

G. Ganesan and ors. Vs. J. Surendran and ors.

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Court : Chennai

Decided On : Dec-02-2004

Reported in : 2005(1)CTC699; (2005)1MLJ191

Judge : A.K. Rajan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 47 - Orders 7, Rule 14(1) - Order 21

Appeal No. : C.R.P. Nos. 2381 to 2384 of 2004 and C.M.P. Nos. 18143 to 18146 of 2004

Appellant : G. Ganesan and ors.

Respondent : J. Surendran and ors.

Advocate for Def. : K. Chandru, Sr. Counsel for ;Balan Haridas, Adv.

Advocate for Pet/Ap. : R. Thiagarajan, ;S.V. Jayaraman, Sr. Counsels for ;N. Maninarayanan, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

A.K. Rajan, J.

1. By consent of parties, the main CRPs are taken up for disposal.
2. The above CRPs have been filed under Article 227 of the Constitution of India by the obstructors against the order and decree dated 2.11.2004 made in M.P.Nos. 493 of 2004 and 495/2004 in E.P.No. 78 of 2001 in RCOP.No. 982 of 1999 on the file of the XII Judge, Small Causes Court, Chennai.
3. The brief facts of the case is as follows:

The first respondent filed a petition against one Gomathi, a tenant, for fixing fair rent in an RCOP and the fair rent was fixed as Rs. 49,000 by the Rent Controller. But the rent was not paid by the tenant. Therefore, Rule 1 filed RCOP 982 of 1999 for eviction on the ground of willful default. By order dated 19.07.2000, eviction was ordered by the Rent Controller. Thereafter, E.P.No. 78 of 2001 was filed against the said Gomathi/tenant and when the bailiff went to execute the order of the Court, the 11 obstructors (Rule 3 to Rule 13) resisted the execution of the order of the Court. They claimed that they became tenants under one Nirmala. Therefore, RI filed M.P.No. 231 of 2001 for removal of the obstructors and that was allowed on 11.3.2002. The appeal in RCA.No. 237 of 2002 by the 11 obstructors was dismissed on 5.3.2004. Against that CRP.No. 716 of 2004 was filed; that was also dismissed. Thereafter, the obstructors filed SLP before the Supreme Court and that was dismissed on 22.11.2004.

4. In the mean while, M.P.Nos. 493, 494 and 495 of 2004 were filed by the three persons before the Rent Controller to 'record them' as obstructors. They claimed that they were in occupation of a portion of the premises; they became tenant through one Vasathi Devi. Vasathi Devi had earlier filed a suit in C.S.No. 537 of 2004 for declaration of title of the property and also for permanent injunction. In that an application was filed for injunction restraining the first respondent from interfering with the possession; but that was rejected by this Court. While rejecting the application, the High Court has found that the lease agreement alleged to have been executed by Vasathi Devi in favour of the obstructors were 'forged' and the High Court directed the execution Court to proceed with the E.P. The first respondent filed MP.No. 707 to 709 of 2004 to strike off the petitioners in the said M.P.Nos. 493 to 495 of 2004. The Rent Controller passed a detailed order and

allowed M.P.Nos. 707 to 709 of 2004. Against that, the petitioners in M.P.Nos. 493 of 2004 and 495 of 2004 and the respondents in M.P.Nos. 707 and 709 of 2004 have preferred these revision petitions.

5. The learned Senior Counsels Mr.R. Thiagarajan and S.V. Jayaraman submitted that in the E.P. proceedings, when the obstructors filed a petition and it has been taken on file that has to be decided as if it is a suit even though the petition was filed in EP; a separate suit need not be filed (as per Order XXIX, Rule 97, CPC). While so, the Rent Controller did not complete the proceedings. From the order, it is seen that P.W.I was examined in chief and the matter was posted for cross-examination, but before the completion of the cross-examination, relying upon the Judgment of the High Court, the petitions were rejected. The procedure followed is not legally sustainable and therefore, the order of rejection of the petitions is liable to be set aside.

6. In support of the contention, the learned counsel relied upon the Judgment in N.S.S. Narayana Sarma and Ors. v. Goldstone Exports (P) Ltd. and Ors., : AIR 2002 SC251 . They referred to the following passage in Paragraph 16:

'The words 'all questions arising between the parties to a proceeding on an application under Rule 97' would envelop only such questions as would legally arise for determination between those parties. In other words, the Court is not obliged to determine a question merely because of the resister raised it. The questions which the executing Court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties.....

Order 21, Rule 97 conceives of resistance of obstruction to the possession of immovable property when made in execution of a decree by 'any person'. This may be either by the person bound by the decree, claiming title through the Judgment-debtor or claiming independent right of his own including a tenant not party to the suit or even a stranger.'

7. The learned counsel also relied upon another Judgment in *Tanzeem-e-Sufia v. Bibi Haliman and Ors.*, : [2002]SUPP2SCR8 wherein it has been held as follows:

'A prayer has been made for delivery of possession by removing all obstruction with the assistance of armed police and lady constables etc. Such an application is envisaged under Order 21, Rule 97, CPC and that being the position, it entitles the appellant to be heard before passing any order on the application moved by the decree holder. There is no question of treating the application for writ of delivery of possession as one under Order 21, Rule 97, in fact it is an application under that provision. The appellant took extra precaution to inform the Court about its intention to file objections before hand and requested for a hearing. Once an application was moved by the decree holder there was no occasion to refuse hearing to the appellant. The refusal to hear the appellant, on the ground that it has already filed a suit for declaration of its title and for declaration that the decree passed in title suit is not binding on it as well as the reasoning given by the execution Court, that the remedy of the appellant would only lie by moving an application under Order 21, Rule 99, CPC was erroneous.'

The Senior counsel therefore contended that the fact that already another suit has been filed by the owner, does not prevent a person from filing a petition as obstructor in the execution proceedings. Relying upon these Judgments, the learned counsel submitted that once the enquiry has begun, that enquiry should have been completed in full; the Rent Controller should not have dismissed the petition relying upon the order of the High Court without completing the entire proceedings. The learned counsel further submitted that, the Rent Controller could come to the very same conclusion after completing the entire proceedings i.e. after examining all the witnesses; Inasmuch as the proceedings were not completed in full but was abruptly closed is not legally sustainable and hence the CRPs are to be allowed.

8. The learned Senior Counsel Mr. Chandru, appearing for the first respondent relied upon a Judgment of the Supreme Court in *K.K.Modi v. K.N. Modi*, : [1998]1SCR601 , and submitted that the Court has the discretion to strike off the proceedings on being satisfied of there being no chance of success in the suit,

when it is satisfied that it is an abuse of process of Court. The counsel also relied upon a decision of this Court in *Gangabai Ammal v. S. Kalyanasundaram*, 1999 (2) L.W. 781. In that decision, the Court has held that this Court is not concerned with the provisions on which a petition is filed. 'Whatever may be the provision, intention is only one, that is, to re-agitate the same matter already concluded, and that he is not entitled to under law.' He also relied upon a decision of this Court in *K.K. Swaminathan v. Srinivasagam*, : 2003(4)CTC347 wherein this Court has held that Supervisory revisional jurisdiction of the High Court is the residuary jurisdiction conferred on the High Court and it can be exercised under Section 115, CPC, where it is just and necessary to strike off any proceedings. Therefore, the learned Senior Counsel submitted that the proceedings can be struck off at any stage if the Court find that it is an abuse of process of the Court.

9. From the facts stated above, it is clear that the Rent Controller passed an order of eviction against one Gomathi; the eviction was obstructed by 11 persons whose names were recorded by the bailiff when the order was sought to be executed. That means only those 11 persons were in the premises when the bailiff went to execute the order of the Court. All those 11 persons filed petitions as obstructors and challenged the eviction; they went up to the Supreme Court but failed. In the mean while, some other persons as obstructors have filed these petitions; M.P.No. 493 of 2004 was filed by one Ponnusamy, M.P.No. 494 of 2004 was filed by one Ramanathan and M.P.No. 495 of 2004 was filed by one Ganesan. All the three filed the petition on the same day of 8th July, 2004. The petitioner in MP.No. 493 of 2004 is said to be in occupation of 500 Sq.ft. petitioner in MP.No. 494 of 2004 is said to be in occupation of 400 sq.ft. Both MP.Nos. 493 and 494 of 2004 are identically worded and they claimed to have become tenants in the year 2002 by entering into rental agreement with Vasathi Devi, Wife of the first respondent herein. Strangely they have not given the date of the agreement; they have not filed any document along with the petition in proof of their claim. When a question was put to the learned counsel appearing for the revision petitioners whether any person can file a petition as obstructors without placing any material to show that he was in occupation/possession' the learned counsel answered in the affirmative. He also added that a mere statement to that effect is sufficient and there is no need to give any other material at the time of filing of the petition. The learned

counsel also submitted that the word 'Stranger' appearing in the decisions of the Supreme Court relied upon by him, includes any person who is not a party to the proceeding either in the E.P. or in the suit. Therefore, a stranger also can maintain a petition as obstructor.

10. The petitioners in M.P.No. 493 and 495 of 2004 had claimed that they became lawful tenants on 9.4.2002 by executing a lease agreement with Vasathi Devi. (According to Vasathi Devi, she became the owner by virtue of a Will). (Originally it was stated in the petition in M.P.No. 494 of 2004, from that date onwards, that he was in possession and enjoyment of the entire ground floor and first floor. But, this was corrected as '1050 Sq. ft. in the front portion.' He is not a petitioner before this Court at present). The case of the petitioner is that he was not made a party to the proceeding and were deliberately omitted to be included.

11. This Court in CRP.No. 716 of 2004 filed by the 11 Obstructors has held that:

'Be that as it may, the fact remains that the first respondent had obtained a valid decree as against the second respondent in the rent control proceedings and the same was sought to be executed by the first respondent herein. Only at the time, the petitioners herein have started to object and resist on the ground that they are entitled to be in possession of the property as they are all legal tenants under R. Nirmala and the said Nirmala is a party to the said O.S.No. 3200 of 2003 wherein only she has given a counter affidavit stating that the first respondent viz., J. Surendran alone is the sole legal heir of late Mrs. Janaki Ramachandran and he is the landlord in respect of the petition premises. The 8th petitioner herein viz., Vaithiyanathan claims possession only through R. Nirmala and the said Nirmala has come out with the said counter affidavit which runs contra to the claim made by the revision petitioners, more particularly the 8th revision petitioner/obstructor.'

'That only in the said circumstances, this Court is also persuaded to come to the conclusion that the letter said to have been given by the second respondent viz., Gomathi to Nirmala appears to be artificial and it would not even create a sub-tenancy in favour of revision petitioners, as it has been observed by the Division Bench of this Court.'

12. Thus, this Court has found that the property belonged to the landlord/first respondent. While so, the present revision petitioners claim through Vasathi Devi (wife of the first respondent). She claims to be the owner through a Will which was not probated (where probate is necessary). No beneficiary can claim through the Will unless it is probated. Therefore, the claim of Vasathi Devi that she is the owner cannot be accepted. Further, this Court has also held that the Will was forged. These revision petitioners claim that they became tenant through Vasathi Devi. It is on record that when the bailiff went to execute the decree, there are only 11 persons. The bailiff had recorded only 11 obstructors; that shows there were no other person in the premises on the date when the bailiff went to execute the decree. The petitions filed by the obstructors were filed in the year 2001. That shows the bailiff went to execute the decree in the year 2001 itself. According to the revision petitioners, they became tenant only in the year 2002 through Vasathi Devi. Therefore, on the date when they alleged to have come into occupation, the person who alleged to have granted permission has no right whatsoever. Further, a person who came into possession after the order of eviction was passed, through some other persons other than the decree holder cannot claim any right.

13. That apart, the contention of the respondents that these petitioners were not infact in occupation of the premises cannot be rejected. Along with the petitions as obstructors, they had not filed any document to show that they were in occupation of the premises. It is true that the Supreme Court has held even a 'stranger' can obstruct the execution of a decree. But such a stranger also must have some executable legal right either as a tenant or as subtenant or atleast as a trespasser. To show that he was either a tenant or a subtenant or a trespasser, i.e., to prove that he was in actual possession on the date when he filed a petition as obstructor, there must be some materials; and that should be filed before the Court along with the petition. A mere statement that a person is in occupation is not sufficient to file a petition as obstructor. If such a procedure is allowed, that will prove the saying that 'the real trouble for the decree holder starts only after getting a decree'. It is true that the obstructor petition has to be disposed of as a suit in the same E.P. proceedings and there is no need to file a separate suit. The obstructor petition should be treated as filing of a suit. To file a suit as provided under Order VII, Rule 14(1), the documents which are relied upon shall be filed along with plaint. A

fortiory, an obstructor petition which is tantamount to a suit, must also be filed along with the documents that are relied upon, to prove the case of the petitioner (who is in the nature of the plaintiff).

14. In a suit the document relied upon for the claim shall be filed at the time of presentation. So also, a petition as an obstructor without any document or material to show that he was in actual possession of the premises can not be filed. Such a petition if permitted to be filed and tried as a suit, would result only in injustice and that will be nothing but abuse of process of Court. In this case, the petitions in M.P.Nos. 493 and 495 of 2004 filed by these revision petitioners have been filed only in that manner. Except for a bare statement, that they are in possession of the property, no other material was filed to show their actual possession prima facie. Such petitions are not maintainable at all. It is true that those petitions were tried as if it was a suit and P.W. 1 was examined in chief. When it was posted for cross-examination, the petitions in M.P.Nos. 707 and 709 of 2004 to strike off their names (from the E.P. proceedings) filed the judgment of the High Court. As held by the Supreme Court in K.K. Modi v. K.N.Modi referred above, the Court has discretion to strike off the proceedings on being satisfied of there being no chance of success in the suit when it is satisfied that it is an abuse of process of Court. In the case of K.K. Swaminathan v. Srinivasagam referred above, where it is just and necessary to strike off any proceedings, the Court has inherent power under Section 115 of CPC; and that can be done at any stage of proceedings, if the Court found that it is an abuse of process of Court.

15. Applying these principles to the present case (during the proceedings), the High Court has held in the suit filed by Vasathi Devi in C.S.No. 537 of 2004 for declaration of title held that the lease agreement executed by Vasathi Devi is forged and directed that the E.P shall be proceeded. That was filed before the E.P. Court in M.P.Nos. 707 and 709 of 2004 to strike off the proceedings. When the High Court has held that the lease agreement relating to these petitioners were forged, the Rent Controller need not and cannot continue the proceedings and independently come to a different and contrary conclusion that such a lease agreement is not forged. If such a step has been adopted, the Rent Controller would be committing an act of contempt of Court, in not following the decision of

the High Court on an issue which has been decided by it; since it cannot decide the same issue which had already been decided by the High Court. Therefore, the Rent Controller had come to the conclusion that there is no chance of success for the petitioner in the proceedings and that if it is allowed to continue, it is an abuse of process of Court. Deciding the same issue amounts to re-agitating the same matter which no one is entitled to do. Under those circumstances, the Rent Controller had followed the legal principles correctly and ordered striking off the names in that E.P. proceedings. That act of Rent Controller is perfectly legal and justified and there is no illegality in striking off their names even though P.W.I was not cross-examined and other witnesses were not examined. If the Rent Controller had proceed with the enquiry in M.P.Nos. 493 and 495 of 2004 that would be an abuse of process of Court. Therefore, the order passed by the learned Rent Controller is legally sustainable and there is no illegality in the impugned order.

16. In the result, the revision petitions are devoid of merits and the same are dismissed, with costs. Consequently, connected CMPs are closed.

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