

(2005) 09 MAD CK 0074

In the Madras High Court

Case No : C.R.P. (NPD) No. 1770 of 2005 and C.M.P. No. 15645 of 2005

Kamalam

APPELLANT

Vs

Palpannaicherry Mariyamman Temple

RESPONDENT

Date of Decision : 17-09-2005

Acts Referred:

Citation : (2005) 09 MAD CK 0074

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : P.M. Subramaniam, for the Appellant;

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—The order of eviction passed by the learned District Munsif, Nagapattinam in E.P. No. 225 of 2004 in O.S. No. 353 of 1994 is challenged by the revision petitioner/defendant.

2. Originally the suit is for recovery of possession and the proceedings went on to the stage of second appeal before this Court in S.A. No. 50/98, wherein, a compromise memo was filed containing different stipulations. Pursuant to the compromise, a decree was passed which would be binding on the parties. The respondent temple made an execution petition in E.P. NO. 225/2004 seeking eviction of the revision petitioner/ defendant from the petition mentioned property. The application was opposed by the revision petitioner by filing a detailed counter. After hearing both sides, the learned District Munsif, Nagapattinam, passed an order of eviction and allowed the Execution Petition. Aggrieved over the same, the revision petitioner has brought forth this revision petition before this Court.

3. The only contention put forth by the learned counsel for the petitioner before this Court is that as per the memo of compromise, a decree was passed in S.A. No. 50/98 and it was agreed that monthly rent of Rs. 200/- should be paid on or before 5th of every month commencing from April 1998 and if not paid, the

decree for possession passed by the court below should be executed forthwith. Further, monthly rent of Rs. 200/- was subject to periodical revision of 10% once in three years and the same should be calculated on the basis of the previous rent when the increase was made. In the instant case, the revision petitioner was making the payment regularly and in so far as the increased rent is concerned, there was no revision or communication calling upon the revision petitioner to make such payment. Hence, she did not pay further. Subsequently, the entire payment has been made. Under the circumstances, the learned District Munsif, Nagapattinam, should have dismissed the Execution Application for delivery.

4. The court heard the learned counsel for the revision petitioner and on perusal of the materials available on record, the Court is of the considered opinion that the revision petition has got to be dismissed.

5. Admittedly, the proceedings between the parties culminated in S.A. NO. 50/98, which more appropriately recommends terms of compromise, which reads as follows:-

"1. The defendant (Appellant) shall pay the arrears of rent upto March 1997 at Rs. 4/- p.a. amounting to Rs. 108/-, and from 1.4.97 at Rs. 200/- p.m. The arrears from 1.4.97 to 31.3.98 amount to Rs. 2400/-. The entire arrears of Rs. 2508/- shall be paid within 8 weeks i.e. on or before 18.5.98.

2. The monthly rent from 1.4.98 shall be paid on or before 5th of the current month.

3. The defendant-Appellant shall be in occupation as a tenant only in respect of the property described in the schedule to the plaint in O.S. NO. 353/94 DMC, Nagapattinam, viz., 750 sq.ft. She shall not encroach upon any other remaining portion of the temple land.

4. If the defendant-Appellant does not pay the arrears of Rs. 2508/- on or before 18.5.98, or the agreed monthly rent of Rs. 200/- on or before 5th of every month, commencing from April 1998, the decree for possession passed by the Court below shall be executed forthwith.

5. The monthly rent of Rs. 200/- is subject to periodical revision of 10% once in 3 years and the same shall be calculated on the basis of the previous rent when the increase is made. "

6. Clause 3 of the compromise would clearly reveal that the revision petitioner should be in occupation as a tenant only in respect of property described in the schedule to the plaint in O.S. NO. 353/94 on the file of DMC, Nagapattinam, viz., 750 sq.ft. and she shall not encroach upon any other remaining portion of the temple land. The Execution Petition filed by the temple would clearly reveal that the tenant has not handed over the possession in respect of other part viz., which was in her occupation in excess of 750 sq.ft. The counter filed by the revision petitioner before the lower court in the execution petition would also clearly reveal that she has been in possession of the property in excess of 750

sq.ft. even today and she has no objection for the portion being taken delivery by the temple. This part of the counter filed by the revision petitioner would be indicative of the fact that the revision petitioner/tenant has been in possession of the entire property in excess of 750 sq.ft. despite the decree that was passed in the second appeal.

7. Under the circumstances of the case, the Court is of the considered opinion that it would be suffice to allow the application for execution before the lower court. It is true that there was a clause stipulating the periodical revision and enhancement of rent at the rate of 10%, once in three years. The trial Court has also given a finding that as per the stipulation, the petitioner has not paid the monthly rent, according to the periodical revision. The Execution Petition has been filed on the ground that the revision petitioner/tenant has not surrendered possession of the property in her occupation in excess of 750 sq.ft. Hence, the Court is of the considered opinion that the order of eviction ordered by the court below has got to be sustained. Accordingly, the revision is dismissed. Consequently, connected C.M.P. No. 15645 of 2005 is closed.