enquiry



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and collecting evidence in view of the decision of the Hon'ble Supreme

Court in “***Silverline Forum Pvt.Ltd versus Rajiv Trust and another***” 1998

(3) SCC 723 wherein, it has been held that an obstruction petition does not necessarily involve a detailed enquiry or collection of evidence and that the Court can make the adjudication on admitted facts or even on the averments made by the resistor. While dismissing the applications filed by the petitioner herein, the Executing Court has observed that the petitioner is a transferee *pendente lite* since he entered the lease agreement with the 2nd respondent in the year 2019 and by the time, already eviction order was passed against the 2nd respondent which was confirmed by the Rent Control Appellate Authority and therefore the order of eviction will also bind as against the petitioner/obstructor also. It was further observed that the petitioner was well aware of the eviction proceedings and despite the same, he entered into a lease agreement with Ms.Nachammai, whose rights over the premises have not been decided since the suit for partition filed by her was dismissed for default. Taking note of these factors, the Executing Court was of the view that the act of the petitioner reflects his audacity to cause obstruction and being an Advocate, to abuse law. Therefore, arriving at



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such conclusion, the Executing Court has held that the case of the obstructor/petitioner lacks *bona fide* and his rights cannot be protected.

7. Sub-letting is prohibited under the Rent Control Acts and also it is a ground for eviction. In the present case, it is not in dispute that the 2nd respondent Ahamed Malick and his wife were the tenants of the 1st respondent/decreed holder and they entered into rental agreements agreeing to repay the rents at Rs.12,000/- and Rs.10,000/- per month respectively towards the tenanted premises and since they committed default in payment of rents, the landlord has moved petitions for their eviction, which were also allowed and eviction orders were passed by the Rent Control Authorities and finally, this Court also confirmed the eviction in Revision Petitions filed by the tenants. The petitioner herein claimed himself as a tenant of the 2nd respondent Ahamed Malick, who is admittedly, a tenant of the 1st respondent/landlord and therefore, he can be construed as a sub tenant, but strangely, having occupied the premises, the petitioner has not at all claimed himself as a sub tenant and acted as if he was not aware of the original owner and rental proceedings between 2nd respondent and the 1st respondent.



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But as could be seen from the counter affidavit filed by the petitioner in para 9, he has categorically admitted that he came to know through Vijayabaskar that the 2nd respondent Ahamed Malick is the not the owner and one Kadiresan, the landlord/decreed holder is the owner and rent control cases have been filed and the same are pending. Therefore, by this admission, the petitioner is well aware of the rent control proceedings between the 1st and 2nd respondents, but to show his *bona fide*, he has not taken any steps to implead himself as a party to the rent control proceedings, instead, he entered into lease agreement with the sister of the decreed holder, Ms.Nachammai, that too after eviction order reached its finality.

8. It is well settled law that if the landlord makes out a case for eviction under the Act against the main tenant, the sub-tenant cannot have any voice in such a contingency and he has to abide by the decision in the action taken by the landlord against the main tenant. The sub-tenant/obstructor cannot put forth any grievance since the Act confers upon him no protection whatsoever and his right to be in possession is, in the very nature of things, very nebulous and is a defeasible right.



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9. Execution is the last stage of any civil litigation. The main hurdles to execute the decree passed by the civil Court, is the objection raised by the judgment debtors, strangers or the persons claiming under or through the judgment debtors, during the execution of the proceeding. Generally, the objectors have raised their objections under section 47 and Order XXI Rule 97, 99, 101 of the CPC, etc. In case of the resistance of execution proceedings by a stranger by claiming independent interest in the property, this Rule 97 applies.

10. In fact, Order 21 Rule 97 of the Civil Procedure Code protects the rights of a person who is genuinely in possession of property and claiming independent rights. The object of this provision is only to protect the interests and rights of the innocent buyers who purchased the property without the knowledge of *pendente lite* between the parties and the sub tenants who were in actual possession of the property and a decree was obtained behind their back by collusion between the landlord and the tenant. Even a third party can file an application under Order 21 Rule 97 CPC if they want to object to the decree being executed against them. No doubt, the



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executing Court must adjudicate the claim of any person resisting delivery of possession, including tenants or strangers. But at the same time, while disposing of execution applications filed under Order 21 Rule 97 CPC, if the executing Court gets whiff off dishonest tactics of Judgment debtor to delay the execution, the executing Court must absolutely firm in stopping such unhealthy practices and delay.

11. In the present case, the 1st respondent/landlord, after obtaining the eviction order nearly after a lapse of 10 years having filed the RCOPs in the year 2012, when he has taken steps to evict the tenants by filing Execution Petition, the petitioner who is a practicing Advocate, thwarted the execution of the warrant when the Bailiff attempted to execute it pursuant to the orders of the Executing Court and filed the applications in EA Nos.4 and 5 of 2022 and successfully prolonged the matter for another two years. As already stated above, the petitioner is fully aware of the rental proceedings between the landlord and his tenant/2nd respondent herein and when he entered lease agreement with the 2nd respondent in the year 2019, already there was eviction order passed against the 2nd respondent. Further, he also entered



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into a lease agreement with Ms.Nachammai, who is none other than the sister of the landlord and she filed a suit in O.S.No.416 of 1999 for partition and it was dismissed for default and later, it was not restored and thereby, the rights of the said Ms.Nachammai, have not been decided. The petitioner is not an ordinary man since he is a legal practitioner and he knows *pros and cons* of the judicial proceedings particularly after entering into the agreements with the 2nd respondent and one Ms.Nachammai during *pendente lite*. Initially, he introduced himself as a lawyer and later, he claimed to be a tenant of the 2nd respondent and thereafter, he jointed with the co-owner of the subject property, viz., Ms.Nachammai and started resisting the execution proceedings and objected the delivery. The Executing Court has rightly come to the conclusion that the petitioner has not made out any case to adjudicate his claim since it is not bona fide one and his possession through judgment debtor is impermissible. When the matter has reached finality and when the eviction order was passed against the judgment debtor, the petitioner has entered into a lease agreement with the judgment debtor, who is the original tenant of the landlord/1st respondent and as per Section 26 of the Tamil Nadu Buildings (Lease and



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Rent Control) Act, 1960, any order for the eviction of a tenant passed under this Act shall be binding on all sub-tenants who were made parties in the application for eviction, but any person who become a sub-tenant after the date of the application for eviction shall be bound by the order of eviction and be evicted as if he were a party to the proceedings provided that such order was not obtained by fraud or collusion. In the present case, it is not the case of the petitioner that the landlord/1st respondent has obtained order of eviction against the 2nd respondent/judgment debtor by fraud or collusion. Therefore, the eviction order passed against the 2nd respondent shall be binding on the petitioner also, who claimed as a tenant under the judgment debtor.

12. For the foregoing reasons, this Court does not find any infirmity or illegality in the order passed by the executing Court in order to interfere with the same. Accordingly, these Revision Petitions fail and the same are dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions are closed.



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13. However, the learned counsel for the petitioner would submit that in case of dismissal of the revision petitions, the petitioner will be put to irreparable loss since he parted with huge amount by making part payment towards sale consideration to Ms.Nachammai who is none other than own sister of the landlord and she is having 1/3rd share in the property. This Court cannot adjudicate this aspect in these revision petitions and it is for the petitioner to work out his remedy in the manner known to law against her for recovery of the amount.

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Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

To:

The XVI Court of Small Causes,
Chennai.

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