

(2003) 01 MAD CK 0111

In the Madras High Court

Case No : Civil Revision Petition (NPD) No. 1826 of 2002 and C.M.P. No's. 19069, 19070 and 19342 of 2002

Christian Vellalar Sangam

APPELLANT

Vs

Jeffri Sam Balan, represented by his father and guardian, Y. Dhanapaul, Sekar, Smt. Catherane and Dr. Reginald

RESPONDENT

Date of Decision : 31-01-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2003) 2 LW 408 : (2003) 1 MLJ 665

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : G. Subramanian for P. Peppin Fernando, for the Appellant; T.R. Rajagopalan for first respondent for T.R. Rajaraman, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Aggrieved by the order in unregistered E.A. General No. 14969 of 2002 in E.P. No. 211 of 2002 in R.C.O.P. No. 66

of 1998 on the file of the Rent Controller (District Munsif), Tirunelveli dated 17-12-2002, the petitioner/third party has filed the above Revision

under Article 227 of the Constitution of India.

2. According to the petitioner Sangham, it is in possession of upstairs in door No. 260, Tiruchendur Road, Palayamkottai. The said properties

belongs to Muthiah Pillai Tamil Language Trust. One Jayanth Rhenius got a letter of administration in O.P. No. 515/1996 on the file of the Original

Side of this Court and on the basis of it, he had sold the property to the first respondent. The petitioner Sangham which is interested in the Muthiah

Pillai Tamil Language Trust, filed O.A. No. 5109/2001 before this Court to revoke the said order of letter of administration. The said application

was dismissed. The petitioner filed O.S.A. No. 398 of 2002 against the said order. In the said O.S.A. No. 398 of 2002, this Court passed status-

quo order in C.M.P. No. 15769/2002 on 25-11-2002. The first respondent herein filed R.C.O.P. No. 66/98 against 2nd and 3rd respondents in

respect of door No. 260, Tiruchendur Road, Palayamkottai. The said R.C.O.P. was allowed. Hence the first respondent took steps to execute the

decree in E.P. No. 211/2002. In the said petition the petitioner filed an application under Order XXI, Rule 97 C.P.C. to entertain the petitioner's

lawful obstruction and resistance of the attempt of the first respondent taking in delivery of the property. The first respondent filed an objection to

the said application. By the impugned order dated 17-12-2002, the Court below dismissed the said application as not maintainable in law, hence

the present Revision under Article 227 of the Constitution before this Court.

3. Heard Mr. G. Subramanian, learned senior counsel for the petitioner and Mr. T.R. Rajagopalan learned senior counsel for the first

respondent.

4. After taking me through various earlier proceedings and the order under challenge, Mr. G. Subramanian, learned senior counsel for the

petitioner, would contend that in the light of the status-quo order passed by this Court in C.M.P. No. 15769/2002 in O.S.A. No. 398/2002 dated

25-11-2002, the Court below committed an error in dismissing the application filed by the petitioner Sangham as not maintainable. He further

contended that the reasons given by the lower court are not correct and that the petitioner, who is a third party in the rent control proceedings,

having no other course filed a petition under Order 21, Rule 97 read with Section 151 of the Code of Civil Procedure. In such a circumstance, the

learned District Munsif ought to have numbered the application and disposed of the same, after affording opportunity to the petitioner Sangam to

lead evidence, both oral and documentary. On the other hand, Mr. T.R. Rajagopalan, learned senior counsel for the first respondent, would

contend that it is obvious to note that it is the 4th respondent who has set up the petitioner sangam to file the present application under Order 21,

Rule 97 C.P.C. for obstructing delivery of the property. He further pointed out that the petitioner sangam has not pleaded an independent right

over the property and when a prima facie case is not made out to show that the

petitioner has a right to file the said petition under Order 21, Rule

97 C.P.C., he cannot maintain a petition, that too after an order of delivery was passed by the executing court as early as 7-11-2001. According

to him, the present application is nothing but a calculated and deliberate attempt of the petitioner herein to protract the lawful order passed by the

rent controller, and it is an abuse of process of law; hence the petitioner as well as the respondents 2 to 4 herein are liable to be prosecuted for

committing criminal contempt.

5. I have carefully considered the rival submissions.

6. In an answer to the rival contentions, it is useful to refer the factual details. The property which is the subject matter of the proceedings was

purchased by the first respondent herein for valuable consideration. At the time of purchase, respondents 2 and 3 herein were tenants. The first

respondent herein filed R.C.O.P. No. 66/98 on the file of the Rent Controller, Tirunelveli against the tenants for eviction on various grounds. The

4th respondent herein filed a suit, viz., O.S. No. 250/98 on the file of the Additional District Munsif, Tirunelveli for a permanent injunction

restraining the defendants including the first respondent herein from interfering with his peaceful possession, otherwise than by due process of law.

The 4th respondent claimed in the said suit that he is a statutory tenant, entitled to the protection of the Rent Control Act. Both the proceedings

namely RCOP No. 66/98 and O.S. No. 250/98 were tried together and ultimately the Rent Controller allowed the eviction petition filed by the

first respondent and dismissed the suit filed by the 4th respondent, holding that respondents 2 and 3 herein alone are tenants and that the 4th

respondent has no right either as a tenant or as a person in possession of the property. As against the decision of the trial court, the 4th respondent

filed an appeal in A.S. No. 3/1999 on the file of Subordinate Judge, Tirunelveli and the respondents 2 and 3 herein filed R.C.A. No. 36/99 before

the appellate authority. The appeals preferred by respondents 2 to 4 were dismissed confirming the findings given by the Rent Controller. The

respondents 2 to 4 herein have filed C.R.P. No. 2522 of 2001 and Second Appeal No. 1373/2001 before this Court. This Court, after

considering the case on merits, dismissed the C.R.P. as well as the second appeal by a common judgment dated 2-11-2001. As against the said

judgment, the respondents 2 to 4 herein filed SLP Nos. 22122 to 22124 of 2001. The Special Leave Petitions were also dismissed by the Supreme Court. As rightly pointed out, it is relevant to note that respondents 2 to 4 herein engaged the same counsel to represent their cause throughout. It is further seen that after the disposal of the matter by the Supreme Court, the petitioner herein filed an application in O.A. No. 5109/2001 in O.P. No. 515/96 seeking to revoke the letter of administration granted in the said O.P. The said application was dismissed.

However, the petitioner herein has filed an appeal, viz., O.S.A. No. 398/2002 and the same is pending. Respondents 2 and 3 herein who suffered an order of eviction, contested the matter in E.P. No. 211/2001 in R.C.O.P. No. 66/98. It is further seen that on 7-11-2001 the execution petition was allowed and delivery was ordered. On 8-11-2001, when the Ameen went to the premises for execution of warrant of delivery, reported that the premises was locked and that the respondents 2 and 3 herein were not available. Subsequently, the first respondent herein filed a petition in E.A. No. 545/2002 to remove the lock and break open the door and E.A. No. 546/2002 to give police protection to evict the respondents 2 and 3 herein from the demised property. The tenants thereafter filed a petition on 28-2-2002 before the executing court to stay all further proceedings in E.P. No. 211/2001 in RCOP No. 66/98. The said application was also rejected. On the same day, the 4th respondent herein as third party to the rent control proceedings filed E.A. No. 251/2002 raising an obstruction for the delivery of the property pursuant to the order of eviction against the respondents 2 and 3 herein. The said application was resisted by filing counter affidavit by the first respondent herein. After prolonging the matter, it is seen that the 4th respondent has set up the petitioner sangam to file another application under Order 21, Rule 97 C.P.C obstructing delivery. Though it is stated in their affidavit that they are in lawful possession from 1992, admittedly, no rent was fixed or paid at any point of time.

The petitioner has not pleaded an independent right over the property bearing door No. 260, Tiruchendur Road, Palayankottai and also has not made out a prima facie case to file a petition under Order 21, Rule 97 C.P.C. Learned senior counsel for the first respondent, after taking me through the earlier proceedings, extensively pointed out that the petitioner herein is claiming under the 4th respondent and they cannot maintain a

petition under Order 21, Rule 97, that too after the delivery order was passed by the executing court as early as 7-11-2001.

7. It is further seen that in the course of rent control proceedings, an Advocate Commission was appointed to inspect the demised premises and he

submitted his report. The said report has been marked as a document in E.A. No. 251 of 2002. After inspection, the Advocate Commissioner

submitted a report wherein it is stated that the upstairs portion where the petitioner claimed to be in possession was vacant and that there was no

traces of enjoyment by anybody. The Commissioner has also mentioned that the entire upstairs portion has been damaged and unused for several

years. As rightly pointed out, even in the petition filed by the 4th respondent namely E.A. No. 251/2002, the 4th respondent has not mentioned

that the premises were being occupied or enjoyed by the first respondent herein. The materials placed would clearly show that the petitioner herein

has any semblance of right over the demised premises. Considering the objections raised, the Court below though has not assigned separate

number for the petition filed under Order 21, Rule 97, framed necessary points for consideration and considered the claim of both parties and

found that it is nothing but a calculated and deliberate attempt to protract the execution of a lawful order passed by the Rent Control Court in

favour of the first respondent. A perusal of the certified copy of the order which is under challenge, shows that except the fact that the petition

under Order 21, Rule 97 C.P.C. having not been assigned with a number, the learned District Munsif, after determining the relevant issues,

considered the case of both parties. Though Mr. G. Subramanian, learned senior counsel for the petitioner, vehemently contended that they were

not given opportunity to lead evidence and mark documents, a perusal of the certified copy of the order shows that an opportunity was given to the

parties and neither of them examined any witness nor marked any document in support of their respective claim. In such a circumstance, I am

unable to appreciate the contention raised by the learned senior counsel for the petitioner. As a matter of fact, the Court below considered both the

factual and legal aspects before negating the claim of the petitioner herein. The sequences narrated above would clearly show that the Court

below not only considered all the materials, but also exposed the deliberate attempt made by the petitioner herein to protract the execution of the

lawful order passed by the Rent Controller.

8. Learned senior counsel for the petitioner has relied on the following decisions: (1) R. Rangantha Naidu Vs. R. Subramaniya Mudaliar, (2)

Shreenath and Another Vs. Rajesh and Others, : (3) Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another, : and (4) Tanzeem-e-Sufia Vs. Bibi

Haliman and Others, : in order to show how the petitions filed under Order 21, Rule 97 C.P.C have to be considered and disposed of. There is no

dispute with regard to the proposition laid down in those cases. It is settled law that after the Amendment Act, 1976(Act IV of 1976), if there is

any dispute or question relating to delivery of possession, the same has to be determined by the Court executing the decree and not by a separate

suit. I have already referred to the fact that in view of the valid objection raised by the first respondent herein, though the learned Principal District

Munsif has not assigned a separate number to the petition filed under Order 21, Rule 97, after determining the point for consideration and after

elaborately discussing all the materials, rejected the claim of the petitioner. Accordingly, I am unable to accept the argument of the learned senior

counsel for the petitioner. There is no dispute that this Court by exercising jurisdiction under Article 227 of the Constitution can set aside the order

of the Court below, if the findings arrived at by the Court below are based on no evidence or so perverse that no reasonable person could come to

such conclusion. I have already referred to the discussion of the Court below, the various litigations, etc. Absolutely there is no case made out for

interference by this Court under Article 227 of the Constitution. The jurisdiction under Article 227 is exercisable only when a grave error has

resulted in injustice. Though Mr. T.R. Rajagopalan, learned senior counsel for the first respondent, has referred to various decisions of the Apex

Court with regard to power of this Court exercisable under Article 227 of the Constitution, in the light of the factual details furnished, the earlier

civil and rent control proceedings and also of the fact that delivery order was passed even as early as 7-11-2001, I am of the view that it is

unnecessary to refer those decisions in detail. It is also to be noted that though the Division Bench of this Court directed the parties to maintain

status-quo in C.M.P. No. 15769/2002 in O.S.A. No. 398/2002 dated 25-11-2002, as rightly explained, the fact is that no change should be

effected in the property which is the subject matter of the proceedings. Here again, I have verified the relief prayed for in the said C.M.P. as well

as the stand of the petitioner before the Court below and I am satisfied that the learned Prl. District Munsif has neither exceeded his limit nor

violated the limited order passed by the Division Bench of this Court. I am also satisfied that the petitioner sangam has not established its right over

the property, which is the subject matter in this Revision, in the manner known to law. I am also satisfied that the executing Court after considering

the merit of the case pleaded by the petitioner herein, rightly rejected the unnumbered petition filed in E.P. No. 211/2002. The Court below has

also considered both factual and legal aspects before negating their claim. In the light of the abundant factual details and in view of the settled

position of law, I am of the view that the petition has not made out a case for interference by this Court exercising power under Article 227 of

the Constitution.

9. Net result, the Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected C.M.Ps., are closed.