

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.161 of 2014

Gnana Soundari

... Petitioner

Vs

Latha Chandrasekar

... Respondent

Civil Revision Petition under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, as amended by Act 23 of 1973 against the judgment and decree of the VIII Judge, Court of Small Causes, Chennai in R.C.A.No.789 of 2007 on 21.10.2013 confirming the order and decree dated 29.10.2007 in R.C.O.P.No.90 of 2006 passed by XV Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.C.Chinna Vyran

Respondent : Mrs.Latha Chandrasekar - no appearance

ORDER

Though notice was duly served on the respondent and her name has been printed in the cause list, none appeared for the respondent.

2.Challenging the judgment and decree passed in R.C.A.No.789 of 2007 on the file of the VIII Judge, Court of Small Causes, Chennai,

confirming the order passed in R.C.O.P.No.90 of 2006 on the file of the XV Judge, Court of Small Causes, Chennai, the landlady has filed the above Civil Revision Petition.

3.The petitioner/landlady filed R.C.O.P.No.90 of 2006 for eviction on the ground of willful default.

4.According to the petitioner, the petition premises was leased out to the respondent on a monthly rent of Rs.1,000/- for residential purpose. The respondent filed her counter disputing the title of the petitioner/ landlady.

5.Before the Rent Controller, on the side of the landlady, she was examined as P.W.1. However, no document was marked. On the side of the respondent, respondent's husband was examined as R.W.1 and ten documents, viz., Exs.R1 to R10 were marked.

6.Before the Rent Controller, the petitioner/landlady contended that her husband, Subramani had executed a Will in her favour, which was also probated and Letters of Administration was issued to her by this Court. The Rent Controller observed that a Will could not be considered as a transfer of property and it gives only authenticity to claim right. The Rent Controller,

dismissed the petition, finding that there is a dispute as to the title between the petitioner and the respondent's husband. On appeal, the Rent Control Appellate Authority confirmed the order passed by the Rent Controller finding that the dispute between the parties can be decided only before the Civil Court.

7.Before the Rent Control Appellate Authority, the landlady produced five documents. Ex.P4 is the order dated 26.09.2006 passed by this Court issuing Letters of Administration in favour of the petitioner. Ex.P5 is the order dated 03.10.2012 passed by this Court dismissing the Application No.5206 of 2006 in O.P.No.181 of 2006, which was filed by four petitioners, including the respondent's husband.

8.From Ex.P4, it is clear that Letters of Administration was granted in favour of the petitioner and the application to revoke the Letters of Administration filed by four petitioners, including the respondent's husband, was also dismissed by this Court by order dated 03.10.2012, which was marked as Ex.P5. Therefore, from Exs.P4 & P5 orders dated 26.09.2006 and 03.10.2012 respectively, it is clear that the landlady has right over the property. The Rent Control Appellate Authority without considering the additional documents erroneously confirmed the order passed by the Rent

Controller. But the Appellate Authority should have considered the documents produced by the petitioner/landlady and decide the matter on merits.

9.The learned counsel appearing for the petitioner also relied upon the provisions of Section 41 of the Indian Evidence Act.

10.Since the Lower Appellate Court has not considered the documents produced by the petitioner/landlady, specifically Exs.P4 & P5, I am of the view that the judgment and decree passed by the Rent Control Appellate Authority have to be set aside and the matter can be remitted back to the Rent Control Appellate Authority for fresh consideration. Accordingly, the judgment and decree passed in R.C.A.No.789 of 2007 on the file of the Rent Control Appellate Authority, VIII Judge, Court of Small Causes, Chennai are set aside. The matter is remitted back to the Rent Control Appellate Authority for fresh consideration. The Rent Control Appellate Authority is directed to decide all the issues, afresh, after taking into consideration the documents produced by the petitioner/landlady and after giving opportunity of hearing to both sides. The Appellate Authority is

directed to dispose of the appeal in R.C.A.No.789 of 2007 within a period of

three months from the date of receipt of a copy of this order.

11. With these observations, the Civil Revision Petition is allowed. No costs.

Index : No
Internet : Yes
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21.10.2016

To

1. The VIII Judge,
Court of Small Causes,
Chennai.

2. The XV Judge,
Court of Small Causes,
Chennai.

M.DURAIWAMY,J.
va

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