

(2009) 04 MAD CK 0479

In the Madras High Court

Case No : C.R.P. (NPD) MD. No"s. 87 to 89 of 2009 and M.P (MD) No"s. 1, 1 and 1 of 2009

S. Paul Pandi

APPELLANT

Vs

Mariammal and N. Subbiah Naidu

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 227

Citation : (2009) 4 CTC 254

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : V. Nagendran, for the Appellant; S. Subbiah, for R. 1, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—These three civil revision petitioners have been preferred by the revision petitioner/appellant/ petitioner as against the orders dated 05.11.2008 passed in C.M.A. Nos. 32 of 2008, 33 of 2008 and 34 of 2008 by the learned I Additional Subordinate Judge, Madurai, confirming the orders dated 01.07.2008 passed by the learned I Additional District Munsif, Madurai Town, in rejecting the unnumbered E.As., filed by the revision petitioner u/s 47 of the Code of Civil Procedure.

2. The learned I Additional District Munsif, Madurai Town, while rejecting the unnumbered E.As., vide orders dated 01.07.2008, has inter alia observed that the petitioner in respect of the petition mentioned property has filed the suit praying for the relief of declaration and therefore, the present E.As., are not maintainable and moreover, the Executing Court has to act in pursuance of the orders passed in the Rent Control Petitions and it cannot go beyond the said orders and inasmuch as no stay order has been passed in the appeal as against the orders passed in R.C.O.P. Nos. 102 of 2002, 98 of 2002 and 100 of 2002, the

present unnumbered E.As., are not maintainable and resultantly, rejected the same.

3. Aggrieved against the said order of rejection of unnumbered E.As., dated 01.07.2008 passed by the learned I Additional District Munsif, Madurai Town, the revision petitioner has preferred the appeals in C.M.A. Nos. 32 of 2008, 33 of 2008 and 34 of 2008 as appellant before the first appellate authority, viz., the learned I Additional Subordinate Judge, Madurai and the first appellate Court after contest, has resultantly dismissed the said appeals thereby confirming the order of rejection passed by the Executing Court.

4. The learned Counsel for the revision petitioner in these revision petitions, submits that the first appellate Court and the Executing Court have passed orders contrary to law and procedure and therefore, the said orders are vitiated and erroneous ones and moreover, without numbering the E.As., and dismissing the same, is an illegal one resulting in miscarriage of justice and that the reasoning assigned by both the authorities in dismissing the unnumbered E.As., and the appeals in C.M.A. Nos. 32 of 2008, 33 of 2008 and 34 of 2008, is not correct in the eye of law and therefore, he prays for allowing the present civil revision petitions in the interest of justice.

5. According to the learned Counsel for the revision petitioner, as against the revision petitioner's father/tenant, the orders have been passed in R.C.O.P. Nos. 102 of 2002, 98 of 2002 and 100 of 2002, on 06.11.2003 and the revision petitioner claims that he is the owner of the suit property by virtue of a Will dated 05.09.2001 and that the revision petitioner is one of the sons of the second respondent and unless the Executing Court numbers the said three E.As., the revision petitioner cannot put forward his case thoroughly and comprehensively in the manner known to law and to avoid multiplicity of suits, the claim petitions filed u/s 47 of the CPC are maintainable in the eye of law and therefore, the civil revision petitions may be allowed by this Court.

6. Contending contra, the learned Counsel for the first respondent/landlady, submits that the will dated 05.09.2001 has been created for the purpose of claiming ownership by the revision petitioner with a view to obstruct the decree passed against the second respondent (the father of the revision petitioner) in the R.C.O.P proceedings and that the revision petitioner is not a tenant of the first respondent and only the second respondent is a tenant of the first respondent and that the unnumbered E.As., filed by the revision petitioner before the Executing Court u/s 47 of the CPC are not maintainable and that both the Executing Court as well as the first appellate Court have rightly rejected the unnumbered E.As., and the appeals and inasmuch as the Executing Court cannot go behind the tenure of the decree passed in R.C.O.P. Nos. 102 of 2002, 98 of 2002 and 100 of 2002, on 06.11.2003. At this stage, this Court sitting in revision need not interfere with the orders passed by both the authorities in the unnumbered E.As., and in the appeals referred to supra.

7. Countering the submissions of the learned Counsel for the first respondent, the learned Counsel for the revision petitioner submits that the revision petitioner has filed P.O.P. No. 15 of 2007 on the file of the learned I Additional District Munsif, Madurai Town, claiming declaratory relief that he is the owner of the property involved in the R.C.O.P proceedings and that the said proceedings are pending and that though delivery has been ordered in E.P. Nos. 98 of 2004, 96 of 2004 and 97 of 2004, the matter in issue, batta has not been paid and delivery has not been effected.

8. A perusal of the orders passed in R.C.O.P. Nos. 102 of 2002, 98 of 2002 and 100 of 2002, on 06.11.2003 indicate that the conditional orders passed in I.A. Nos. 283 of 2002, 301 of 2002 and 301 of 2002, have not been complied with by the second respondent herein and therefore, the petitions have been allowed granting two months' time for eviction on 06.11.2003.

9. It is to be noted that the second respondent has been a tenant under the first respondent in respect of three portions in the building bearing Door No. 12, Krishnakonar 1st Lane, Solaialagapuram, Madurai.

10. According to the learned Counsel for the first respondent, the first respondent has started eviction proceedings against all the tenants of the building comprised in fourteen portions and she has been successful enough to obtain possession in respect of eleven portions and that the second respondent/tenant who is none less than the father of the revision petitioner herein, has driven the first respondent from pillar to post by taking several legal proceedings commencing from the learned Rent Controller to this Court in C.R.P(NPD) MD. Nos. 1303 to 1305 of 2008 and C.R.P (NPD) MD. Nos. 1633 to 1638 and 578 to 580 of 2008, and all the attempts of the second respondent/tenant has ended in failure except the fact that he has been successful enough to drag on the proceedings till date and after exhausting all the remedies available to the second respondent, the second respondent has allowed his son/revision petitioner herein to file the civil revision petitions before this Court and also the proceedings before the Executing Court and that the civil revision petitions are the last arrow in his bow and therefore, he prays for dismissing the revision petitions in furtherance of substantial cause of justice.

11. This Court has paid its anxious consideration to the arguments projected on both sides and noticed the same.

12. In support of his contention that the frivolous proceedings initiated by the revision petitioner in the unnumbered E.As., will have to be struck off in the interest of justice, the learned Counsel for the first respondent cites the decision of this Court in Dindigul Pettai Sathangudi Shatriya Nadar Uravinmurai v. Selvaraj reported in 2009(2) CTC 57 wherein it is held that "whenever this Court finds any abuse of process of Courts and if the proceedings initiated are possessing the elements of frivolousness and vexatiousness, this Court can very well pass appropriate orders, invoking Article 227 by exercising supervisory jurisdiction."

13. The substance of the contention put forth by the learned Counsel for the first respondent/landlady is that if the E.As., filed by the revision petitioner before the Executing Court are to be numbered and taken on file, then the Executing Court has to assess the rights of the parties by taking oral evidence of the parties and to adjudicate them indulging in a futile fashion by wasting the precise judicial hours by adopting dilatory tactics in the interest of justice. The revision petitioner who is none other than the son of the second respondent, cannot be permitted to abuse the process of Court by resorting to another round of litigation in regard to the rights which have already crystallized and transformed in the manner of decree being passed in R.C.O.P proceedings which have become final and binding between the inter se parties, viz., the first respondent and the second respondent as landlady and tenant.

14. Continuing further, this Court opines that the Executing Court cannot go into the roving enquiry to find out whether the decree passed by the Court which has passed is one without jurisdiction and in fact, the want of jurisdiction must be apparent.

15. Inasmuch as the revision petitioner/son is not a tenant under the first respondent/landlady and because of the fact that his father (the second respondent) has been a tenant under the first respondent, this Court is of the considered view that on the basis of facts and circumstances of the case, a Court of law cannot permit the revision petitioner to file E.As., and to record his objections by leading any evidence thereto, to unsettle the matters which have reached a finality.

16. The general principle is that the fruits of the decree passed in the proceeding by a successful party will have to be enjoyed by litigant/decreed holder.

17. Suffice it for this Court to point out that since the revision petitioner is not a tenant and claims only through a Will dated 05.09.2001 claiming ownership of the petition mentioned property and admittedly, for which he has initiated the proceedings in P.O.P. No. 15 of 2007 before the appropriate Court and the same is pending as on date, this Court without going into the merits of the matter opines that the civil revision petitions fail on the basis that when the orders passed in R.C.O.P. Nos. 102 of 2002, 98 of 2002 and 100 of 2002, on 06.11.2003, have finally decided the right of the parties, the same cannot be permitted to be raised once again by means of E.As., being filed by the revision petitioner by way of another round of litigation and in that perspective, dismisses the civil revision petitions to prevent aberration of justice. Both the orders of the first appellate Court and the Executing Court do not suffer from any material irregularity or patent illegality. It is always open to the revision petitioner to establish his rights in the suit filed by him as pauper in P.O.P. No. 15 of 2007 on the file of the learned I Additional District Munsif, Madurai Town, claiming ownership of the property in issue. The parties are directed to bear their own costs in the interest of justice. Resultantly, the connected Miscellaneous Petitions are dismissed.