

Paramasivam Vs. Kaliyan and Another

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Court : Chennai

Decided On : Mar-23-2001

Reported in : (2001)2MLJ544

Judge : D. Murugesan, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 21, Rule 97; Tamil Nadu (Buildings Lease and Rent Control) Act, 1960 - Sections 18

Appeal No. : C.R.P. No. 299 of 2001 and C.M.P. Nos. 1654 and 3733 of 2001

Appellant : Paramasivam

Respondent : Kaliyan and Another

Advocate for Def. : Mr. S. Parthasarathy ;for Sarvabhuman Associates, Adv.

Advocate for Pet/Ap. : Mr. V.K. Vijayaraghavan, Adv.

Judgement :

ORDER

1. The petitioner in this civil revision petition is the third party to the K.C.O.P.NO.78 of 1985 on the file of the learned District Munsif, Thanjavur. The 1st respondent filed the said R.C.O.P. against the 2nd respondent and obtained an order of eviction during the year 1982. Thereafter, an application for execution in E.RNo.6 of 2000 was filed by the 1st respondent and the same was also ordered. In the

meantime, the revision petitioner filed UFCFR No.321 of 2000 on 22.1.2001 objecting the execution proceedings on the ground that he entered into an agreement with the 1st respondent for sale in respect of the petition mentioned property and has paid the entire sale consideration of Rs. 1,50,000 and the 1st respondent has also put the petitioner in possession and therefore the 1st respondent should not be given possession of the property. Since the 1st respondent denied the very agreement for sale, the petitioner filed O.S.No. 11 of 2001 before the learned Principal Sub Judge, Thanjavur and the same is pending. However, the application filed by the petitioner under Order 21, Rule 97 Clause (1) of CPC was dismissed by the impugned order even without numbering the same and taken on file.

2. The learned counsel for the petitioner submitted that the order of the learned Principal Sub Judge in rejecting the application even without numbering the same is ex facie illegal inasmuch as the petitioner was not given proper opportunity to put forth his case by letting in evidence and in any case as per the judgments of the Supreme Court reported in Bhahmdeo Chaudhary v. Kishikesh Prasad Jaiswal and Babulal v. Raj Kumar, it has been held that an application for obstruction has to be adjudicated upon before it is dismissed in limine. Therefore, the learned counsel submitted that the rejection of the application filed by the petitioner under Order 21, Rule 97 Clause (I) of CPC is patently illegal and therefore is liable to be set aside.

3. The learned counsel for the 1st respondent on the other hand would submit that the civil revision petition itself is liable to be dismissed on the sole ground that the petitioner has not approached this court with clean hands and he has suppressed certain material facts before this court and has obtained an order of interim stay of all further proceedings in E.P.No.6 of 2000. The alleged agreement of sale entered into by the 1st respondent with the petitioner is denied and at no point of time the 1st respondent has put the petitioner in possession. In fact the petitioner has filed a suit in O.S.No. 11 of 2001 before the learned Principal Sub Judge, Thanjavur. When the said suit is pending, the petitioner in order to drag on the execution proceedings has filed the application under Order 21, Rule 97, Clause (i) of CPC. Whiic that being the position, the application was rejected after hearing the

petitioner in person as to the maintainability of the same and there is no question of giving an opportunity to the petitioner to lead evidence in the application as the petitioner has already approached the civil court for the same relief which the petitioner can very well agitate before the civil court. The learned counsel would further submit that the order under challenge gives reason for rejecting the application and therefore there is no notice necessary as has been held by the Supreme Court in the judgments reported in Badamo Devi and others v. Sugar Sharma, and in Lakshmi Narayanan v. S.S. Pandian, . Therefore the learned counsel for the 1st respondent seeks for the dismissal of the revision petition.

4. Before going into the question as to whether the petition filed by the petitioner under Order 21, Rule 97 Clause (i) is dismissed, a notice is necessarily to be issued to the petitioner. I intend to go into the question as to whether the petitioner has approached this Court furnishing all particulars before an order of interim injunction was obtained from this court. The civil revision petition was filed on 29.1.2001. Admittedly, the petitioner has filed a suit in O.S.No.II of 2001 before the learned Principal Sub Judge, Thanjavur for specific performance in respect of the agreement for sale allegedly entered into by the 1st respondent with the petitioner on 20.11.98. Pending the suit, the petitioner also filed I.A. No.14 of 2001 seeking for an order of interim injunction restraining the 1st respondent herein from executing the order of eviction and the said I.A. came to be dismissed on 1.2.2001. Further, the learned counsel submitted, as against the order of eviction passed in O.S.No.II of 2001, the 2nd respondent herein filed revision petition in C.R.P.No.193 of 1992 and the same was dismissed by this Court on 2.3.92. Pursuant to the order in C.R.P., the order of delivery was also passed on 14.11.2000. After the order of revision was passed, the petitioner allegedly entered into an agreement with the 1st respondent. The above facts have not been placed before this Court either in the civil revision petition or in the affidavit filed in support of the application in C.M.P.No.1654 of 2001. From the facts narrated above, it would be very clear that the petitioner has not approached this Court with clean hands and on this ground alone, the civil revision petition is liable to be rejected.

5. That apart, coming to the facts of the case, the petitioner is a third party to the eviction petition as well as the execution proceedings. The alleged agreement for

sale entered into by the 1st respondent with the petitioner has been disputed by the 1st respondent. Equally, the 1st respondent has denied the fact that the petitioner was put on possession of the petition mentioned property. The Supreme Court judgments relied upon by the learned counsel for the petitioner relates to a case where the objector was admittedly put on possession and by the execution proceedings, his possession was sought to be disturbed. In the given case, even though it is the case of the petitioner that he was put on possession, the same has been denied by the 1st respondent. Further, the petitioner himself has filed a suit in O.S.No.11 of 2001 before the learned Principal Sub Judge, Thanjavur for specific performance of the agreement for sale. Pending the above suit, the petitioner has also taken out an application in I.A.No.14 of 2001 seeking for an order of injunction restraining the 1st respondent from executing the order of eviction which was dismissed on 1.2.2001. The dismissal of the said interim application can be presumed that the petitioner was not in possession in the petition mentioned property. In the circumstances, the judgments relied upon by the learned counsel for the petitioner are not applicable to the facts of the present case. Therefore, I do not accept the said contention of the learned counsel for the petitioner.

6. In this connection, it is further relevant to point out that the petitioner allegedly entered into an agreement for sale with the 1st respondent only on 20.11.98 after the order of eviction was passed against the 2nd respondent in favour of the 1st respondent and the said order of eviction was confirmed by this court in C.R.P.No.193 of 1982 as early as on 2.3.82 and the delivery was also ordered on 14.11.2000. When such is the position, the application filed by the petitioner under Order 21, Rule 97 Clause (i) of CPC which was rejected after hearing the petitioner of course, the party in person in detail. Going by the impugned order, the learned Judge has given reasons for not entertaining the said application. When the order itself gives sufficient reason, the question of issuing notice to the other respondent and requiring them to submit their objection is not necessary. It is not the case of the petitioner that the agreement for sale dated 20.11.92 allegedly entered into between the petitioner and the 1st respondent was registered one. In the absence of such registration, the executing court need not consider and entertain the application for objection for executing an order of eviction petition as

early as in the year 1992. Therefore, I do not find any justification in the contention of the learned counsel for the petitioner that the learned Principal Sub Judge, Thanjavur ought to have issued notice and thereafter adjudicated upon the application filed by the petitioner. In that view of the matter, I do not find any merit in the contentions on the learned counsel for the petitioner. Accordingly, this civil revision petition is dismissed. No costs. Consequently, C.M.P.Nos.1654 and 3733 of 2001 are closed.

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