

M. Chokkappan Vs. C. Selvaraj

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Court : Chennai

Decided On : Apr-07-2004

Reported in : AIR2005Mad79; (2004)2MLJ722

Judge : S. Sardar Zackria Hussain, J.

Acts : [Constitution of India](#) - Article 227

Appeal No. : Civil Revision Petition (NPD) No. 1616 of 2002

Appellant : M. Chokkappan

Respondent : C. Selvaraj

Advocate for Def. : T.S. Sivagnanam, Adv.

Advocate for Pet/Ap. : R. Thirugnanam, Adv.

Disposition : Revision allowed

Judgement :

ORDER

S. Sardar Zackria Hussain, J.

1. This Civil Revision Petition is filed by the decree-holder against the dismissal of E.A. No. 72 of 2001 in E.P. No. 93 of 1994 in R.C.O.P. No. 43 of 1992 on the file of the District Munsif Court, Thanjavur.

2. The revision petitioner on the strength of the eviction order obtained in R.C.O.P. No. 43 of 1992 filed E.P. No. 93 of 1994 for delivery and it appears that delivery was ordered. The senior bailiff concerned returned the delivery warrant for want of survey number in the delivery warrant. Therefore, the decree-holder filed E.A. No. 72 of 2001 in E.P. No. 92 of 1994 to incorporate the survey number as T.S. 66/2313. The petition was opposed.

3. The Executing Court considering such objections dismissed the E.A. No. 72 of 2001 as per order dated 14.2.2002 and it is challenged in this Civil Revision Petition by the decree-holder.

4. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent.

5. The learned counsel for the revision petitioner/decreree-holder argued that inasmuch as the survey number was omitted to be mentioned, the same may be incorporated in the delivery warrant by making suitable order. In this regard, the learned counsel relied on the decision A. Shamsuddin - vs. - K. Chellappan reported in 1998 II M.L.J. 99, in which this Court held:-

'Civil Procedure Code (V of 1908), Sections 151 and 152, Order 6 Rule 17. Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960, Section 18. Petition for eviction of tenant ordered. In the Execution Petition, Amin reporting that he could not identify property. Praying for better particulars. Landlord's application to add a better description of property. Application, held, was one under Sections 151 and 152. Order of Rent Controller allowing application, sustained.

The Court does not think that the present application could be treated as an amendment. It is only an explanation regarding the description of the property. By virtue of the present applications, the landlord is only giving better particulars to identify the rented building. If that be so, it cannot be said that to settle a controversy, an amendment is made. Regarding the tenanted building, there is no controversy. Naturally, it is only a correction of the boundaries. If that be so, the application need not be filed during the pendency of the proceedings. It can be filed even after the proceedings have come to an end and before the satisfaction

of the decree is entered. The principle of Order 6, Rule 17 C.P.C. will apply only to pending proceedings and when there is controversy. In this case, so long as there is no controversy, the petitioner cannot impeach the right of the decree-holder to the better particulars to identify the rented building. The principles of Sections 151 and 152, Civil Procedure Code apply to the facts of this case and the lower court has taken into consideration the interests of justice in allowing the applications. There is no prejudice caused to the petitioner and there is also no manifest injustice done by the court below in allowing the applications.'

6. I am in respectful agreement with the judgment reported in 1998 II M.L.J. 99 and of the view that at the time of filing the Rent Control Original Petition for eviction T.S. No. could have been omitted to be mentioned by mistake, the decree-holder can seek to incorporate the same in the delivery warrant, in that no hardship will cause to the respondent/tenant, inasmuch as the property was described with correct boundaries and it was also not challenged before the Rent Controller as regards the identity of the property. In that view the revision petition is to be allowed by setting aside the order of the Executing Court.

7. In the result, this Civil Revision Petition is allowed setting aside the order of the Executing Court dated 14.2.2002 made in E.A. No. 72 of 2001 in E.P. No. 93 of 1994 in R.C.O.P. No. 43 of 1992. The Executing Court is directed to incorporate the T.S. No. 66/2313 in the delivery warrant after making necessary amendment in the Execution Petition on the application by the decree-holder mentioning the Town Survey Number as 66/2313 and by allowing the said application straightaway. It is further directed to issue suitable directions for delivery of the property.