

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.08.2016
Coram

The Hon'ble Mr.Justice M.DURAISWAMY

CRP(NPD)NO.1439 of 2009
and C.M.P.No.1 of 2009

1. P.Sivakumar (died)
2. P.Indrani
3. P.Devaki
4. S.Sujatha
5. P.S.Monisha
6. Tejah Sivakumar
(Petitioners 4 to 6 are brought
on record as Lrs of the deceased
1st petitioner vide order of the
Court dated 16.09.2011 made
in M.Ps.1 to 3 of 2011)

...Petitioners

Vs

1. Hindustan Petroleum Corporation Limited
Bombay having Regional Office at
18/3 Big Bazaar Street,
Coimbatore represented by its
Chief Regional Manager
2. Vijayalakshmi
3. Kathirvelu

..Respondents

Civil Revision Petition filed under Section 227 of the Constitution of India against the fair and decreetal order of the Principal Subordinate Judge's Court (Rent Control Appellate Authority at Erode) dated 26.03.2009 in R.C.A.No.9 of 2006 Partly reversing the fair and decreetal order of the Principal District Munisf Court (Rent Controller) at Erode dated 10.11.2005 in E.A.No.28 of 2001 in E.P.No.21 of 2000 in R.C.O.P.No.10 of 1984.

For Petitioners : Mr.P.Valliappan
For Respondents : Mr.M.Vijayan for
M/s King and Patridge (R1)
NA for R2 & 3

O R D E R

Challenging the Judgment and decree dated 26.03.2009 passed in R.C.A.No.9 of 2006 on the file of the Principal Subordinate Court (Rent Control Appellate Authority), Erode, reversing the order dated 10.11.2005 passed in E.A.No.28 of 2001 in E.P.No.21 of 2000 in R.C.O.P.No.10 of 1984 on the file of the Principal District Munsif Court, (Rent Controller), Erode, the landlords have filed the above Civil Revision Petition.

2. Pursuant to the order of eviction passed in R.C.O.P.No.10 of 1984, which was confirmed by this Court as well as the Hon'ble Supreme Court, the landlords have filed Execution Petition in E.P.No.21 of 2000 and took possession of the petition premises on 17.10.2000. The delivery was recorded by the Rent Controller on 23.10.2000. Thereafter, the landlords have filed an application in E.A.No.259 of 2000 to permit them to withdraw the rent deposited by the tenants. The learned counsel appearing for the landlords submitted that the tenants had no objection for allowing the application in E.A.No.259 of 2000 and hence the Rent

Controller directed the landlords to withdraw the amount deposited by the tenants to the credit of R.C.O.P. After recording the delivery, the Execution Petition was closed by the Rent Controller.

3. Thereafter, the 1st respondent has filed an application in E.A.No.28 of 2001 under Section 47 of the Code of Civil Procedure read with Order 21 Rule 100 and 101 of the Code of Civil Procedure. It is the case of the respondents/tenants that at the time of delivery of possession of the petition premises, some of the movable properties were retained by the landlords and therefore, the landlords should be directed to return the movables or in the alternative to pay compensation of a sum of Rs.10 lakhs. The application filed by the tenants was contested by the landlords. The Rent Controller, taking into consideration the case of both parties, dismissed the application. Aggrieved over the same, the tenants preferred an appeal in E.A.No.9 of 2006 and the Rent Control Appellate Authority reversed the order passed by the Rent Controller and directed the landlords to pay a sum of Rs.1,40,338/- as compensation being the value of the two hoardings alleged to have belonged to the tenants. While modifying the order passed by the Rent Controller, the Rent Control Appellate Authority has stated that R.W.1 who was examined on the side of the landlords had admitted that the two hoardings belonged to the

tenants are with the landlords. However, on a perusal of the evidence of R.W.1, it could be seen that nowhere R.W.1 has admitted the existence of the two hoardings. In fact, R.W.1 has stated that he has installed two hoardings in respect of his jewellery business and also specified the value of each hoardings and also stated that for painting the hoardings, he has spent a sum of Rs.5,000/- per hoarding. When a suggestion was put to R.W.1 that there are three hoardings, R.W.1 denied the suggestion made by the tenants. The Rent Control Appellate Authority, without reading the entire evidence of R.W.1, erroneously stated that R.W.1 had admitted that the two hoardings belonged to the tenants are with them. When there is no such admission made by R.W.1 in his evidence, the finding of the Rent Control Appellate Authority cannot stand.

5. In these circumstances, the Judgment and decree passed by the Rent Control Appellate Authority in R.C.A.No.9 of 2006 is liable to be set aside and accordingly, the same is set aside. The Civil Revision Petition Stands allowed. No costs. Connected miscellaneous petition is closed.

05.08.2016

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To

1. The Principal Subordinate Court Erode,
2. The Principal District Munsif Court, Erode.

M.DURAIWAMY,J

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