

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1306 of 2017

M/s.Indian Steel Traders
Rep. By Prop.S.M.A.
Mohammed Saleem
No.70, Sembudoss Street,
Chennai – 600 001.

.. Petitioner

Vs.

Taha Shabbir Jodhpurwala

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 31.01.2017 made in M.P.No.68 of 2016 in RCOP.No.58 of 2014.

For Petitioners : Mr.M.Liagat Ali

ORDER

This Civil Revision Petition has been filed to set aside the order dated 31.01.2017 made in M.P.No.68 of 2016 in RCOP.No.58 of 2014.

2. The petitioner/tenant is the respondent in RCOP.No.58/2014 on the file of XVI Small Causes Court, Chennai. The respondent filed RCOP for fixation of fair rent. The petitioner filed MP.No.246/2016 for the dismissal of the RCOP, in view of the judgment of this Court in OSA.No.117/2015 dated 06.11.2015.

3. According to the petitioner, the property was settled on the respondent by his grandfather, after obtaining permission of this Court in A.No.4572/2008 in OP.No.516/1988. But, the permission granted to the grandfather of the respondent to execute settlement deed was set aside by the Hon'ble Division Bench of this Court in OSA.No.117/2015 by the Judgment dated 06.11.2015. Therefore, the property was reverted back to the grandfather of the respondent. The respondent is not the owner of the property. There are other co-owners and without their permission and consent, respondent has filed the above RCOP, which is not maintainable.

4. The respondent filed counter and denied all the averments made by the petitioner and submitted that the First Bench of this Court did not set aside the Settlement Deed and it has set aside only the permission granted to the grandfather of the respondent to settle the property. Even before settlement, his grandfather gifted the property to the respondent. Even if the settlement deed is set aside, the respondent and his father are having 16/31 share which is more than 50% of the share in the property. The petitioner filed this petition only to drag on the proceedings and is squatting the property without even paying any rent.

5. Learned Trial Judge, considering all the averments made in the affidavit, counter affidavit and materials on record and the judgment

of this Court, has held that as per the provisions of the Rent Control Act, one co-owner can maintain the Rent Control Proceedings and a petition for fixation of fair rent. The dispute on the title can only be decided after completion of trial. The Rent Control proceeding is summary proceeding and maintainability of the petition can be decided only at the time of final hearing and closed the petition.

6. Aggrieved against the same, the present Civil Revision Petition is filed.

7. Heard the learned counsel appearing for the petitioner.

8. The contention of the petitioner is that the respondent is not the owner of the property, in view of the judgment of the First Bench of this Court in OSA.117/2015, dated 06.11.2015. It is contended by respondent that Respondent is a co-sharer of the petitioner's property. As per provisions of the Tamil Nadu Building Lease and Rent Control Act, one of the co-sharers can maintain the petition under the Rent Control Act.

9. The learned Rent Controller, considered the judgment of this Court and held that this Court has not set aside the settlement deed executed in favour of the respondent, but it has only set aside the permission granted to the grand father of the respondent.

10. Whether the respondent is a owner or co-sharer or not a owner can be decided only at the conclusion of Trial by appreciating the evidence let in by parties.

11. The Learned Rent Controller has rightly held that the dispute regarding title and maintainability can be decided at the time of final hearing. There is no infirmity in the impugned order warranting interference by this Court.

In the result, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

10.04.2017

Speaking / Non-speaking order

Index :Yes/No

gv

To

The XVI Small Causes Court,
Chennai.

V.M.VELUMANI,J.

gv

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