

(2012) 06 MAD CK 0018

In the Madras High Court

Case No : C.R.P. (NPD) No. 3911 of 2010 and M.P. No. 1 of 2010

Chandran, Sekar and Gopalakrishnan

APPELLANT

Vs

K.M. Muthusamy and A.V. Murugasamy

RESPONDENT

Date of Decision : 22-06-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 36, Order 21 Rule 96, Order 21 Rule 97, Order 21 Rule 98

Citation : (2012) 4 CTC 603

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; A.K. Kumarasamy, for the Respondent

Judgement

G. Rajasuria, J.—Animadverting upon the order dated 7.8.2010 passed in E.A. No. 23 of 2009 in E.P. No. 62 of 2008 in O.S. No. 35 of

2002 by the learned Additional District Court/Fast Track Court No. 1, Erode, this Civil Revision Petition is focussed. A summation and

summarisation of the germane facts absolutely necessary for the disposal of this Revision would run thus:

R2/Murugasamy filed the Suit for Specific Performance and obtained the decree. Ultimately he got the Sale Deed executed in his favour. When he

filed E.P. to take delivery of the property concerned, the Revision Petitioners herein three in number filed Application under Order 21, Rule 36 of

C.P.C. claiming that they happened to be the Tenants and they should not be evicted otherwise than in accordance with law. The Application was

resisted by the Respondents; whereupon the Court rejected the Application.

2. Being aggrieved by and dissatisfied with the said rejection order, this Revision

has been focussed on various grounds.

3. Heard both sides.

4. The points for consideration are as to:

(i) Whether the Application filed under Order 21, Rule 36 of C.P.C. was a proper one to be filed before the Court or whether an Application

under Order 21, Rules 97 & 98 of C.P.C. was contemplated in this factual matrix?

(ii) Whether the Lower Court in *stricto sensu* treated the objectors' Petition as a Suit and dealt with the matter and rendered the order?

5. It is quite obvious that Application under Order 21, Rule 36 of C.P.C. as such is not maintainable. I would like to extract hereunder the relevant

provisions in this regard:

Order 21, Rule 36:

36. Decree for delivery of immovable property when in occupancy of Tenant. -- Where a decree is for the delivery of any immovable property in

the occupancy of a Tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall

order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of

drum or other customary mode, at some convenient place, the substance of the decree in regard to the property. Arrest and detention in the Civil

prison.

Order 21, Rule 96:

96. Delivery of property in occupancy of Tenant.-- Where the property sold is in the occupancy of a Tenant or other person entitled to occupy the

same and a certificate in respect thereof has been granted under Rule 94, the Court shall, on the Application of the purchaser, order delivery to be

made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or

other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Order 21, Rule 97

97. Resistance or obstruction to possession of immovable property.-- (1) Where the holder of a decree for the possession of immovable property

or the purchaser of any such property sold in execution of a decree is resisted or

obstructed by any person in obtaining possession of the property,

he may make an Application to the Court complaining of such resistance or obstruction.

[(2) Where any Application is made under sub-rule (1), the Court shall proceed to adjudicate upon the Application in accordance with the

provisions herein contained.]

Order 21, Rule 98:

[98. Orders after adjudication.-- (1) Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such

determination and subject to the provisions of sub-rule (2),--

(a) make an order allowing the Application and directing that the Applicant be put into the possession of the property or dismissing the

Application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the

judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the

pendency of the Suit or Execution proceeding, it shall direct that the Applicant be put into possession of the property, and where the Applicant is

still resisted or obstructed in obtaining possession, the Court may also at the instance of the Applicant, order the judgment-debtor, or any person

acting at his instigation or on his behalf, to be detained in the Civil prison for a term which may extend to thirty days.

6. A cumulative reading of the aforesaid provisions would amply make the point clear that, really a Tenant in occupation, who is not a party to the

decree, could certainly file an Application under Order 21, Rule 97, causing obstruction to the effect that in the event of ordering delivery, there

could only be symbolic delivery and not actual physical dispossession of the Tenant. In such a case, the Executing Court should have either

directed the E.A. to be rectified by the judgment-debtor or to be represented as an Application under Order 21, Rule 97 of C.P.C., but the

Lower Court simply took it as a Petition under Order 21, Rule 36, and after entertaining both oral and documentary evidence, summarily disposed

it of holding that those Petitioners were not the Tenants and they were persons set up by the judgment-debtor.

7. The learned Counsel for the Petitioners would submit that it was not at all in the mind of the Petitioners or the Respondents or the Court that the

said Application was deemed to be one under Order 21, Rule 97 of C.P.C. When such was the case, there was no likelihood of the parties

participating in the proceedings as though it was a Suit and the Court also dealing with the matter as a Suit and disposing it of. I could see

considerable force in the submission made by the learned Counsel for the Petitioners.

8. Whereas the learned Counsel for the Respondents would submit that this is a matter of the year 2002 and in fact, the Revision Petitioners, as

per their own version filed a Suit seeking injunction as against the judgment debtor, when such is the position, there is no genuineness on the part of

the Revision Petitioners in prosecuting their alleged false claim. At this juncture, this Court cannot come to the conclusion as to whether the claim of

the Petitioners is a false or true one. In this case, the Lower Court miserably failed to adhere to the provision of law. On seeing the Application

filed under Order 21, Rule 36 of C.P.C., it ought to have returned the Application for making necessary rectifications, but that was not done so.

Simply the matter was processed further like an ordinary I.A., without treating it like a Suit; No issues were framed as contemplated under Order

21, Rule 98 of C.P.C. Hence, the fact remains that any order passed under Order 21, Rules 97 & 98, should be deemed to be a decree, over

which Appeal lies. But in this case, without keeping those salient features in mind, simply the matter was disposed of. Hence, I would like to set

aside the order of the Lower Court and accordingly, it is set aside. The matter is remitted back to the Lower Court giving liberty to the Petitioners

to make necessary corrections and amendments in the Petition; whereupon the Respondents also shall have the opportunity of filing additional

pleadings and thereafter issues should be framed by the Lower Court and both sides should be given opportunity to adduce evidence thereon and

accordingly, by treating the matter as a Suit, judgment should be delivered within a period of two months thereafter, for which both parties shall

co-operate.

Accordingly this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.