



C.R.P. (MD) No. 1446 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 1446 of 2022

and

C.M.P (MD) No.5996 of 2022

Balakrishnan

... Petitioner/

2nd Defendant

-VS-

1.S.Perachi

2.Kadalmani Raja

3.Chellapandian

... Respondents/
Plaintiffs

PRAYER: Civil Revision Petition filed under Article 225 of the Constitution of India, to call for records and set aside the fair and decreetal order dated 13.04.2022 passed in Review Petition in E.A.No.3 of 2019 in E.P.No.91 of 2017 in O.S.No.89 of 2000, on the file of Principal Subordinate Court, Tenkasi and allow this civil revision petition.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.V.Karuppaiah



WEB COPY



C.R.P. (MD) No. 1446 of 2022

ORDER

The Civil Revision Petition is filed aggrieved by the order in E.A.No.3 of 2019 in E.P.No.91 of 2017 in O.S.No.89 of 2000, dated 13.04.2022.

2. When this matter came up for hearing on 24.07.2024, the following order was passed by this Court:-

“This civil revision petition is filed aggrieved by the order in E.A.No.3 of 2019 in E.P.No.91 of 2017 in O.S.No.89 of 2000 dated 13.04.2022. By the said order, the trial Court ordered delivery of possession.

2. The case of the parties is that a suit for partition was filed, in which, the decree was passed dividing the suit properties as one half between the plaintiff and the defendants. The parties also entered into a compromise in the final decree proceedings and accordingly, each of the portion of the plaintiff and the defendants were earmarked and they put each other mutually into possession. When actual delivery was sought to be ordered, since the petitioner is occupying the property as a tenant, earlier in respect of the other sharer only symbolic delivery was ordered, leaving it open for the



WEB COPY



C.R.P. (MD) No. 1446 of 2022

party to approach the appropriate Rent Control /Court to file a suit for ejectment. When it came to the turn of the first respondent herein, the trial Court ordered actual delivery of the property. Aggrieved by the same, the present civil revision petition is filed.

3. The learned counsel for the petitioner would submit that even as on date the petitioner is in occupation of the property as a tenant, already there is a decree in his favour not to evict the tenant except by due process of law. In view thereof, by a compromise decree entered into in a collateral proceedings without an ejectment order or an eviction order, the plaintiff cannot be evicted from the suit property.

4. Per Contra, the learned counsel appearing on behalf of the respondents would submit that the petitioner is not at all a tenant. They have not received even a single penny as a rent. The suit property, as it stands today, is only a vacant land. There is no question of any occupation or possession by the petitioner as a tenant.

5. In that view of the matter, after hearing the arguments, this Court passed over the matter with a direction to the parties to go to the suit property and join by virtual mode. Accordingly, the respondent joined this Court by virtual mode with a video mobile phone. The Court could see that though the property is a vacant



property, the petitioner herein is conducting his timber business and his timbers are all stacked in the property. Therefore, it cannot be said that the petitioner is not in occupation of the premises. Therefore, the petitioner will be entitled to succeed to that extent, but, however, the Court will not come to the rescue of a person who is squatting over the other person's property without paying the rent. Therefore, both sides learned counsel are directed to file calculation memo as to the what would be the rent due to the respondent /Perachi from the date of her purchase to till date. 6. For filing calculation memo, call on 31.07.2024.”

3. Today, when the matter came up for hearing, the learned Counsel appearing on behalf of the petitioner filed an additional typed set of papers containing the calculation memo also. According to him, during the tenancy in respect of the other half of the suit property, he had also entered into a sale agreement and filed a suit for specific performance in O.S.No.20 of 2019, which was dismissed for the relief of specific performance, however, decreed with a direction to refund the advance amount of Rs.2,06,000/- (Rupees Two Lakhs and Six Thousand only) and therefore, since the amount is said to be refunded, he is not paying rent to the other person. However, as far as the petitioner is concerned, he has filed a calculation memo. According to him, the



rent for the property which was prevailing in the year 2008 was Rs.250/-.

Therefore, the rent payable in respect of half of the said property two and half cents is Rs.125/-. Therefore, by calculating the rent from the date of purchase of the petitioner from December 2008 till (Rupees 125 X 187), the total arrears comes to Rs.23,375/- (Rupees Twenty Three Thousand Three Hundred and Seventy Five only).

4. The learned Counsel appearing on behalf of the respondents had also filed a calculation memo. It is also agreed by him that the rent was fixed at Rs. 250/- per month in March 2005. Therefore, he has filed a calculation memo by increasing the rent of by 10% for each three years and According to him the total arrears will be Rs.1,56,519/-.

5. I have considered both the calculation memos. In the instant case, this Court is not concerned with the quantum of the rent or the willful default or the eviction of the tenant, which will be considered by in the separate proceedings. The only contention raised in the civil revision petition was that when the petitioner is a tenant, only symbolic delivery could have been ordered by the execution court and the decree holder should have been relegated to the appropriate forum, namely, the Rent Control Tribunal or the civil suit as the



C.R.P. (MD) No. 1446 of 2022

case may be, for ejectment of the tenant. The same order was passed in respect of the other half of the property in respect of the very tenant himself. Therefore, I am in agreement with the argument of the learned counsel for the petitioner regarding the same. However, noting that even if the petitioner is entitled for the said relief in law, this Court will not come to the rescue of the person whose squats in another man's property without even paying the rent. Only in that view of the matter, this Court directed both parties to file their calculation memo. Therefore, a direction can be given only in respect of the admitted rent and not on the ground of fair rent or the subsequent revisions that could have been happened between the parties.

6. In view thereof, I am inclined to accept the calculation memo filed by the learned Counsel for the petitioner and conclude that the admitted arrears as Rs.23,375/- (Rupees Twenty Three Thousand Three Hundred and Seventy Five only). This direction will not in any manner affect the rights of the respondent landlord in taking proceedings as per the relevant statutes or directing the petitioner to come for agreement with reference to quantum of rent etc. This direction is issued only based on the principles of equity when this Court is coming to the rescue of the tenant on the principles that only the symbolic delivery alone can be ordered, at the same time, he should be put on terms to



C.R.P. (MD) No. 1446 of 2022

pay the arrears as admitted by him and also continue to pay the monthly rent because his right is pleaded only in the capacity of as a tenant.

7. In view thereof, the civil revision petition stands allowed on the following terms:-

(i) The order dated 13.02.2022 made in E.A.No.3 of 2019 in E.P.No.91 of 2017 stands modified to the effect that only symbolic delivery shall stand delivered to the respondent and the same is recorded;

(ii) It is further recorded that the petitioner herein is in occupation of the property as a tenant and he is carrying on his timber business and this Court itself had observed through the virtual mode that he has stacked his timber in the vacant land and is carrying on his business and is in occupation of the property as a tenant. The admitted rent as on today is Rs. 125/- per month and above modification of the order is granted on condition to pay the admitted arrears of Rs. 23,375/- to pay by way of demand draft to the respondents within one week from the date of receipt of a copy of the order;



C.R.P. (MD) No. 1446 of 2022

WEB COPY

(iii) If the petitioner fails to pay the said arrears, the Civil Revision Petition stand dismissed and the above modification order will not come to the aid of the petitioners herein;

(iv) the petitioner shall also continue to pay the monthly rent of Rs.125/- without fail on or before the 5th of the every succeeding calendar month to the respondents.

(v) It will be open for the respondents to take such proceedings in the manner known to law for eviction of petitioner on any such grounds as may be permissible under law.

Consequently, the connected Miscellaneous Petition is closed. No costs.

31.07.2024

Index : Yes
NCC : Yes
PKN



WEB COPY



C.R.P. (MD) No. 1446 of 2022

D.BHARATHA CHAKRAVARTHY, J.

PKN

To

1. The Principal Subordinate Court, Tenkasi.

C.R.P. (MD) No. 1446 of 2022

31.07.2024