

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2017

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

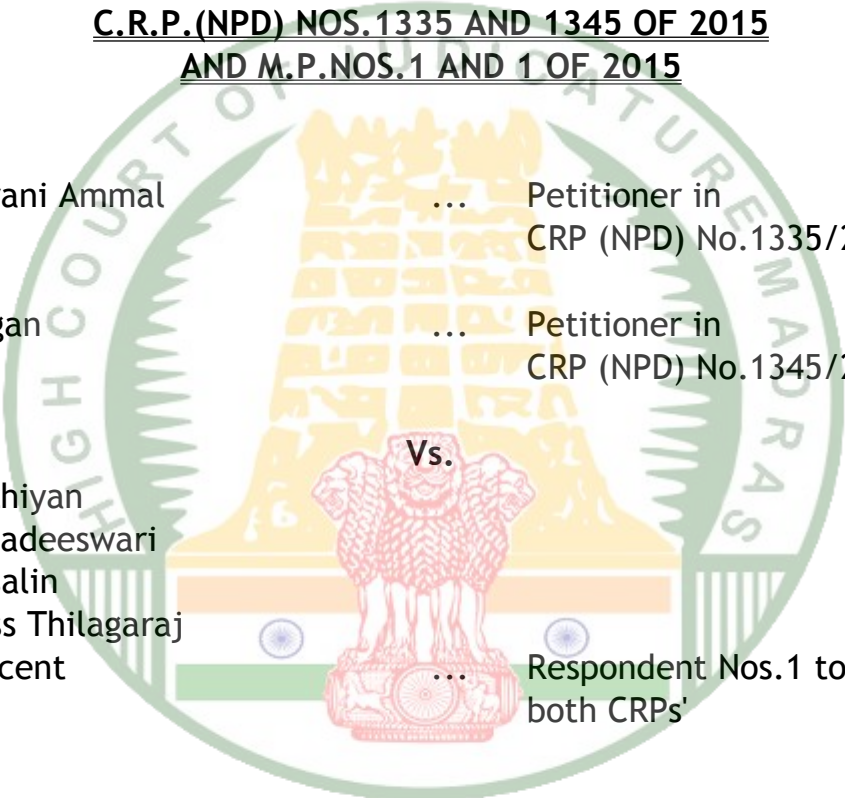
C.R.P.(NPD) NOS.1335 AND 1345 OF 2015
AND M.P.NOS.1 AND 1 OF 2015

Annapoorani Ammal ... Petitioner in
CRP (NPD) No.1335/2015

Arivazhagan ... Petitioner in
CRP (NPD) No.1345/2015

Vs.

1.S.C.Sezhiyan
2.S.C.Jagadeeswari
3.S.C.Rosalin
4.S.C.Doss Thilagaraj
5.S.C.Vincent ... Respondent Nos.1 to 5 in
both CRPs'



PRAYER IN CRP (NPD) NO.1335/2015: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the order and decreetal order of the Appellate Authority (VIII Judge, Small Causes Court) Chennai, dated 02.02.2015, passed in R.C.A.No.712 of 2012 confirming the order and decreetal order of the Rent Controller (XV Judge, Small Causes Court) Chennai, dated 28.09.2012 passed in RCOP No.2307 of 2009.

PRAYER IN CRP (NPD) NO.1345/2015: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the order and decreetal order of the Appellate Authority (VIII Judge, Small Causes Court) Chennai, dated 02.02.2015, passed in R.C.A.No.713 of 2012 confirming the order and decreetal order of the Rent Controller (XV Judge, Small Causes Court) Chennai, dated 28.09.2012 passed in RCOP No.2311 of 2009.

For Petitioners : Mr.S.Baskaran
For Respondents : Mr.K.Perumal

COMMON ORDER

Aggrieved over the concurrent findings of the Courts below, the unsuccessful tenants are before this Court on revision.

2. The respondents / landlords filed two eviction petitions under Sections 10 (2)(i) and 10(2)(vii) of the Tamil Nadu Buildings (lease and Rent Control) Act 1960 for willful default and denial of title. Before the Rent Controller, the respondents / landlords let in evidence as P.W.1 and marked Exs.P1 to P7. On the side of the petitioners / tenants, none were examined as witnesses and no documents were marked. Finally, eviction was ordered and the petitioners / tenants were directed to

deliver vacant possession within a period of two months from the date of decree. Aggrieved over the same, the petitioners / tenants have filed two appeals.

3. Before the Rent Control Appellate Authority, the respondents/landlords filed a petition under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act to stop the proceedings till the petitioners / tenants deposit the arrears of rent in M.P.No.41 of 2014 in RCA No.712 of 2012. The petitioners / tenants have filed a petition to receive documents in M.P.No.43 of 2014 in RCA No.713 of 2012. Both the appeals were taken up together for hearing along with the respective miscellaneous petitions. The Appellate Authority has considered all the issues together and confirmed the order of eviction passed by the Rent Controller on merits and dismissed the miscellaneous petitions along with the appeals. Aggrieved over the same, the revision petitioners / tenants have preferred the above two Civil Revision Petitions.

4. According to the petitioners / tenants, the property originally belonged to one M.S.Abdul Rahman Marakkayar. On 22.12.1956,

one S.Rengasamy Iyengar purchased the property. Father of one of the petitioners, namely S.Arivazhagan and husband of the other petitioner namely, Annapoorani Ammal had become lessees, in so far as the land is concerned. One Subramanian, father and husband of the revision petitioners had put up a superstructure with the permission of the owner of the property in the year 1956 itself. Since unknown rowdy elements threatened their peaceful possession, a suit was filed in O.S.No.2740 of 2007 on the file of XIII Assistant Judge, City Civil Court, Chennai, for permanent injunction. The matter was referred to Lok Adalat, wherein it was agreed to follow due process of law for evicting the tenants therein and in so far as title is concerned, that was left open to be decided by the Competent Court, by its award dated 21.02.2008. Thereafter, the respondents have filed an eviction petition before the Rent Controller. According to the petitioners, there is no landlord / tenant relationship between them. The respondents have collected only ground rent and therefore, they are not entitled to maintain the rent control petition.

5. The Rent Controller had gone through the evidence and documents on the side of the landlord. It was found that though a counter was filed by the revision petitioners / tenants, no evidence was let in to establish the averments made therein and no documents were marked and therefore, ordered eviction based on the sale deed of the landlord evidencing the purchase of the property along with thatched and tiled house in the schedule. It is also proved on the side of the landlord that the tenants were paying rentals till 2004 and thereafter, committed willful default. Eviction was ordered with a direction to deliver possession within two months from the date of the decree.

6. Before the Appellate Court, the tenants sought to mark the sale deed made in favour of landlords, dated 18.08.1980; certified copy of the plaint in O.S.No.2740 of 2007; award passed on 21.02.2008; and the notice issued by the landlords calling for payment of rentals and the property tax payment made by the landlord.

7. The Appellate Authority has considered those documents. The revision petitioners have come up with the documents to be marked

as exhibits for the consideration of appeal. The schedule of the property of the sale deed dated 18.08.1980 clearly shows the land and the superstructure, namely, thatched and tiled houses. The construction seems to be made of mud. The further averments by the landlord that the petitioners / tenants committed wilful default was also held to be proved. A perusal of the plaint dated 29.10.2006 and the award passed thereon on 21.02.2008, does not show the names of the revision petitioners. In fact, they were neither parties to the suit nor to the settlement made before the Lok Adalat on 21.02.2008. In the absence of any issue of title, between the parties, it will not hinder the proceedings. Further, the award against all the other tenants left open the issue of superstructure and the title to the same. But there is no independent suit filed by the tenants to establish the title.

8. The Appellate Authority, following the judgment of this Court in **RAMACHANDRAN AND OTHERS VS. VALLIAMMAL AND OTHERS [1992 (1) MLJ 188]** "that a party who is the best person to give evidence on certain matter should enter the witness box and place the facts before the Court and in the event of his failure to do so, the Court is

bound to draw an adverse inference against him, has found that the tenants have not established their claim that they are the lessees in respect of land alone and there is no jural relationship of landlord and tenant. On the other hand, the landlords have proved by oral and documentary evidence that they are the title holders of the superstructure and the revision petitioners have committed willful default. Since in the main appeal itself it was decided that the order passed by the Rent Controller is legal and sustainable, the miscellaneous petition under Section 11(4) of the Act filed by the landlord and the miscellaneous petition filed under Rule 16(2) to receive the documents, by the tenants were dismissed. Further, the Rent Control Appellate Authority even though found that the revision petitioners / tenants have committed wilful default even after the decree passed by the Rent Controller, dismissed both the miscellaneous petitions, in view of the findings in appeal.

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9. The learned counsel for the revision petitioners relied on the following judgments, which do not come in aid of the revision petitioners:-

(i) Judgment of this Court in **ARUMUGHA NATTAR VS. HUSSAIN MOIDEEN KHAN [1964 (II) MLJ 386]**

(ii) Judgment of this Court in **ANNAPOORNI VS. JANAKI [1995 (1) L.W. 141]**

(iii) Judgment of the Hon'ble Supreme Court in **RAJENDRA TIWARY VS. BASUDEO PRASAD AND ANOTHER [2002 (1) SCC 90]**

(iv) Judgment of the Hon'ble Supreme Court in **J.J.LAL PVT. LTD., AND OTHERS VS. M.R.MURALI AND ANOTHER [2002 (3) SCC 98]**

(v) Judgment of the Hon'ble Supreme Court in **A.V.G.P.CHETTIAR AND SONS AND OTHERS VS. T.PALANISAMY GOUNDER [2002 (5) SCC 337]**

(vi) Judgment of this Court in **SHANMUGA SUNDARAM VS. A.S.KAMALAM [2004 (1) MLJ 560]**

(vii) Judgment of this Court in **SURESH KUMAR KOTHARI VS. DR.T.RAMACHANDRAN AND ANOTHER [2007 (2) CTC 787]**

(viii) Judgment of this Court in ***P.JAGADEESAN AND ANOTHER VS. K.BALASUBRAMANIAN [2010 (3) MWN (CIVIL) 739]***

(ix) Judgment of the Hon'ble Supreme Court in ***A.SHANMUGAM VS. ARIYA KSHATRIYA RAJAKULA VAMSATHU MADALAYA NANDHAVANA PARIPALANAI SANGAM AND OTHERS [2012 (6) SCC 430]***

(x) Division Bench judgment of this Court in ***K.LOGANATHAN VS. K.SAHADEVAN AND OTHERS [2013 (2) CTC 177]***

10. I have considered the materials available on record and contentions of both the parties.

11. The issue, as to (i) whether there is jural relationship between the parties exists or not; (ii) whether the revision petitioners have proved that they are the owners of the superstructure; and (iii) whether they have *bonafide* title to the same, have to be decided.

12. It is well settled that a person, who makes certain averments, shall come into the witness box and let in the best evidence on his side. Without getting into the witness box, a litigant cannot expect the Court to believe the averments made in the counter. Pleading is not evidence, much less proof. In the absence of any proof on the side of the revision petitioners, it cannot be held that they have established their claim as to the ownership of the superstructure and the landlord shall be compelled to file a suit for ejection.

13. On the other hand, it is well established that as per the sale deed dated 18.08.1980, the landlords have purchased the land and superstructure and have issued notice to the revision petitioners calling for rentals. The other documents relied on by the revision petitioners also prove that the landlords have paid the property tax. Since the documents sought to be marked by the revision petitioners does not come to their aid and they were rejected. The revision petitioners cannot also take advantage of the award passed in a Civil Suit, to which they are not parties. Therefore, the Appellate Court has gone through the length and breadth of the documents and the judgment of the Rent Controller and

came to the conclusion that the order of eviction is sustainable in the eye of law and are on facts. I do also find no illegality in the orders passed by the Rent Controller as well as the Rent Control Appellate Authority. In the absence of any illegality, the orders passed by the Courts below are to be confirmed.

14. In fine, both the Civil Revision Petitions are dismissed, confirming the orders of the Courts below directing the revision petitioners to deliver vacant possession to the respondents / landlords, within a period of one month from the date of receipt of a copy of this order. No costs.

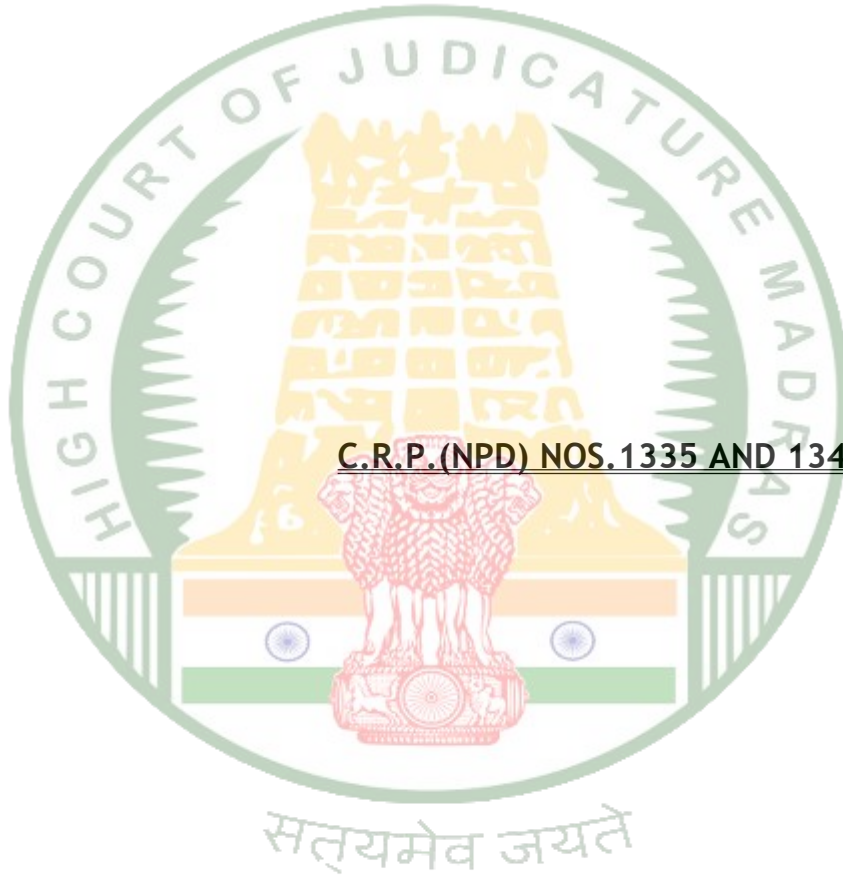
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M.GOVINDARAJ, J.

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