



C.R.P.(MD)No.2121 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2025

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.2121 of 2021
and C.M.P.(MD).No.11261 of 2021

Navaneethakrishnan @ Kannan ... Petitioner/Petitioner/
Respondent/Respondent

Vs.

1.K.Soundararajan (Died) ... Respondent/Respondent/Petitioner/
Petitioner

2.S.Ramiah

3.Gandhimathinathan

4.Seethalakshmi

(Respondents 2 to 4 are brought on record as legal heirs of the deceased sold respondent vide Court order dated 16.06.2023 made in C.M.P. (MD).No.5316 of 2022)

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order passed in unnumbered E.A.No..... of 2021 in E.P.No.132 of 2018 in R.C.O.P.No.18 of 2016, dated 04.10.2021 on the file of the Principal District Munsif Court, Tirunelveli.

For Petitioner : Mr.N.Vignesh

For Respondents : Mr.M.P.Senthil



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ORDER

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This revision petition has been filed to set aside the fair and decreetal order passed in unnumbered E.A.No..... of 2021 in E.P.No.132 of 2018 in R.C.O.P.No.18 of 2016, dated 04.10.2021 on the file of the Principal District Munsif Court, Tirunelveli.

2.The facts in brief:

R.C.O.P.No.18 of 2016 was filed by the deceased Soundarajan respondent herein against the revision petitioner before the Rent Controller namely I Additional Rent Controller, Tirunelveli for eviction, wherein, the revision petitioner entered appearance and later failed to appear, so the exparte order was passed by the order, dated 05.04.2018. Against which, no appeal was preferred. The order was put in execution in E.P.No.132 of 2018. The revision petitioner entered appearance. Pending the delivery process a petition was taken out by this revision petitioner in unnumbered E.A under Section 47 of CPC, stating that the main petition itself is not maintainable, since lease was a permanent one and so enquiry Court has no jurisdiction to entertain the petition for the eviction.



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3.The Execution Court without even numbering the petition rejected the same by going into the merits of the matter observing that the petitioner exhausted remedy by filing I.A.No.53 of 2018 to set aside the exparte order. That application was dismissed. Against which, Revision was preferred. Revision was also dismissed on 05.02.2020. The revision petitioner ought to have been pleaded the facts before the Rent Controller during trial. Without participating in the enquiry process this petition is filed to delay the delivery process.

4.Heard both sides.

5.The learned counsel for the revision petitioner would submit that when the Rent Controller lacks jurisdiction to entertain the petition for eviction, it is nullity, which can be challenged by way of filing Section 47 CPC. For that purpose he would rely upon the Judgment of the Honourable Supreme court made in the case of ***Sunder Dass Vs. Ram Prakash*** reported in ***(1977) 2 SCC 662*** and in the case of ***Harshad Chiman Lal Modi Vs. DLF Universal Ltd., and another*** reported in ***(2005) 7 SCC 791***.



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6.I am not going to touch upon the merits of the matter. Whether the Rent Controller passed the order by exercising the jurisdiction conferred upon him as per the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, is beyond the scope of this revision. So I am not expressing any opinion on that. It is left open to be decided by the Execution Court on its judicial side.

7.Similarly, the respondent also relies upon various judgments touching upon the merits of the claim made by the revision petitioner.

1. The Judgment of the Honourable Supreme Court of India made in the case of *Mumtaz Yarud Dowla Wakf Vs. M/s Badam Balakrishna Hotel Pvt. Ltd. & Ors.* in *Civil Appeal No.6933 of 2023 (Arising out of SLP (C) No.997 of 2022) dated 20.10.2023,*
2. The Judgment of the Honourable Supreme Court Court made in the case of *Pradeep Mehra Vs. Harijivan J.Jethwa (Since deceased Thro. Lrs.) & Ors.* reported in *2023 Live Law (SC) 936* and
3. The Judgment of this Court made in the case of *Ondimuthu @ N.O.Muthu Vs. Arulmigu Meenakshi Sundareswarar*



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Devasthanam, Madurai, through its Executive Officer and Ors.

WEB COPY reported in **2018 (6) CTC 709.**

8.For the very same reasons stated above, I am not going to the merits of the matter. But, here the problem lies in the order passed by the Execution Court. It ought to have entertained the petition on its judicial side and should have decided same. Rejection of a petition on its administrative side even without numbering the same is improper. Because rejection of a plaint or petition will amount to a decree. Against which appeal will lie. So that will be possible only if the petition is entertained on the judicial side. Merits of the matter ought not to have decided on its administrative side.

9.On the sole ground the order passed by the Execution Court is set aside. The matter is remitted back with a direction to process the petition on its judicial side, if any doubt arises with regard to the maintainability it shall be decided on the judicial side by affording opportunity to both sides. With this directions, this civil revision petition stands allowed. By considering the oldness of the matter, there shall be a



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direction to the execution court to complete the above said process within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

24.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

- 1.The Principal District Munsif, Tirunelveli.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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