

(2017) 06 MAD CK 0085
In the Madras High Court
Case No : 1656 of 2005; 14179 of 2005

S NATARAJAN

APPELLANT

Vs

SRI ARUNACHALESWARAR DEVASTHANAM

RESPONDENT

Date of Decision : 01-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 47](#) - Search of place entered by person sought to be rested
[Tamil Nadu Slum Areas \(Improvement and Clearance\) Act, 1971](#)
[Section 29](#)

Citation : (2017) 06 MAD CK 0085

Hon'ble Judges : M V Muralidaran

Bench : SINGLE BENCH

Advocate : M V Muralidaran

Judgement

1. The judgment debtor in E.P.No.132 of 2003, on the file of the Registrar, Small Causes Court, Chennai and the petitioner in M.P.No.71 of 2005 is the civil revision petitioner before this Court, challenging the order made in M.P.No.71 of 2005 in E.P.No.132 of 2003, to ejecting the suit in Eject Suit No.18 of 1988 dated 23.06.2005, on the file of the Registrar, Small Causes Court, Chennai.
2. The petitioner/judgment debtor in E.P.No.132 of 2003 has filed petition under Section 47 of C.P.C. in M.P.No.71 of 2005, seeking prayer to dismiss the E.P.No.132 of 2003 as unenforceable, unexecutable.
3. It is the case of the petitioner/judgment debtor is that originally an Ejectment Suit No.18 of 1998 was filed by the respondent/decreed holder before the learned III Judge, Small Causes Court, Chennai. The said ejectment suit has been filed for evicting the petitioner from the premises bearing New No.380, Old No.671, Thiruvottriyur High Road, New Washermenpet, Chennai-21, and the said suit was decreed in favour of the respondent/decreed holder, against which the petitioner/judgment debtor has filed civil revision petition before this Court in C.R.P.No.1987 of 1991 and the same was dismissed, as against the order, the

petitioner has filed an appeal in S.L.P. before the Hon?ble Supreme Court and the same was also dismissed on 30.09.1991.

4. After dismissal of the appeal by the Hon?ble Supreme Court, the respondent/decree holder has filed Execution Petition in E.P.No.132 of 2003 before the learned Registrar, Small Causes Court, Chennai, for executing the decree in Ejecment Suit No.18 of 1988.

5. While pendency of the above Execution Petition, this petitioner/judgment debtor has filed an application in M.P.No.71 of 2005 under Section 47 of C.P.C., seeking prayer before the learned Registrar, Small Causes Court, Chennai, to dismiss the Execution Petition in E.P.No.132 of 2003 as unenforceable and un-executable. The petitioner/judgment debtor has raised a ground stating that the suit property under the possession and occupation of the petitioner were notified by the Tamilnadu Slum Clearance Board as "Slum Area" under "Arunachaleswarar Kovil MUDP Scheme" and the property bearing New No.380, Old No.671, Thiruvottriyur High Road, New Washermenpet, Chennai-21 and measuring to an extent was allotted by the Tamilnadu Slum Clearance Board, in favour of the petitioner/judgment debtor by an allotment order dated 27.03.1993, Se.Mu.No.36741/92/E1. A lease cum sale agreement dated 08.05.1995 was also executed in favour of the petitioner/judgement debtor, by the Tamil Nadu Slum Clearance Board.

6. The petitioner/judgment debtor also states that after the execution of the lease cum sale agreement dated 08.05.1995, the Tamilnadu Slum Clearance Board has directed the petitioner for the payment of the sale consideration of Rs.69,300/- on monthly instalments of Rs.787/- per month. He has also states that the petitioner had paid the entire sale consideration to the Tamilnadu Slum Clearance Board and has complied with the terms of the allotment order. Therefore, the property was allotted by the Tamil Nadu Slum Clearance Board and the area was notified as slum area. This respondent/decree holder have no right to evict the petitioner/judgment debtor from the premises. Therefore, he filed the above M.P.No.71 of 2005 for dismissal of the E.P.No.132 of 2003, as unenforceable and un-executable.

7. A counter affidavit has been filed by the respondent/decree holder and denying the entire allegations set out in the affidavit.

8. This respondent states that even if the allotment is made by the Tamilnadu Slum Clearance Board, later on the Taminadu Slum Clearance Board has issued notice dated 28.01.2004 for cancelling the illegal order of allotment made in favour of the petitioner/judgment debtor. Therefore, the petitioner/judgment debtor has filed a writ petition in W.P.No.3364 of 2004 before this Court, challenging the validity of the show cause notice, the said writ petition was dismissed on 17.12.2004 and this Court has clearly held that the order of allotment made by the Tamilnadu Slum Clearance Board cannot clothe the petitioner with title to the suit property. This Court has also clearly held that the

Taminadu Slum Clearance Board has not yet acquired the suit land and therefore, the order of allotment has no legal basis or sanctity.

9. The respondent also states that the petitioner/judgment debtor is only a tenant at sufferance, who is in unauthorised occupation and squatting on the suit property, which is absolutely owned by the respondent/decreed holder for decades together. Therefore, the respondent/decreed holder has also states that the petitioner/judgment debtor has not raised this ground in the suit and he has raised the same only before the Registrar, Small Causes Court, Chennai in the Execution Petition. Therefore, the respondent/decreed holder prayed for dismissal of the M.P.No.71 of 2005.

10. Considering both side arguments, the learned Registrar, Small Causes Court, Chennai was pleased to dismissed the application on the ground that the petitioner has narrated his arguments and perusal of the suit and it is only after thought by the petitioner to claim the defect under Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act.

11. The learned Rent Controller states that the judgment produced by the petitioner/judgment debtor in the case of Parthasarathy and another v. Kuppammal reported in AIR 1980 MADRAS 246 is not relevant to the issue before the said Court and hence he dismissed the petition in M.P.No.71 of 2005 on 23.06.2005. Challenging the said order dated 23.06.2005 in M.P.No.71 of 2005, this petitioner/judgement debtor has filed this Civil Revision Petition before this Court.

12. I heard Mr.P.Amarnath, learned counsel appearing for the petitioner and Mr.Suresh Krishnamoorthy, learned counsel appearing for the 1st respondent and perused all the records.

13. It is the admitted case of the petitioner/judgment debtor that he is the tenant under the respondent/decreed holder and Ejectment Suit No.18 of 1988 was filed before the learned III Judge, Small Causes Court, Chennai, in the year 1988 and the same was decreed. Against the said decree in Ejectment Suit in 18 of 1988, this petitioner, who is the defendant in the suit has filed a civil revision petition before this Court in CRP.No.1987 of 1981, the same was dismissed on 30.08.1991 and SLP filed by this petitioner was also dismissed by the Hon''ble Apex Court on 30.09.1991.

14. On perusal of the records, it clearly shows that this petitioner/judgment debtor has not at all raised the plea that the property was allotted by the Tamilnadu Slum Clearance Board in favour of the petitioner and the provision under Section 29 of the Tamilnadu Slum Areas (Improvement and Clearance) Act, is applicable to this petitioner/judgment debtor, before the learned III Judge, Small Causes Court, Chennai in the Ejectment Suit No.18 of 1988 and the said suit was decreed, and this petitioner/judgement debtor has failed all his attempt in the appeal before this Court and the Appeal before the Hon''ble Apex Court. When the competent Court has decreed the suit in ejectment suit No.18 1988

and the same was confirmed by this Court and the Hon'ble Apex Court and the Execution Petition in E.P.No.132 of 2003 was filed by the respondent/decreed holder before the learned Registrar, Small Causes Court, Chennai, the learned Registrar, except to executing the decree, he cannot go beyond the limit in the Ejectment Suit No.18 of 1988. This Court and the Hon'ble Apex Court has categorically held that the executing Courts except to executing the decree, they should not go beyond the limit.

15. Apart from this, when the petitioner/judgment debtor has not raised these grounds in respect of the allotment of the petition premises by the Tamilnadu Slum Clearance Board in the suit proceedings, he agitated all the proceedings. Admittedly, as per Section 29 of the Act, it is made clear that the eviction proceedings should be proceeded by the persons concerned, only after obtaining permission from the Tamilnadu Slum Clearance Board. But, this ground was raised only in the E.P. proceedings by the respondent/judgement debtor and the same cannot be looked into by the Executing Court.

16. When the petitioner/judgment debtor has not raised this ground he has no locus standi to take up a new defence which had not been taken up by him earlier in the suit, since the new plea taken up by the petitioner/judgment debtor cannot be allowed to conduct a fresh trial by way of the above petition in M.P.No.71 of 2005. The judgment produced by the petitioner/judgment debtor reported in AIR 1980 MADRAS 246 is not applicable to the present case in hand. Therefore, the learned Registrar has considered the case in a proper manner and there is no necessity arose to this Court warranting interference in the order passed by the learned Registrar, Small Causes Court, Chennai.

17. In the result: (a) this civil revision petition is dismissed by confirming the Fair and Decreetal order passed in M.P.No.71 of 2005 in E.P.No.132 of 2003 in Ejectment Suit No.18 of 1988, dated 23.06.2005, on the file of the Registrar, Small Causes Court, Chennai-600 104.

(b) the learned Registrar, Small Causes Court, Chennai is hereby directed to take up the Execution Petition in E.P.No.132 of 2003, without giving any adjournment to either parties and dispose the same within a period of three months from the date of receipt of a copy of this order. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit. No cost. Consequently, connected miscellaneous petition is closed.