
(1997) 09 MAD CK 0159
In the Madras High Court
Case No : C.R.P. No. 2520 of 1997

G. Ganapathy Puratchi Dasan	Vs	APPELLANT
Y. Sudhakar Reddy represented by power Agent B.N. Anand		RESPONDENT

Date of Decision : 15-09-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (1997) 09 MAD CK 0159

Hon'ble Judges : S.M. Abdul Wahab, J

Bench : Single Bench

Advocate : S.K. Sundaram, for the Appellant; N. Krishnamitra, for the Respondent

Judgement

S.M. Abdul Wahab, J.—This Civil Revision petition has been preferred by the petitioner against the order dated 7.8.1997 in Transfer O.P. No. 81 of 1997 on the file of the Chief Judge, Small Causes Court, Madras. The petitioner is a tenant. R.C.O.P. No. 208 of 1990 was filed against him. On 16.4.1993 the said petition was ordered. As against the same one appeal was also preferred in R.C.A. No. 948 of 1993. The appeal was dismissed. As against the said order C.R.P. No. 2960 of 1996 was preferred by the petitioner and there again, he was unsuccessful as it could be seen from the order dated 21.2.1996 in C.R.P. 2960 of 1996.

2. After he failed in the eviction proceedings, the respondent filed E.P. No. 131 of 1997 for delivery of possession. At that stage, it appears that he filed a petition M.P. No. 196 of 1997 requesting to stay the proceedings since he wanted to move the Supreme Court. Even though time was granted till 30.4.97 there was no proceeding initiated in Supreme Court. Instead of moving the Supreme Court, the petitioner filed on 7.4.1997 a petition u/s 47, C.P.C. before the executing court.

3. The contention urged by the petitioner in S. 47, C.P.C. Petition is that the original order passed in R.C.O.P. 208 of 1990 is null and void since the order has

been obtained by a power of Attorney without producing a proper power of Attorney. According to the petitioner, the power of Attorney produced before the Rent Control Authority was to give evidence and not to initiate any proceedings. He also filed a petition before the Execution Court for direction to produce the original power of attorney. The said petition is M.P. No. 289 of 1997.

4. After the petition S. 47, C.P.C. was filed without giving any opportunity to the petitioner, the Executing Court straightaway posted the matter for orders. Hence he filed a petition before the Chief Judge, Small Causes Court, Madras for transfer. The Chief Judge, Small Causes Court, Madras rejected his application for transfer by his order dated 7.8.1997. Aggrieved by the same, he has moved this Court in the present C.R.P. The Respondent's contention is that the very same contention, namely power of attorney produced before the Rent Control Authority at the time of initiating the proceedings for eviction is not valid, was raised in the Rent Control proceeding before the Appellate Court as well as before the High Court, when the matter was pending before it by way of Civil Revision Petition as mentioned above. Further, in the counter which was filed before the Chief Judge, Small Causes, opposing the transfer petition, it is stated that pursuant to the petition filed by the petitioner in M.P. 289 of 1997, the original was produced before the Executing court and it was also perused by the counsel for the petitioner and the Executing court recorded a note also on this aspect stating that the tenant's counsel on a perusal of the original power of attorney was satisfied with reference to the execution of the power of Attorney.

5. After going through the allegations contained in the petition as well as the counter, the learned Chief Judge, Small Causes Court, has rejected the application for transfer.

6. The learned counsel for the petitioner once again urged that the power of attorney granted for R.C.O.P. No. 208 of 1990 did not authorise the power of attorney to institute Rent Control proceedings. But it is only to give evidence on behalf of the petitioner therein.

7. In this court, the learned counsel for the respondent produced the original power of Attorney dated 20.11.1989. The same has been executed before the Attached, Embassy of India, Kuwait. It is also stated that it was signed in the presence of the "Attached" and the seal of Embassy of India is also attached in the original power of Attorney. The original was also perused by the counsel for the petitioner. According to the learned counsel for the petitioner after perusal of the same, the power of attorney does not authorise to the Rent Control petition even before the Rent Controller. According to him a reading of the same shows that the power of attorney has already been executed and the power is given only to proceed further with the said initiated proceedings. The relevant clauses are extracted below:-

"Clause I purports to enable the power of attorney to make representation on behalf of the principal. Clause 3 enables the power of attorney to sign and verify

petitions, counter statements in R.C.O.P. 208/1990."

It is not in dispute that the R.C.O.P. No. 208/1990 was only filed on 22.1.1990. In paragraph 6 of the original order dated 16.4.1993 by the Rent Controller in R.C.O.P. No. 208 of 1990 this fact is stated. From the aforesaid facts, it is clear that the Rent Control petition was filed subsequent to the power of attorney dated 20.11.1989. Even though the wordings are not properly worded a plain reading of all the clauses in the power of attorney goes to show that the agent is empowered to sign and verify petitions etc. Clause 2 also shows that he can appoint and engage an advocate to prosecute and conduct cases on behalf of the principal. Therefore, it is clear that the Agent can sign the petition and engage advocate, That means the agent is empowered to file the petition.

Apart from the above it is also brought to my notice that this aspect of the matter was already raised before the Rent Controller as well as the Appellate Authority and finally before this Court in C.R.P. 2960 of 1996. In paragraphs 14 and 15 the learned Judge of this Court Justice S.S. Subramani by his order, dated 1.2.1997 has observed as follows :-

"14. Paragraph 6 of the order of the Rent Controller has given detailed reasons why the case of the revision petitioner cannot be accepted.

15. The very same contention was urged before the Appellate Authority also. The authority below also did not accept the arguments of the counsel regarding the maintainability. After the eviction petition was filed, the landlord himself came over to India and at that time an attempt was made to examine him. He was examined in part and the case got adjourned and by that time, he had returned to Gulf Countries. It became, therefore, necessary to execute another power of attorney which is Ex.A.1. It was executed in India. The Rent Controller has seen the earlier power of Attorney and he has given reasons to hold that the eviction petition is maintainable. The same is also accepted by the authority below. No other materials is placed before this Court to come to a different conclusion."

As per the above observations, it is clear that the matter has already been dealt with by the three courts. In the circumstances, the attempt of the petitioner to raise the very same contention once again is not justified. The learned Chief Judge, Small Causes Court has dealt with all these points in his order. In paragraph 7 he has noted that it was brought to his notice that the counsel for the respondent produced the power of attorney and it was verified by the executing court as well as the counsel for the petitioner herein and the genuineness of the same was accepted. Of course, the learned Chief Judge, Small Causes Court has given other reasons also for rejecting the petition for transfer, namely, the non-payment of Rs. 1,32,000/- and the suppression of Transfer Petition No. 50 of 1997 filed earlier. In my view the substance of the grievance of the petitioner is that the original power of Attorney dated 20.11.1989 did not authorise the agent to institute eviction proceedings and for the said purpose he should be given an opportunity in the execution proceedings,

u/s 47 C.P.C. to give evidence. As we have seen already, there is no justification for the said contention. In the circumstances, there is no justification for allowing the Transfer Petition on the ground that the respondent was not given sufficient opportunity to produce evidence on the aspect, namely that the original power of attorney in R.C.O.P. 208 of 1990 did not authorise the agent to institute eviction proceedings. For the foregoing reasons, I find that there is no substance in the Civil Revision Petition. Accordingly, it is dismissed. However, there will be no order as to costs.