

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-09-2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.NPD.No.3353 OF 2017

1.S.Nazar Ali
2.Jarina Begum
3.Nawsath Ali
4.Samsu Begum
5.Amjud Ali
6.Fathima Begum
7.Saddiq Ali
8.Firoj Begum
9.Abudahir
10.Megaraju Parveen
11.Sameen Banu

...

Petitioners

-VS-

T.E.Varadarajan

...

Respondent

Petition against the order, dated 16.08.2017, passed in E.A.No.309 of 2017 in E.P.No.39 of 2017 in R.C.O.P.No.10 of 2005 on the file of Principal District Munsif, Cuddalore.

For petitioners : Mr.D.Ravichander

ORDER

This Civil Revision Petition is directed against the dismissal of the petition, filed under Section 47 of the Civil Procedure Code, by the Court below.

2. Petitioners are tenants. While the Rent Controller dismissed the petition for eviction of the tenants/petitioners, the Rent Control Appellate Authority reversed the said finding of the Rent Controller and allowed the appeal, for eviction. The lower appellate Court has ordered eviction of the petitioners. Petitioners staked their claim that they were not the tenants at all and also questioned the jural relationship. They also claimed that a sum of Rs.2,25,000/-, which was paid as advance, be refunded.

3. The case of the petitioners is that the land in question belongs to a temple, over which, the respondent has put up a superstructure and agreed to sell the same to the petitioners. An agreement of sale was also entered into on 17.05.1993 thereto and the sale consideration was fixed at Rs.4,50,000/-. At the time of agreement, the respondent has received a sum of Rs.2,00,000/- and, thereafter, a sum of Rs.25,000/- on 01.06.1993. Therefore, according to the petitioners, the respondent is liable to refund the sum of Rs.2,25,000/-. They filed a suit for specific performance in O.S.No.54 of 1997 on the file of Subordinate Judge, Panruti. The trial Court has

decreed the suit, against which, the respondent filed an appeal in A.S.No.130 of 1998. The appellate Court has found that the petitioners are not entitled to specific performance and ordered the alternative relief of refund of advance amount, with interest at the rate of 9% per annum. Now, the petitioners have filed the petition under Section 47 of C.P.C., stating that a charge is created over the property and, therefore, the execution petition is liable to be dismissed and that the prayer for delivery of possession is not maintainable without discharging the lien. According to the petitioners, they have a right to possess the property, as long as the advance amount is not refunded to them by the respondent.

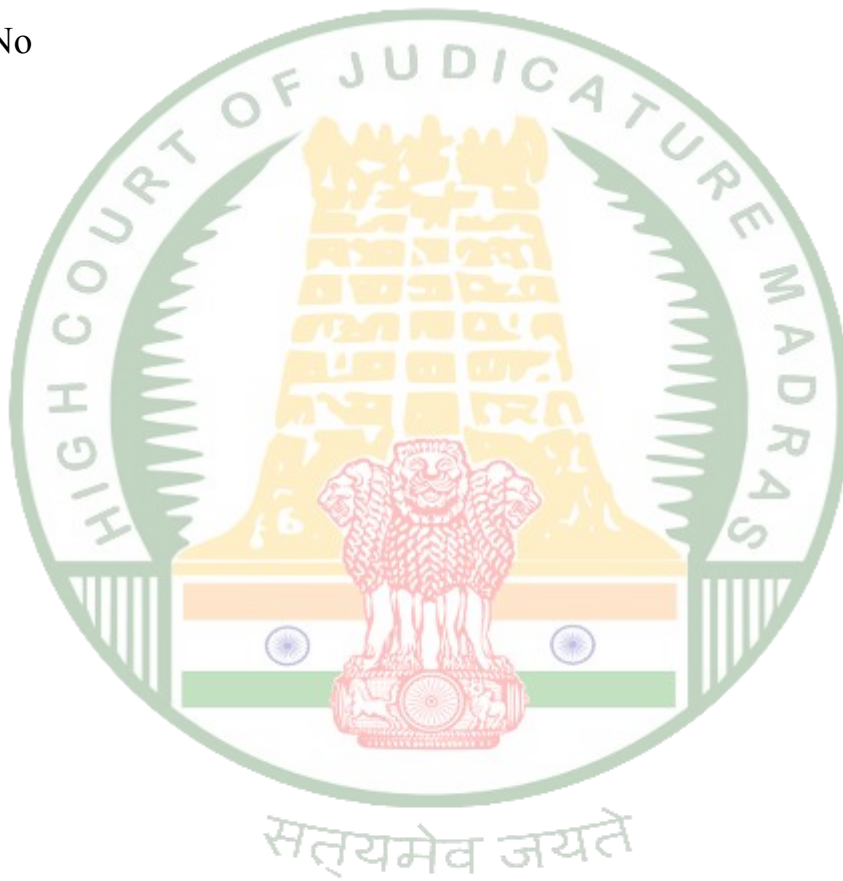
4. Admittedly, the execution petition is filed, based on the decree passed by the Rent Control Appellate Authority. The judgment and decree passed on a suit for specific performance will not create any charge on the superstructure, which belongs to the temple. There is also no finding by the Court below that the petitioners can continue in possession of the property until the refund of the advance amount is made. Moreover, the respondent himself is a tenant of the temple property and is not the owner of the property. Therefore, the parties cannot claim title or create charge over the property, which belongs to a third party. When there is no embargo on executing the decree passed by the Rent Control Appellate Authority, the executing Court can very well order delivery of possession of the property.

5. Under the circumstances, this Civil Revision Petition does not merit any consideration and it is, accordingly, dismissed. No costs. Consequently, the connected C.M.P.No.15580 of 2017 is closed.

Index : Yes/No
Internet : Yes/No

21-09-2017

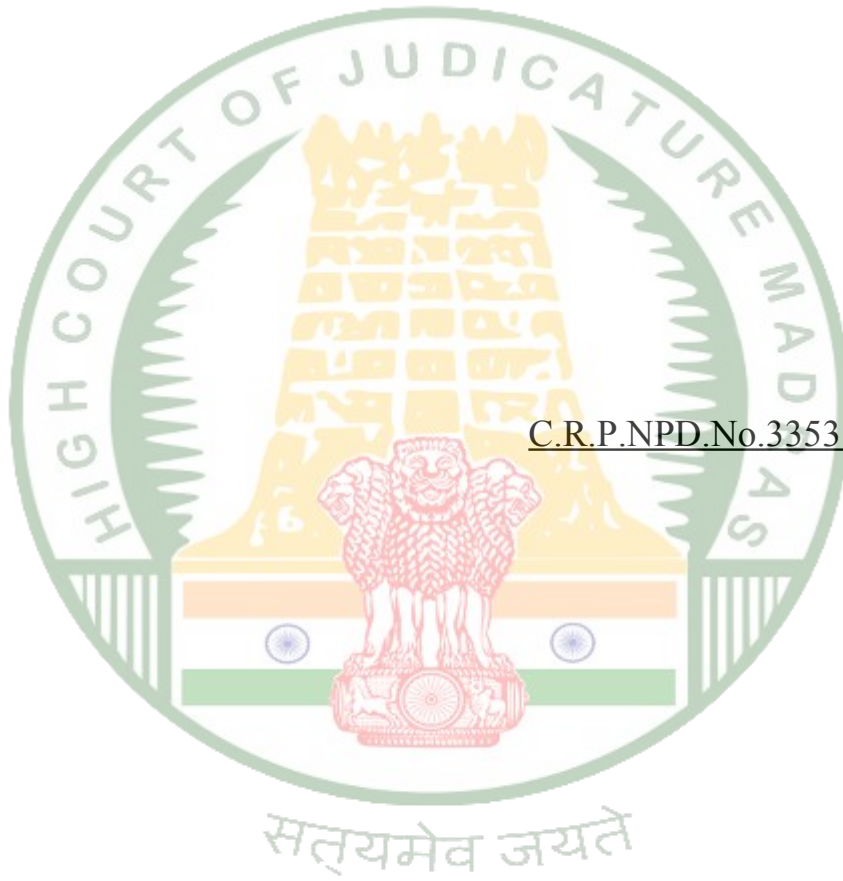
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M.GOVINDARAJ,J.

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