
(2013) 08 MAD CK 0083

In the Madras High Court

Case No : C.R.P. (NPD) No. 1914 of 2009 and M.P. No. 1 of 2009

P.G. Kannappan, P.G. Shanmuganathan and P.G. Raja Sekaran APPELLANT
Vs

Big Mosque Ponnammallee RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2013) 08 MAD CK 0083

Hon'ble Judges : K. Ravichandrabaabu, J

Bench : Single Bench

Advocate : S. Balasubramaniam, for the Appellant; A. Palaniappan, for the Respondent

Final Decision : Dismissed

Judgement

K. Ravichandrabaabu, J.—The civil revision petitioners are the defendants 5 to 7 in O.S. No. 506 of 1981 on the file of the District Munsif

Court, Poonammallee. The said suit was filed by the respondent herein wherein a decree came to be passed on 30.11.1984 declaring the title of the

suit property on the respondent herein and directing the defendants 4 to 10 therein to pay the arrears of rent at the rate of Rs. 1,670/- from

01.01.1985 onwards to the plaintiff/respondent herein. Based on the said decree, the respondent filed E.P. No. 67 of 1995 for arresting the

judgment debtors and detain them in a Civil prison for realisation of the decretal amount. The said execution proceedings was resisted by the

petitioners herein by filing a counter affidavit. They also filed additional counter wherein they have stated that the entire property is occupied by

various persons for more than six years and the encroachers are residing in the suit property. Consequently, they disputed their liability to pay the

rent to the respondent herein. After contest, the said E.P. was ordered on 27.10.2003. Admittedly, the said order has become final and conclusive

and binding between the parties as the petitioners have not challenged the same any further. However, they have chosen to file an application u/s

47 C.P.C. in E.A. No. 111 of 2007 in E.P. No. 67/1995 by contending that the judgment debtors are not liable to pay the rent as they are not the

lessees in respect of the suit property. The court below has rejected the said application by its order dated 15.12.2008. Aggrieved against the

same, the present civil revision petition is filed before this court. Heard the learned counsels appearing on either side.

2. The only contention of the petitioners before this Court is that they are not lessees in respect of the suit property and therefore, they are not

liable to pay the rental arrears. I failed to understand as to how such objection can be raised by the petitioners who are judgment debtors in the

above said suit. Admittedly, they suffered the decree wherein they were directed to pay the arrears of rent from 01.01.1985 at the rate of Rs.

1,670/- per month. The said decree has not been challenged by the judgment debtors and consequently, the same has become final, conclusive

and binding the parties to the proceedings. Raising the very same objection, the petitioners opposed the execution petition. The court below

allowed the execution petition by its order dated 27.10.2003 by rejecting the contention raised by the petitioners. Here again, the said order has

not been further challenged by the petitioners. On the other hand, they seek to get rid of the execution proceedings by filing the application u/s 47

C.P.C. by raising the very same contention. The court below has rightly pointed out that the petitioners having admitted before the trial court that

they are the lessees, cannot contend differently before the Executing Court by filing the present application. It is also observed by the court below

that the petitioners have claimed during the trial that they are the cultivating tenants. When that is the admitted fact, they cannot turn around and say

something else in the execution proceedings by contending that they are not the lessees. The court below has rightly pointed out that the petitioners

are trying to drag on the proceedings one way or other. I find that the order of the court below is just and proper and does not warrant any

interference as I find no infirmity or irregularity therein. Accordingly, the civil revision petition is dismissed. No costs. The connected miscellaneous

petition is also dismissed.