



CRP(MD).No.3240 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.01.2025

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.3240 of 2024 and
CMP(MD).No.18664 of 2024

Victor : Petitioner / Respondent / tenant

Vs.

S.Siriyapushbam : Respondent / petitioner / landlady

PRAYER: Civil Revision Petition is filed under Section 115 CPC to set aside the fair and decreetal order, dated 29.11.2024 made in E.P.No.57 of 2023 in RCOP.No.12 of 2016 on the file of the Principal District Munsif, Thanjavur.

For Petitioner : Mr. K. Guhan

ORDER

This Civil Revision Petition is preferred against the order, dated 29.11.2024 passed in E.P.No.57 of 2023 in RCOP.No.12 of 2016 on the file of the Principal District Munsif Court, Thanjavur.



CRP(MD).No.3240 of 2024

2. The respondent herein filed RCOP.No.12 of 2016 before the Principal District Munsif Court, Thanjavur for evicting the revision petitioner from the petition property. The said petition was allowed. Against which the revision petitioner preferred RCA.No.2 of 2019 before the Principal Sub Court, Thanjavur and the same was dismissed. Aggrieved by this, the revision petitioner preferred CRP(MD).No.2337 of 2019 before this Court which was also dismissed by this Court. Thereafter, the revision petitioner filed E.P.No.57 of 2023 before the Principal District Munsif Court, Thanjavur under Order 21 Rule 35 r/w. Section 151 of CPC. The revision petitioner filed his counter resisting the above execution petition. However, the executing Court allowed the execution petition. Against which the present revision is preferred.

3. According to the revision petitioner, he filed the suit in O.S.No.56 of 2016 before the Additional District Munsif Court, Thanjavur against the respondent for permanent injunction restraining the respondent from interfering in his peaceful possession and enjoyment of the suit property and not to evict him except under due process of law. The above suit was decreed in favour of the revision petitioner.



CRP(MD).No.3240 of 2024

4. The learned counsel appearing for the revision petitioner submits that the Rent Controller has no jurisdiction to pass the eviction order, since the property is located at Vilar village and the Rent Controller do not have territorial jurisdiction to the said village. The revision petitioner also filed a suit in O.S.No. 283 of 2020 before the Principal District Munsif Court, Thanjavur seeking the relief of mandatory injunction to direct the Thasildar for renewing the shop licence situated in the petition mentioned property. It is further submitted that even during pendency of the RCOP proceeding, the revision petitioner had deposited the monthly rents before the Court. Since the respondent attempted to evict the revision petitioner forcibly, he was constrained to prefer a police complaint. Though all the above facts were narrated in the counter affidavit, the execution Court erroneously allowed the execution petition. The learned counsel further submitted that, the revision petitioner has kept his valuables, documents and a sum of Rs.3,00,000/- inside the petition shop. However, the respondent has removed the welded portion and interfered with the same. Hence, the revision petitioner filed an application under Section 47 r/w. 151 of CPC praying to accept his application and reject the execution petition. However, the executing Court returned the said application and allowed the execution petition. The learned counsel further submits that the



CRP(MD).No.3240 of 2024

revision petitioner has fair chance to succeed in the revision petition filed against the orders passed by the Rent Control Tribunal and the Rent Control Appellate Tribunal. Hence, prayed for staying all further proceedings in E.P.No.57 of 2023 in RCOP.No.12 of 2016 on the file of the Principal District Munsif Court, Thanjavur.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. It is not in dispute that the revision petitioner is a tenant in the petition mentioned property; that the respondent is the landlady; that eviction petition was filed by the respondent and the same was allowed by the Principal District Munsif, Thanjavur and the appeal preferred by the revision petitioner in RCA.No.2 of 2019 before the Principal Sub Court, Thanjavur was dismissed, against which, the revision petitioner preferred the revision in CRP(MD).No.2337 of 2019 before this Court. It is also not in dispute that the respondent filed the Execution proceedings before the Principal District Munsif Court, Thanjavur and the same was allowed. The executing Court allowed the Execution Petition holding that the decree holder / respondent is entitled to execute the decree. The decree in



CRP(MD).No.3240 of 2024

the RCOP proceeding was passed on 09.02.2019 directing the revision petitioner to vacate from the petition property. Thereafter, the revision petitioner preferred RCA.No.2 of 2019 and the same was also dismissed. Though the revision petitioner preferred the revision in CRP(MD).No.2337 of 2019, there is no order of stay. Therefore, the executing Court rightly allowed the Execution Petition. The application filed by the revision petitioner under Section 47 r/w. 151 CPC was returned by the execution Court as not maintainable. The revision petitioner evidently committed default in payment of rent. The executing Court also returned the application filed by the revision petitioner under Section 47 CPC as not maintainable. Section 47 of CPC reads as follows:

“47. Questions to be determined by the Court executing decree .-

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

[* * *]

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.”



CRP(MD).No.3240 of 2024

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7. A bare perusal of the aforesaid provision shows that all questions between the parties can be considered by the executing Court. But, the important aspect to remember is that these questions are limited to the “execution of the decree”. The executing Court can never go behind the decree. Under Section 47 of CPC, the executing Court cannot examine the validity of the order of the Court which had allowed the execution of the decree, unless the executing court order is itself without jurisdiction. The executing court, in my opinion took the correct decision in returning the application filed by the revision petitioner under Section 47 CPC on the ground of maintainability. No infirmity or irregularity found in the return order passed by the executing court. The executing Court is hereby directed to proceed with and complete the execution as expeditiously as possible, but at any event within a period of one month from the date a copy of this order is placed before the Court. However, liberty is given to the revision petitioner to move an application for appointment of an Advocate Commissioner to assist the Court Ameen to take the inventory of the articles at the time of taking delivery of the petition mentioned property. The executing court shall consider the said application on its own merits and dispose the same in accordance with law.



CRP(MD).No.3240 of 2024

8. Accordingly, this Civil Revision Petition is disposed of. No costs.

Consequently, the connected Miscellaneous Petition is closed.

02.01.2025

Index : Yes / No

Internet : Yes/ No

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Note: Issue order copy on 02.01.2025

To

The Principal District Munsif, Thanjavur.



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CRP(MD).No.3240 of 2024

K. GOVINDARAJAN THILAKAVADI, J.,

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C.R.P(MD)No.3240 of 2024 and
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02.12.2025