



**A.No.707 of 2024
in
A.No.1826 of 2023
in
E.P No.107 of 2022**

**MASTER
26.02.2026**

ORDER

1. This is an application filed by the applicant/3rd party to take note of the illegal dispossession of the applicant herein and order restoration of possession to the applicant.

2. The case of the applicant is that she is a tenant in respect of a portion of the property at No.26/6, Somu Chetty Street, 5th Lane, Royapuram, Chennai for over a decade, under the 2nd respondent and thereafter under the 3rd respondent herein on a monthly rent of Rs.2,500/- and she was running a business dealing with old cardboard boxes and iron scrap business, which is her only source of livelihood. The applicant further stated that on 20.12.2023 certain persons claiming to be from this court visited the place of business and insisted her to vacate and she informed them that she is a tenant in the premises. Thereafter, she issued notice to the Inspector, Royapuram Police Station and to the Commissioner of Police on 21.12.2023 narrating the facts and similar notice was also issued to the 1st respondent. While so, on 03.01.2024 at about 10.40 a.m a person claiming to be the Bailiff police and some other men along with the 1st respondent came to the place of business of the applicant under the guise of an order of this court and illegally broke into the shop space and threw away all the properties



without a proper eviction order against her in collusion with the court Bailiff.

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3. The 1st respondent filed his counter stating that he filed a suit for specific performance in C.S.No.944 of 2017 against R2 to R4 and after full trial the suit was decreed on 10.08.2022 in favour of the 1st respondent, subsequent to which he filed E.P.No.107 of 2022 under Order 21, Rule 24 of C.P.C and this court executed a sale dated 08.03.2023 vide Document No.857/2023 on the file of SRO, Royapuram, Chennai in his favour. Thereafter, he filed A.No.1826 of 2023 along with a certified copy of the sale deed for deliver of possession which was allowed by this court along with break open and police aid orders based on which the court Bailiff after executing the delivery warrant on 03.01.2024 handed over the vacant possession of the suit property and the E.P was terminated on 05.01.2024 based on the Bailiff report. The 1st respondent further stated that nowhere in the Bailiff report, the presence of this applicant as a tenant in the premises first recorded. The present petition is nothing but a vexatious, frivolous application filed by the applicant in collusion with R2 to R4.

4. Heard both side counsels. On the side of applicant, the applicant was examined as PW1 by filing proof affidavit and Ex.Nos.A1 to A6. Ex.A1 (series Nos.9) are the photocopies of the rent receipts issued to the applicant. Ex.A2 (series Nos.2) are the photocopies of water can receipts. Ex.A3 is the photocopy of the police complaint dated 21.11.2023 lodged by the applicant to the Inspector of Police, Royapuram and the Commissioner of Police, Chennai. Ex.A4 is the postal tracking of the letter sent to the Commissioner of Police, Ex.A5 is the postal tracking of the letter sent to the Commissioner of Police and Ex.A6 is the certificate under section 65 (B) of Indian Evidence Act, 1872. On the side of 1st respondent no oral evidence let in and Ex.R1 marked through PW1 cross. The learned counsel for the applicant submitted that since,



the delivery was taken and the building in the suit premises was demolished there can be no possibility of re-possession and so this court may award compensation to the applicant for her ill-legal dispossession of the suit premises by the 1st respondent.

5. Materials on record perused. It is seen that the present applicant claims her right through the 2nd and 3rd respondent as a tenant for about 10 years. The main execution petition was filed by the 1st respondent/decreed holder to direct the Assistant Registrar (Original Side) of this Hon'ble Court to execute the registered sale deed in favour of him in respect of this suit property morefully described in the schedule as the Judgment Debtor/4th respondent defaulted to execute the sale deed as per the Judgment in C.S.No.944 of 2017 which was allowed by this court on 01.02.2023 and the sale deed was executed by the Assistant Registrar (Original Side) on 08.03.2023 subsequent to which the E.P was terminated. Thereafter, the 1st respondent filed an application for delivery of vacant possession of the suit property by removing the respondents 2 to 4/Judgment Debtors 2 to 4 or any other person who is bound by the decree which was allowed by this court on 29.03.2023 and delivery was ordered. From then on court Bailiffs visited the E.P schedule mentioned property for execution of warrant on 13.04.2023, 21.11.2023, 03.01.2023 and finally on 03.01.2024 the Bailiff has handed over the vacant possession of the property to the decreed holder.

6. Now, this application has been filed by the applicant claiming to be a tenant under the 2nd and 3rd respondents who are the Judgment Debtors 1 and 2 herein, alleging illegal dispossession and restoration of possession or in the alternative compensation contending that her tenancy is prior to the agreement of sale in favour of the decreed holder. The admitted facts are that the decreed holder has filed a suit for specific performance which was decreed in his favour and delivery of possession was



effected through court process. Based on the bailiff's report delivery was recorded and EP terminated.

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7. Under Order 21, Rule 99 C.P.C a person other than the Judgment Debtor who is dispossessed in execution may make an application to the court complaining of such dispossession and seek for adjudication. However, such person must establish an independent right, title or interest in the property. The Hon'ble Supreme Court in **Silver Line Forum Private Limited ---Vs--- Rajiv Trust AIR 1998 SC 1754** has held that resistance by a third party must be adjudicated only if an independent right is disclosed. Similarly, in **Usha Sinha ---Vs--- Dina Ram AIR 2008 SC 1997**, it has been held that “persons claiming through the Judgment Debtor are bound by the decree unless they establish an independent right existing prior to the decree. In the present case though the applicant alleges that the tenancy is prior to the agreement of sale. She has not substantiated the same by way of proper and satisfactory evidence. Further, the petitioner did not restrict or obstruct delivery at the time of execution on 03.01.2024 when the court Bailiff handed over the vacant possession to the decree holder. Further, perusal of the Bailiff reports available in the court, nowhere in their report the Bailiffs had noted down the presence of applicant/3rd party in the E.P schedule mentioned property and the report dated 04.01.2024 reads as follows:

8. *“On 03.01.2024 when the Bailiff went to the spot along with the police, found the doors of all the 9 rooms locked which had break open and after taking inventory of all the 9 rooms, the premises was locked and possession was handed over to the decree holder. As the compound wall was in a dilapidated condition the property was fenced by the decree holder in the presence of Bailiff which was also locked and the keys were handed over to the decree holder. Documents relied on by the applicant*



to prove that she is the tenant in R2 and R3 is Ex.A1 (series of rental receipts) which pertains subsequent to the date of execution of agreement of sale on 05.04.2017 by the Judgment Debtors in favour of the decree holder. Ex.A2 (series of photocopies of the water can receipts alleged to be issued by SPK Water Supply which speaks nothing about tenancy of the applicant under the respondents 2 to 4 in the E.P schedule mentioned property. Ex.Nos.A3 to A5 are nothing but the police complaint lodged by the applicant to the Inspector of Police and Commissioner of Police which also do not prove the tenancy as alleged by the applicant. Furthermore, the applicant herself during cross examination has admitted that the 2nd respondent Gnanajyothi has vacated the property mentioned in the application and move to another residence and also had admitted that the property has been demolished by the person who purchased it.”

9. Once delivery has been effected and recorded the executing court cannot reopen execution proceedings unless the applicant establishes a legally substantial independent right under order 21, Rule 99 C.P.C. In the absence of such proof the applicant who claims her right through JD 1 and 2 is also bound by the decree. Similarly, the execution court has no jurisdiction to award compensation in execution proceedings in the absence of the statutory proceedings. Therefore, this court is of the opinion that the applicant failed to establish that she has any subsisting independent right in respect of the E.P schedule mentioned property and so this court is not inclined to entertain this application.

In the result, this application is dismissed. No cost.

Sd/-
MASTER

Petitioner side Witness: PW-1 Mrs.Annamariya.

Petitioner side Exhibits:



Ex.A1 (series Nos.9) : Photocopies of the rent receipts.

Ex.A2 (series Nos.2) : Photocopies of water can receipts.

Ex.A3 : Photocopy of the police complaint dated 21.11.2023

Ex.A4 : Postal tracking of the letter sent to the Commissioner of Police,

Ex.A5 : Postal tracking of the letter sent to the Commissioner of Police

Ex.A6 : Certificate under section 65 (B) of Indian Evidence Act, 1872.

Respondent side Witness: Nil

Respondent side Exhibits:

Ex.R1 (Series Nos.2) : Photographs

Sd/-

MASTER