

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.2337 of 2016

and

C.M.P.No.12031 of 2016

1.Abdul Rasheed
S/o.Abdul Azeez

2.Kulsheer Begum
W/o.Abdul Rasheed

... Petitioners

VS

Muslim Mahadamia Jamath Committee
Erode-6 represented by
its Special Secretary, G.Meyasa

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of learned I Additional District Munsif, Erode, passed in I.A.No.1400 of 2015 in O.S.No.498 of 2014 on 25.02.2016.

For Petitioner : Mr.S.Muralidharan

ORDER

This revision challenges the order of learned I Additional District Munsif, Erode, passed in I.A.No.1400 of 2015 in O.S.No.498 of 2014 on 25.02.2016.

2. Originally, respondent/plaintiff had moved R.C.O.P.No.25 of 2005 on the file of learned Principal District Munsif, Erode, seeking eviction of the defendant from the suit property and the same was allowed on 12.04.2007. Petitioners/defendants had preferred an appeal in R.C.A.No.6 of 2006 on the file of Rent Control Appellate Authority, Erode and finding of the Rent Controller was confirmed in the same. Petitioners/defendants preferred C.R.P.No.611 of 2009 before this Court, which was allowed in favour of petitioners/defendants with a direction to the plaintiff to file a Civil suit for eviction of defendants from the suit property. Alleging, amidst other grounds, that petitioners/defendants had not paid monthly rent regularly and that they having failed to do so, are to be vacated from the property, respondent sought eviction. Petitioners/defendants moved I.A.No.1400 of 2015 seeking striking off of the plaint in O.S.No.498 of 2014. Court below, under orders dated 25.01.2016, has dismissed such application giving rise to this revision.

3. Heard learned counsel for petitioners.

4. Learned counsel for petitioners submitted that the respondent/plaintiff had, in the suit, sought a direction that the petitioners/defendants deliver and surrender possession of property. The

schedule of property in the plaint informs that the suit property is a dwelling house. Learned counsel contends that the plaintiff not having sought a direction for removal of the superstructure rendered the suit not maintainable and hence, the plaint was liable to be strike off of the file. Learned counsel contends that the Court below has erred in dismissing the interlocutory application.

5. A perusal of the order of the Court below informs that the contentions of petitioners/defendants before it was that the Tamil Nadu City Tenants Protection Act was not applicable. In dismissing the application, the Court below has taken note of the position that in the earlier round of litigation it was common ground that only land had been leased out and superstructure had been put by petitioners/defendants. This Court finds specious the contention that in the absence of a prayer seeking removal of superstructure, suit for eviction was not maintainable. Under the Tamil Nadu City Tenants Protection Act, a decree may be passed requiring a tenant to hand over vacant possession. In the face of such a decree, it becomes the duty of a tenant to remove the superstructure put by him and in the event of failure to do so, such removal may be effected at his cost.

Finding no infirmity in the impugned order of the Court below and there being no merit, the Civil Revision Petition shall stand dismissed. This Court considers it appropriate to impose costs and accordingly, petitioners are directed to pay a sum of Rs.10,000/- (Rupees Ten thousand only) to the Tamil Nadu State Legal Services Authority, High Court, Chennai, within a period of two weeks from the date of receipt of this order. Connected miscellaneous petition is closed.

11.08.2016

Index:yes/no
Internet:yes
kkd

To

- 1.The I Additional District Munsif,
Erode.
- 2.The Tamil Nadu State Legal Services Authority,
High Court, Chennai.

C.T.SELVAM,J.

kkd/gm

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