

**IN THE COURT OF PRINCIPAL DISTRICT MUNSIF KANCHEEPURAM
KANCEEPURAM DISTRICT**

**PRESENT: Tmt.R. Rajeswari,B.Com.,L.L.M.,
Principal District Munsif, Kanchipuram**

On Wednesday, this the 13th day of September 2023

EA.No.2 of 2021

In

EP.No.72 of 2013

V. Srinivasan
S/o. Venkatesan

..Petitioner/Judgment Debtor

/Versus/

1. V. Sampoorname
W/o. Late. A. Varadan.
2. V. Ramamoorthy,
S/o. Late. A. Varadan

...Respondents/Decree Holders

This petition has come up on 02.01.2023 for final hearing before me in the presence of M/s. J. Manigandan & G. Sridhar, advocates for the petitioners and M/s. Kanchi.GV.Mathiazhagan & S. Mageswaran, advocate for the respondents and upon hearing the arguments of both sides and upon perusing the connected material records and having stood over till this day for consideration, this court delivers the following:

ORDER

1. This petition is filed under Section 47 of CPC to dismiss the execution petition filed by the respondent/Decree Holder in E.P.No.72/2013 in RCOP.No.9/2006.

2. **The case of the petitioner as stated in his affidavit is as follows:-**

The petitioner submitted that the Respondents 1 and 2 have filed the rent control petition for owners use and occupation, act of waste and willful default etc., the schedule of the property mentioned in the rent control proceedings is extracted below, Kancheepuram District and Town Kamarajar Street, Door No. 58-E, Town survey No.2134/2 including Electric Service Connection Sc.No. 15360 ground floor.

3. The petitioner submit that the rent controller has allowed the Eviction petition that the respondent/petitioner is entitled to eviction of the appellant/respondent on the ground of willful default in payment of rent, own use and occupation and not on the ground of causing nuisance to the respondent/petitioner. Time for eviction; two months, no costs.'
4. The landlady and her son fraudulently obtained the eviction decree by misrepresenting the facts regarding title over the property. Aggrieved by the order of eviction R.C.A.No.7 of 2012 was preferred by the petitioner. During cross examination the Pw1 in Rcop No.7 of 2009, the Pw1 has categorically stated that they purchased the property from one Yasodha Ammal and constructed the superstructure in the suit premises and relevant portion is extracted below. " யசோதா அம்மாஸிடமிருந்து 1990 வருடம் வாங்கியிருக்கிறோம் அப்போது நான் மைனர். நான் கிரையம் வாங்கிய காலத்திலேயே வாடகைக்கு இருந்தோம் என்றால் காலி மனையாக தான் வாங்கினோம்"

5. During pendency of the Rent Control Appeal, the executive officer of the Sri Devarajasamy Devasthanam, having office at Sri Devarajaswamy temple Sannathi Street, Kancheepuram has called for objection for granting lease of land originally leased out to the One Dr. Venkatesan who subsequently surrendered the possession in favour of the temple which is subject property and the same is extracted below. " காஞ்சிபுரம் நகரம், காமராஜர் வீதி, கதவு எண். 58ஈ டவுன் சர்வே எண். 2134 /2 கொண்டதில் உள்ள அடிமனை வாடகை ரசீதானது எனது பெயரில் தங்கள் நிர்வாகத்திற்குட்பட்ட அருள்மிகு வரதராஜஸ்வரி தேவஸ்தானம் மூலம் வாடகை ரசீதுபடி நான் தவறாமல் வாடகை செலுத்தி வருகின்றோம். இந்நிலையில் எனது சொந்த வேலை நிமித்தமாக என்னால் தொடர்ந்து வாடகையை தேவஸ்தானத்திற்கு செலுத்த இயலாத நிலையில் உள்ளேன். எனவே மேற்படி இடத்தில் ஒரு பகுதியான தெற்கு பக்கம் 10 அடி அகலம், 23 அடி நீளம் உள்ள அடிமனைக்கான வாடகையை எனது நண்பர். திரு. வீ. சீனிவாசன். த/பெ. வெங்கடேசன், வர்த்தக முகவரி நெ.58ஈ, காமராஜர் தெரு, காஞ்சிபுரம் என்பவரின் பெயரில் பெயர் மாற்றம் செய்துக் கொடுப்பதில் எனக்கு யாதொரு ஆட்சேபனையும் கிடையாது என்றும், இனி வருங்காலங்களில் மேற்படி மாத வாடகையை மேற்படி வி.சீனிவாசன் அவர்களிடமே வசூல் செய்துக்கொண்டு அவர் பெயரில் ரசீது கொடுக்கவும் நான் மனப்பூர்வமாக சம்மதிக்கிறேன்."
6. The temple is owner of the land comprised in survey No.2134/2 and patta was also in the name of Sri Devarajasamy Devasthanam by the revenue authorities. The Sri Devarajasamy Devasthanam, having office at Sri Devarajaswamy temple

sannathi Street, Kancheepuram has also filed a suit for declaration that O.S.No. 23 of 2016 on the file of Subordinate Judge at Kancheepuram claiming the following relief " suit is for declaration that the plaintiff is the absolute owner of the suit property and for injunction restraining the defendants 2 and 3 from taking eviction proceedings in RCOP No.9 of 2006 on the file of Rent Controller, Kanchipuram and for mandatory injunction against the 1st defendant to pay monthly rent to the plaintiff only and for costs of the suit" on the strength that where the subject property stand belongs to the Sri Devarajasamy Devasthanam, having office at Sri Devarajaswamy temple Sannathi Street, Kancheepuram and the suit was decreed on 18.09.2017.

7. The petitioner state that since no one claimed lease including the land lord and land lady and the temple authorities also granted lease in the petitioner favour and the petitioner is having lease hold right of the land in respect of subject property and the petitioner have not granted any sublease in favour of the onwer of the superstructure and the petitioner is lessee of the land and the eviction order passed by Rent controller Rcop No. 9 of 2006 can not be executed at all.
8. The petitioner further state that pleased determine the owner ship of the land in this subject property and dismiss the above Executive Petition No.72 of 2013 on the file of the Principal District Munsif Court/at Kancheepuram in Rcop No.9 of 2006 before the Rent Controller at Kancheepuram. Hence this petition.

9. **The 2nd respondent filed his counter, which is adopted by the 1st respondent and the gist of the same is as follows:-**

The Rent Control Act is a self-contained code and this Hon'ble Court being Rent Controller is not Civil Court and proceedings are not governed by the C.P.C., except by virtue of Section-18 of the Tamil Nadu Buildings (Lease and Rent Control) Act, the Provision of Order 21 of Cpc., in so far as they related to delivery of possession are made applicable to the execution proceedings under the Rent Control Act. To determine all questions including questions relating to right, title or interest in the property, the Order 21, Rule 101 of cpc contemplates as, "All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceedings on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions. But, the Order – 21, Rule – 102 of C.P.C, contemplates as, "102. Rules not applicable to transferee pendent lite,- Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgement – debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any person. Explanation.- In this rule, "transfer" include a transfer by operation of law."

Admittedly the Eviction Petition in R.C.O.P.No:9 of 2006, filed on 01.06.2006 and passed the order on 31.01.2012, this E.P.No.72 of 2013 is filed on 03.04.2013, the suit in O.S.No. 23 of 2016 is filed during the pendency of the execution proceedings in E.P.No. 72 of 2013 and decreed on 18.09.2017 during the pendency of the execution proceedings in E.P.No. 72 of 2013. Hence, this petition is not maintainable and has to be dismissed in limine.

10. It is further submitted that the Section – 47 of C.P.C., clearly contemplates to determine the questions (1) relating to the execution, (2) discharge or satisfaction of the decree in between the parties. It is submitted that the relating to execution is not relating to right, title or interest in the property and the Sri Devarajaswamy Devasthanam, Kanchipuram is neither party nor purchaser in execution of this Order in R.C.O.P., as explained in Section 47 of C.P.C. Admittedly the Judgment-debtor neither discharge nor satisfy the decree. Hence, the petition under section 47 of C.P.C., is not maintainable either on basis of relating to the execution or discharge or satisfaction of the decree and has to be dismissed in limine.
11. The respondents / decree - holders are absolute owners of the property and the petitioner/judgment – debtor is a tenant under the respondents/decreed holders in respect of the non-residential building bearing door No. 58-E, Kamarajar Street, Kanchipuram Town, ground floor, from the month of July 1997 as per the 11 months lease written agreement dated 01.07.1997, in between the husband of the 1st respondent and the father of the 2nd respondent, the (late) A. Varadan, and the

lease period is only 11 months and said A. Varadan died on 21.05.1998 leaving the respondents/decreed-holders as his legal heirs. After death of the said A. Varadan, the petitioner/judgment-debtor neglected to pay the rent and threaten the respondents/decreed-holders to be sold the property to him on denying to sell the property, the petitioner/judgment -debtor filed a suit before the Hon'ble Additional District Munsif Court, Kanchipuram for Permanent injunction until due process of law, in O.S.No. 730 of 1999 on 09.10.1999 without paying the rent till then, but after filing the above said suit, the petitioner/judgment – debtor used to tender the rent through money order till September 2000, even in the rent itself, the respondent detained the Electricity charges because Respondent/Decree holders are the widow and young boy without anybodies help, they have to lead their life, they received the rent till the month of September 2000, thereafter the petitioner/judgment-debtor stopped even to send the money order, in the meanwhile, the Respondents/Decree holders issued a legal notice, in the month of May 2001, to vacate the premises on default of rent and demanding the arrears of rent.

12. Instead of tendering the arrears of the rent, the petitioner/judgment-debtor filed a petition under section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, in R.C.O.P No 32 of 2001 to deposit the rent in the Court, with false allegation that he has sent the money order till December 2000. This Hon'ble Court allowed the R.C.O.P No.32 of 2001 and directed to deposit the rent from October 2000, admitting default of the petitioner/judgment debtor.

Even depositing of the rent irregularly in the court also, one of the way of willful default with safe mode, after issuing the notice, claiming the rent, the default by the petitioner/judgment – debtor in depositing the rent continuously amounts to willful default as per explanation of section 10(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The 2nd respondent is carrying on Tyer works business in a rental building adjacent to this petition premises and the building owner of the said premises requires the premises for their own use, and the respondents/decreed holders were residing in the 1st floor of the building and used to take the Electric service from the service of the petition mentioned premises, but from the month of July 2001, the petitioner/judgment-debtor disconnected the Electric line to the first floor and made unbearable nuisance to the respondents/decreed-holders in the result the 1st floor became waster and the respondents/decreed-holders came out of their own residence and residing in a rental house and filed the R.C.O.P No.9 of 2006 and continue the fights on various kind of the petitioner/judgment debtor and now presented such kind of this petition to prolong the execution proceedings.

13. In order to answer the affidavit it is true that during cross examination the Pw1 in R.C.O.P No 9 of 2006 the PW.1 has categorically stated that they purchased the property from one Yasodha Ammal and constructed the superstructure in the suit premises. The 2nd respondent strongly denies the allegations contained in the affidavit that pendency of the rent control appeal, the executive officer of the Sri Devarajasamy devasthanam, having office at Sri Devarajaswamy temple

sannathi street, Kanchipuram has called for objection for granting lease of land originally leased out to the one Dr. Venkatesan and the Dr. Venkatesan subsequently surrendered the possession in favour of the temple as utter false. The 2nd respondent submits that there is no such Dr. Venkatesan and said Dr. Venkatesan is no way connected with this property and the said Dr. Venkatesan is neither owner of the property nor tenant under the respondents/decreed-holders to surrender or gift the property, all the material stories are created and played by the Petitioner/judgment debtor in order to cheat the Respondents/Decree-Holders.

14. The petitioner / Judgment debtor has intention to take over property from the respondents under third kind of method, neglected to obey the order and filed this kind of petition. Hence this petition may be dismissed.
15. The point for consideration in this petition is whether this petition is to be allowed or not.

The Point:

16. The learned counsel for the petitioner argued that the Respondents 1 and 2 have filed the rent control petition for owners use and occupation, act of waste and willful default etc., the schedule of the property mentioned in the rent control proceedings is extracted below, Kancheepuram District and Town Kamarajar Street, Door No. 58-E, Town survey No.2134/2 including Electric Service Connection Sc.No. 15360 ground floor.

17. The petitioner submit that the rent controller has allowed the Eviction petition that the respondent/petitioner is entitled to eviction of the appellant/respondent on the ground of willful default in payment of rent, own use and occupation and not on the ground of causing nuisance to the respondent/petitioner. Time for eviction; two months, no costs.'
18. The landlady and her son fraudulently obtained the eviction decree by misrepresenting the facts regarding title over the property. Aggrieved by the order of eviction R.C.A.No.7 of 2012 was preferred by the petitioner. During cross examination the Pw1 in Rcop No.7 of 2009, the Pw1 has categorically stated that they purchased the property from one yasodha Ammal and constructed the superstructure in the suit premises and relevant portion is extracted below. " யசோதா அம்மாளிடமிருந்து 1990 வருடம் வாங்கியிருக்கிறோம் அப்போது நான் மைனர். நான் கிரையம் வாங்கிய காலத்திலேயே வாடகைக்கு இருந்தோம் என்றால் காலி மனையாக தான் வாங்கினோம்"
19. During pendency of the Rent Control Appeal, the executive officer of the Sri Devarajasamy Devasthanam, having office at Sri Devarajaswamy temple Sannathi Street, Kancheepuram has called for objection for granting lease of land originally leased out to the One Dr. Venkatesan who subsequently surrendered the possession in favour of the temple which is subject property and the same is extracted below. " காஞ்சிபுரம் நகரம், காமராஜர் வீதி, கதவு எண். 58ஈ

டவுன் சர்வே எண். 2134 /2 கொண்டதில் உள்ள அடிமனை வாடகை ரசீதானது எனது பெயரில் தங்கள் நிர்வாகத்திற்குட்பட்ட அருள்மிகு வரதராஜஸ்வரி தேவஸ்தானம் மூலம் வாடகை ரசீதுபடி நான் தவறாமல் வாடகை செலுத்தி வருகின்றோம். இந்நிலையில் எனது சொந்த வேலை நிமித்தமாக என்னால் தொடர்ந்து வாடகையை தேவஸ்தானத்திற்கு செலுத்த இயலாத நிலையில் உள்ளேன். எனவே மேற்படி இடத்தில் ஒரு பகுதியான தெற்கு பக்கம் 10 அடி அகலம், 23 அடி நீளம் உள்ள அடிமனைக்கான வாடகையை எனது நண்பர். திரு. வீ. சீனிவாசன். த/பெ. வெங்கடேசன், வர்த்தக முகவரி நெ.58ஈ, காமராஜர் தெரு, காஞ்சிபுரம் என்பவரின் பெயரில் பெயர் மாற்றம் செய்துக் கொடுப்பதில் எனக்கு யாதொரு ஆட்சேபனையும் கிடையாது என்றும், இனி வருங்காலங்களில் மேற்படி மாத வாடகையை மேற்படி வி.சீனிவாசன் அவர்களிடமே வசூல் செய்துக்கொண்டு அவர் பெயரில் ரசீது கொடுக்கவும் நான் மனப்பூர்வமாக சம்மதிக்கிறேன்."

20. The temple is owner of the land comprised in survey No.2134/2 and patta was also in the name of Sri Devarajasamy Devasthanam by the revenue authorities. The Sri Devarajasamy Devasthanam, having office at Sri Devarajaswamy temple sannathi Street, Kancheepuram has also filed a suit for declaration that O.S.No. 23 of 2016 on the file of Subordinate Judge at Kancheepuram claiming the following relief " suit is for declaration that the plaintiff is the absolute owner of the suit property and for injunction restraining the defendants 2 and 3 from taking eviction proceedings in RCOP No.9 of 2006 on the file of Rent Controller, Kanchipuram and for mandatory injunction against the 1st defendant

to pay monthly rent to the plaintiff only and for costs of the suit" on the strength that where the subject property stand belongs to the Sri Devarajasamy Devasthanam, having office at Sri Devarajaswamy temple Sannathi Street, Kancheepuram and the suit was decreed on 18.09.2017.

21. The petitioner state that since no one claimed lease including the land lord and land lady and the temple authorities also granted lease in the petitioner favour and the petitioner is having lease hold right of the land in respect of subject property and the petitioner have not granted any sublease in favour of the onwer of the superstructure and the petitioner is lessee of the land and the eviction order passed by Rent controller Rcop No. 9 of 2006 can not be executed at all.
22. The petitioner further state that pleased determine the owner ship of the land in this subject property and dismiss the above Executive Petition No.72 of 2013 on the file of the Principal District Munsif Court/at Kancheepuram in Rcop No.9 of 2006 before the Rent Controller at Kancheepuram. Hence the petitioner counsel prayed to allow this petition.
23. The learned counsel for the respondent argued that the Rent Control Act is a self-contained code and this Hon'ble Court being Rent Controller is not Civil Court and proceedings are not governed by the C.P.C., except By virtue of Section-18 of the Tamil Nadu Buildings (Lease and Rent Control) Act, the Provision of Order 21 of Cpc., in so for as they related to delivery of possession are made applicble to the execution proceedings under the Rent Control Act. To determine all questions including questions relating to right, title or interest in

the property, the Order 21, Rule 101 of cpc contemplates as, "All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceedings on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions. But, the Order – 21, Rule – 102 of C.P.C, contemplates as, "102. Rules not applicable to transferee pendente lite,- Noting in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgement – debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any person. Explanation.- In this rule, "transfer" include a transfer by operation of law." Admittedly the Eviction Petition in R.C.O.P.No:9 of 2006, filed on 01.06.2006 and passed the order on 31.01.2012, this E.P.No.72 of 2013 is filed on 03.04.2013, the suit in O.S.No. 23 of 2016 is filed during the pendency of the execution proceedings in E.P.No. 72 of 2013 and decreed on 18.09.2017 during the pendency of the execution proceedings in E.P.No. 72 of 2013. Hence, this petition is not maintainable and has to be dismissed in limine.

24. It is further submitted that the Section – 47 of C.P.C., clearly contemplates to determine the questions (1) relating to the execution, (2) discharge or satisfaction

of the decree in between the parties. It is submitted that the relating to execution is not relating to right, title or interest in the property and the Sri Devarajaswamy Devasthanam, Kanchipuram is neither party nor purchaser in execution of this Order in R.C.O.P., as explained in Section 47 of C.P.C. Admittedly the Judgment-debtor neither discharge nor satisfy the decree. Hence, the petition under section 47 of C.P.C., is not maintainable either on basis of relating to the execution or discharge or satisfaction of the decree and has to be dismissed in limine.

25. The respondents / decree -holders are absolute owners of the property and the petitioner/judgment – debtor is a tenant under the respondents/decreed holders in respect of the non-residential building bearing door No. 58-E, Kamarajar Street, Kanchipuram Town, ground floor, from the month of July 1997 as per the 11 months lease written agreement dated 01.07.1997, in between the husband of the 1st respondent and the father of the 2nd respondent, the (late) A. Varadan, and the lease period is only 11 months and said A. Varadan died on 21.05.1998 leaving the respondents/decreed-holders as his legal heirs. After death of the said A. Varadan, the petitioner/judgment-debtor neglected to pay the rent and threaten the respondents/decreed-holders to be sold the property to him on denying to sell the property, the petitioner/judgment -debtor filed a suit before the Hon'ble Additional District Munsif Court, Kanchipuram for Permanent injunction until due process of law, in O.S.No. 730 of 1999 on 09.10.1999 without paying the rent till then, but after filing the above said suit, the petitioner/judgment – debtor

used to tender the rent through money order till September 2000, even in the rent itself, the respondent detained the Electricity charges because Respondent/Decree the Electricity charges. The 2nd respondent submits that because Respondents/Decree holders are the widow and young boy without anybodies help, they have to lead their life, they received the rent till the month of September 2000, thereafter the petitioner/judgment-debtor stopped even to send the money order, in the meanwhile, the Respondents/Decree holders issued a legal notice, in the month of May 2001, to vacate the premises on default of rent and demanding the arrears of rent.

26. Instead of tendering the arrears of the rent, the petitioner/judgment-debtor filed a petition under section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, in R.C.O.P No 32 of 2001 to deposit the rent in the Court, with false allegation that he has sent the money order till December 2000. This Hon'ble Court allowed the R.C.O.P No.32 of 2001 and directed to deposit the rent from October 2000, admitting default of the petitioner/judgment debtor. Even depositing of the rent irregularly in the court also, one of the way of willful default with safe mode, after issuing the notice, claiming the rent, the default by the petitioner/judgment – debtor in depositing the rent continuously amounts to willful default as per explanation of section 10(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The 2nd respondent is carrying on Tyer works business in a rental building adjacent to this petition premises and the building owner of the said premises requires the premises for their own use, and the

respondents/decreed holders were residing in the 1st floor of the building and used to take the Electric service from the service of the petition mentioned premises, but from the month of July 2001, the petitioner/judgment-debtor disconnected the Electric line to the first floor and made unbearable nuisance to the respondents/decreed-holders in the result the 1st floor became waster and the respondents/decreed-holders came out of their own residence and residing in a rental house and filed the R.C.O.P No.9 of 2006 and continue the fights on various kind of the petitioner/judgment debtor and now presented such kind of this petition to prolong the execution proceedings.

27. In order to answer the affidavit it is true that during cross examination the PW1 in R.C.O.P No 9 of 2006 the PW.1 has categorically stated that they purchased the property from one Yasodha Ammal and constructed the superstructure in the suit premises. The 2nd respondent strongly denies the allegations contained in the affidavit that pendency of the rent control appeal, the executive officer of the Sri Devarajasamy devasthanam, having office at Sri Devarajaswamy temple sannathi street, Kanchipuram has called for objection for granting lease of land originally leased out to the one Dr. Venkatesan and the Dr. Venkatesan subsequently surrendered the possession in favour of the temple as utter false. The 2nd respondent submits that there is no such Dr. Venkatesan and said Dr.Venkatesan is no way connected with this property and the said Dr. Venkatesan is neither owner of the property nor tenant under the respondents/decreed-holders to surrender or gift the property, all the material

stories are created and played by the Petitioner/judgment debtor in order to cheat the Respondents/Decree-Holders. Hence the respondent counsel prayed to dismiss this petition.

28. Both sides arguments heard. Records Perused. The main contention of the petitioner is that the respondents/decree holders are not the owner of the petition mentioned property. Sri Devaraji Swamy Temple, Sannadhi Street, Kancheepuram is the owner of the property. It is admitted facts that the petitioner/Judgment Debtor has accepted the ownership of the respondent/decree holders at the time of RCOP proceedings and paid the rents. But the petitioner/decree holders has taken a different stand that the respondent are not the owner of the suit property. To prove his contention, the petitioner/judgment debtor did not produce any both oral and documentary evidence. Hence, the contention of the petitioner is liable to be rejected as is petition devoid of merits.

29. In the result, this petition is dismissed. No Costs.

Dictated to the steno-typist, who directly typed the same in her computer, corrected and pronounced by me in open court, this the 13th day of September 2023

sd/-

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM