

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.01.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.3293 of 2011

and

M.P.No.1 of 2011

1.P.S.Natarajan
2.N.Sudharshan

... Petitioners

vs.

N.Santhanam

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order of the District Munsif cum Judicial Magistrate No.1, Hosur dated 22.07.2011 made in I.A.No.29/2010 in R.C.O.P.No.3 of 2009.

For Petitioners : Mr.P.Mani

For Respondent : Mr.V.Nicholas

ORDER

The submissions made by Mr.P.Mani, learned counsel for the petitioners and by Mr.V.Nicholas, learned counsel for the respondent are heard. The impugned order of the trial court and other documents produced in the form of typed set of papers are also perused.

2. This revision arises out of an order passed by the learned Rent Controller (District Munsif-cum-Judicial Magistrate No.I), Hosur on 22.07.2011 in I.A.No.29/2010 in R.C.O.P.No.3/2009. The respondent herein has filed the above said RCOP for eviction on the ground of owner's occupation and subletting. The revision petitioners are contesting the RCOP contending that at no point of time there was the jural relationship of landlord and tenant between the respondent herein and the petitioners herein. However, it is an admitted fact that the respondent herein was the allottee of the petition property and the allotment was made by the Tamil Nadu Housing Board.

3. The revision petitioners contend that before ever getting a sale deed from the Tamil Nadu Housing Board, the respondent herein entered into an Agreement for Sale with the second petitioner and the said Agreement for sale was executed on 23.02.2004 and that they were inducted in possession pursuant to the agreement and not as a tenant as claimed by the respondent herein. In order to substantiate their contention, the petitioners wanted to produce the said Sale Agreement dated 23.02.2004, as a document to be marked on their side. When marking of the said document was refused, the petitioners herein were constrained to

file above said interlocutory application inviting an order regarding the admissibility of the said document in evidence.

4. The learned Rent Controller, after hearing, decided the issue against the revision petitioners holding that the agreement having been entered into after the introduction of sub section 1-A to Section 17 of the Registration Act by Registration and Other Related Laws Amendment Act 48 of 2001 should have been compulsorily registered and that the said agreement being admittedly unregistered, the same could not be used as a piece of evidence for establishing the right under Section 53-A of the Transfer of Property Act.

5. Though the said reason assigned by the learned Rent Controller cannot be assailed, it is the contention of the learned counsel for the petitioners that the document was sought to be used not for the purpose of establishing any right under Section 53-A of the Transfer of Property Act, but for the purpose of showing the absence of jural relationship of landlord and tenant between the respondent and the revision petitioners at any point of time and that this aspect was not properly considered by the learned Rent Controller.

6. The learned counsel appearing for the respondent is not in a position to contradict the above said submission made by the learned counsel for the petitioners that sub section 1-A of Section 17 of the Registration Act, 1908 makes it compulsory to register a document containing a recital regarding delivery of possession in part performance of the agreement, but the said section does not make the entire document inadmissible for want of registration and that only for the purpose of claiming right under Section 53-A of the Transfer of Property Act, it has been made inadmissible for want of registration. The said contention of the learned counsel for the petitioners that if no protection under Section 53-A is claimed and the document is sought to be used for proof of some other aspect, the non-registration of the agreement, will not, in any way, affect the admissibility of the document as a piece of evidence, has got to be countenanced. In such view of the matter, this court comes to the conclusion that the revision is bound to succeed and the order of the learned Rent Controller (District Munsif-cum-Judicial Magistrate No.I), Hosur is liable to be set aside, however with an observation that the admission of the document shall be restricted to all other purposes, except for the purpose of seeking protection under Section 53-A of the Transfer of Property Act.

In the result, the civil revision petition is allowed. The order of the Rent Controller (District Munsif-cum-Judicial Magistrate No.I), Hosur dated 22.07.2011 made in I.A.No.29/2010 in R.C.O.P.No.3 of 2009 is set aside. However, it is further observed that the admission of the document shall be restricted to all other purposes except the purpose of seeking protection under Section 53-A of the Transfer of Property Act. Since the RCOP is of the year 2009, the learned Rent Controller (District Munsif-cum-Judicial Magistrate No.I), Hosur is directed to dispose of the RCOP within three months from the date of receipt of a copy of this order. However, there shall be no order as to cost. Consequently, connected M.P.No.1 of 2011 is closed.

13.01.2015

Index : Yes/No
Internet : Yes/No
asr

To
The District Munsif cum Judicial Magistrate No.1, Hosur

P.R.SHIVAKUMAR, J.

asr/-

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