

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.4359 of 2011
and M.P.No.1 of 2011

1.C.K.Moidu

2.B.G.Murugesan

... Petitioners

Vs.

Thangammal

... Respondent

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the fair and final order made in R.C.A.No.3 of 2010 dated 26.07.2011 on the file of the II Additional Subordinate Court (Rent Control Appellate Authority), Coimbatore, confirming the fair and final order made in R.C.O.P.No.117 of 2006 on the file of the Principal District Munsif and Rent Controller, Coimbatore dated 25.11.2009.

For Petitioners : Mr.V.Ayyadurai

For Respondent : Mr.J.Saravana Kumar

ORDER

Challenging the judgment and decree passed in R.C.A.No.3 of 2010 on the file of the II Additional Subordinate Court, Coimbatore, confirming the order passed in R.C.O.P.No.117 of 2006 on the file of the Principal District Munsif and Rent Controller, Coimbatore, the petitioners, who claim to be

the tenants under the respondent, have filed the above Civil Revision Petition.

2.The revision petitioners filed R.C.O.P.No.117 of 2006 under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for depositing the rent into the Court. According to the petitioners, the agreed monthly rent was Rs.3,000/-. In the Original Petition, the petitioners have stated that the 2nd petitioner had purchased one-third undivided share in the petition property and the 1st petitioner is the tenant in the remaining two-third share of the petition property, which is owned by the respondent/landlady. According to the petitioners, originally the 1st petitioner was doing hotel business in the said property. Since the 1st petitioner wanted to change over to a new business, he took the 2nd petitioner as a partner, who is the owner of the remaining one-third share in the property. Further, the petitioners have stated that they entered into Partnership Agreement dated 20.07.2001 for doing wine shop business in the petition mentioned property in the name and style of "BEEGEE Wines". Further, the petitioners have stated that since the respondent/landlady refused to receive the rent, they filed the Original Petition under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

3.The respondent/landlady filed her counter disputing the averments stated in the Original Petition and she has also stated that she filed a suit in O.S.No.499 of 2004 on the file of the Fast Track Court No.II, Coimbatore for the relief of partition as against the petitioners. Further, she has stated that the petition mentioned property remained as vacant. In the said suit, she also filed an application in I.A.No.595 of 2004 restraining the petitioners from running any new business and another petition in I.A.No.597 of 2004 restraining them from inducting any 3rd party into the premises and another application in I.A.No.596 of 2004 restraining them from altering the physical features. According to the respondent/landlady, all the three petitions were allowed and interim injunction was granted by the trial Court. According to the respondent/landlady, the petitioners are not tenants and hence, they are not entitled to file Original Petition under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

4.Before the Rent Controller, on the side of the petitioners, P.W.1 was examined and 10 documents, Exs.P1 to P10 were marked. The Rent Controller, taking into consideration the oral and documentary evidences let in by the petitioners, dismissed the Original Petition, against which the petitioners preferred an appeal in R.C.A.No.3 of 2010 on the file of the II

Additional Subordinate Court, Coimbatore and the Rent Control Appellate Authority also confirmed the order of the Rent Controller and dismissed the appeal. Against the concurrent findings of the Courts below, the petitioners have filed the above Civil Revision Petition.

5.Mr.V.Ayyadurai, the learned counsel appearing for the petitioners submitted that the petitioners have established their case by producing Ex.P7 - Income Tax Certificate and Ex.P8 - License to run retail vending of liquor bar and therefore, the Courts below have committed an error in dismissing the Original Petition filed by the petitioners.

6.On a perusal of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the petitioners contend that they are the tenants under the respondent/landlady. Even according to the petitioners, originally the 1st petitioner was a tenant under the respondent/landlady and subsequently, the 2nd petitioner was inducted as a partner to run the wine shop business and also have entered into a Partnership Agreement dated 20.07.2001. However, the Partnership Agreement was not produced before the Rent Controller. In the absence of the Partnership Agreement between the petitioners, there is nothing on record to show the petitioners 1 & 2 are

jointly doing business in the petition premises. The Courts below have taken into consideration Exs.P7 & P8 and ultimately came to the conclusion that the 2nd petitioner is doing business as a sole proprietor and the 1st petitioner is not a partner in the said business. The Courts below have rightly rejected Exs.P7 & P8 documents produced by the petitioners. There is no evidence to show that the 2nd petitioner was a tenant under the respondent. In the absence of any evidence let in by the petitioners, the Courts below rightly came to the conclusion that the petitioners are not tenants under the respondent. That apart, the procedures contemplated under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act was also not followed by the petitioners prior to the filing of the Original Petition. Absolutely there is no averment in the petition that the petitioners have followed any procedure laid down in Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act. Taking into consideration, all these aspects, the Courts below rightly came to the conclusion that there is no landlord - tenant relationship between the 2nd petitioner and the respondent. Further, there is no evidence that the respondent/landlady refused to receive the rent sent by the 1st petitioner. In these circumstances, the Courts below rightly dismissed the Original Petition filed under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act.

7. In these circumstances, I do not find any error or irregularity in the concurrent findings of the Courts below. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

22.06.2016

To

- 1.The II Additional Subordinate Court
(Rent Control Appellate Authority),
Coimbatore.
- 2.The Principal District Munsif and
Rent Controller,
Coimbatore.

M.DURAIWAMY,J.
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