

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2324 of 2009
and M.P.No.1 of 2009

S.Meganathan

... Petitioner

Vs.

1.Sankaran @ Sankaramoorthy
2.Kamala Bai @ Kamalammal
3.K.Nagarajan @ Raja
4.Manigandan
5.Praba Nayagi
6.Vijayakumari
7.Vasanthi
8.Subramania Udayar & Sons
9.M.Viswanathan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 11.12.2007 in R.C.A.No.40 of 2006 on the file of the learned Rent Control Appellate Authority, Salem, confirming the fair and decretal order dated 04.08.2006 made in I.A.No.11 of 2006 in R.C.O.P.No.44 of 2005 on the file of the Additional District Munsif, Salem.

For Petitioner : Mr.T.M.Hariharan

For R1 : Mr.S.Kalyanaraman

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 11.12.2007 in R.C.A.No.40 of 2006 on the file of the learned Rent Control Appellate Authority, Salem, confirming the fair and decretal order dated 04.08.2006 made in I.A.No.11 of 2006 in R.C.O.P.No.44 of 2005 on the file of the Additional District Munsif, Salem.

2. Petitioner is the first respondent, first respondent is the petitioner in R.C.O.P.No.44 of 2005 on the file of the Additional District Munsif, Salem. The first respondent filed the said R.C.O.P for eviction on the ground of owner's occupation. Originally, the first respondent filed the said R.C.O.P only against the petitioner and others. According to the first respondent, the property was leased to one Subramania Udayar & sons and except the petitioner, other partners are not alive and thinking that partnership firm would have become defunct, filed the R.C.O.P against the respondents and legal heirs of the erst while partners. Subsequently, he came to know others were inducted as partners and partnership firm is functioning. In the circumstances, the first respondent filed

I.A.No.11 of 2006 to implead the respondents 8 and 9 in the main R.C.O.P.

3. The petitioner filed counter affidavit and contended that the said application is not maintainable and provision of Order 1 Rule 10 C.P.C is not applicable to the Rent Control proceedings. The first respondent filed the said I.A not only to fill in the lacuna and if amendment is ordered, it will amount to amending R.C.O.P.

4. The learned Rent Control Controller allowed the I.A and held that the provisions of Order 1 Rule 10 C.P.C applies to Rent Control proceedings and petition filed by the first respondent is not to fill in lacuna and when the petition is allowed, amendment to R.C.O.P is only a consequential amendment.

5. Petitioner filed R.C.A.No.40 of 2006. The learned Appellate Authority dismissed the appeal by judgment dated 11.12.2007. Against the said judgment dated 11.12.2007 made in R.C.A.No.40 of 2006, confirming the fair and decretal order dated 04.08.2006 made in I.A.No.11 of 2006 in R.C.O.P.No.44 of 2005, the present Civil Revision Petition is filed by the petitioner.

6. The learned counsel appearing for the petitioner submitted that provisions of the Civil Procedure Code is not applicable to the Rent Control proceedings, as Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, is a special self contained Act. Rent Controller is not a civil Judge. Order 1 Rule 10 C.P.C is not applicable to the Rent Control Proceedings and that Courts below have erred in allowing the application for impleading the respondents 8 and 9 in the main R.C.O.P. The learned counsel appearing for the petitioner, in support of his contentions, relied on the following judgments:

(i) **(2009) 6 MLJ 985 in the case of M.Paul Raj Vs. N.Paramasivam and another:**

"8. Generally, there is an exclusion of the applicability of the provisions of the Code of Civil Procedure and where it is either made applicable or even intended to apply, provision is made to that effect as per the decision in Devarajan V. Muniratnam 94 LW 435 at 437. The special procedure of rules framed under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, provide for a procedure to be followed by the learned Rent Controller and the learned appellate authority and they deal with certain aspects of the procedure to be followed and it is quite obvious that

the provisions of the Code of Civil Procedure cannot be invoked dealing with the petition under the Act as per the decision in Krishnamoorthy V. Jagat Textiles (1981) 1 MLJ 394.

9. In view of the fact that the ingredients of Order 1 Rule 10(2) of the Code of Civil Procedure are not applicable to any proceedings initiated under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, this Court without going into the merits of the matter in issue between the parties, opines that the application in I.A.No.10 of 2008 filed by the revision petitioners under Order 1 Rule 10(2) of the Code of Civil Procedure is not per se maintainable in law and resultantly, the present Civil Revision Petition fails."

(ii) **2007 (2) CTC 787 in the case of Suresh Kumar Kothari V.**

Dr.T.Ramachandran and another:

12.".....Proceeding before a Rent Control Court is summary in nature and the provisions of the Code of Civil Procedure are not fully made applicable to the extent provided under the Statute. We must further note that the Rent Control Court is not Civil Court and the Act itself is more or less a self-contained Code, so far as the relationship of Landlord and Tenant is concerned....."

(iii) **2014 (4) CTC 315 in the case of K.Rajagopal V.**

Gnanapandithan:

"17.5. The learned counsel for the petitioner also

relied upon the decision of the Division Bench of this Court made in O.S.A.No.273 of 2008, dated 11.08.2008, wherein it was stated though it was held that the Rent Control Court is a Civil Court, but not in terms of the provisions of the Code of Civil Procedure. Further, though it was held that where the provisions of the Rent Control Act are silent, the provisions of the Code of Civil Procedure are applicable, but as already held that the Rent Control Act and the Rules made thereunder are complete code covering the proceedings under the said Act.

18. Thus, the above decision shows that Civil Procedure Code is not applicable to the Rent Control Proceedings."

7. Per contra, the learned counsel appearing for the respondents submitted that the learned Rent Controller has a power of Civil Court and therefore provisions of the Civil Procedure Code is applicable to the Rent Control proceedings. The petitioner firm and present partners are necessary and proper parties to the Rent Control proceedings and the Courts below have rightly ordered the application for impleading them. The learned counsel appearing for the respondents submitted that the Hon'ble Apex Court impleaded the partners of firm, invoking Order 1 Rule 10 C.P.C in the Rent

Control Proceedings. The learned counsel appearing for the respondents in support of his contentions, relied on the judgment reported in **(2017) 4 LW 78 in the case of Richard Lee V.**

Girish Soni and another:

6. "Having extensively heard Shri C.U.Singh, learned Senior counsel appearing for the appellant and Mr.Sanjeev Mahajan, learned counsel appearing for the respondents, we are of the view that for properly adjudicating the issue before the Rent Controller in Eviction Petition No.18/2010, in view of the contentions taken by the parties, both the firm in the name and style of K.K.Lee and all its partners should be on the array of parties as proper party. No doubt, they are not necessary parties from the point of view of the Eviction petitioner, but the Court has a duty to see whether the presence of the proper parties would facilitate the complete determination of the matter in dispute....."

8. "In view of the power under Order 1, Rule 10 suo motu invoked by us, it is not necessary for the parties to file separate application, since we have ourselves impleaded the firm and the partners in the proceedings....."

8. Heard the learned counsel appearing for the petitioner and first respondent and perused the materials available on record and

considered the judgments relied on by the learned counsel appearing for both the parties.

9. **The point for consideration** in the Civil Revision Petition is whether provisions of Civil Procedure Code are applicable to the Rent Control Proceedings. This issue is no longer *res-integra*. In the judgments relied on by the learned counsel appearing for the petitioner, it has been specifically stated that the Rent Control Proceedings are summary in nature and Rent Controller is not a Civil Court and Order 1 Rule 10 C.P.C is not applicable to the Rent Control proceedings. It is also held that the Rent Control Act is a self contained code and provisions of the Civil Procedure Code is not applicable to the Rent Control proceedings, which is summary in nature. The ratio in the said decisions are squarely applicable to the facts of the present case. The judgment of the Hon'ble Apex Court reported in **(2017) 4 LW 78 in the case of Richard Lee V. Girish Soni and another**, relied on by the learned counsel appearing for the respondents is not applicable to the facts of the present case as the Hon'ble Apex Court has not held that provision of Civil Procedure Code, especially Order 1 Rule 10 C.P.C is applicable to the Rent Control proceedings. The Hon'ble Apex Court

exercising *suo motu* power under Order 1 Rule 10 C.P.C, impleaded the partnership firm, on the ground that he is a necessary party. In the present case, admittedly, the partnership firm is a tenant and respondent, subsequent to filing of the R.C.O.P, is not entitled to file application under Order 1 Rule 10 C.P.C to implead partnership firm and present partner, since the Order 1 Rule 10 C.P.C is not applicable to the Rent Control Proceedings. The Courts below have committed an irregularity in allowing the application for impleading. In view of the said irregularity, the order of the learned Rent Controller and judgment of the Appellate Authority are liable to be set aside and hereby set aside.

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

Index: Yes/No
gsa

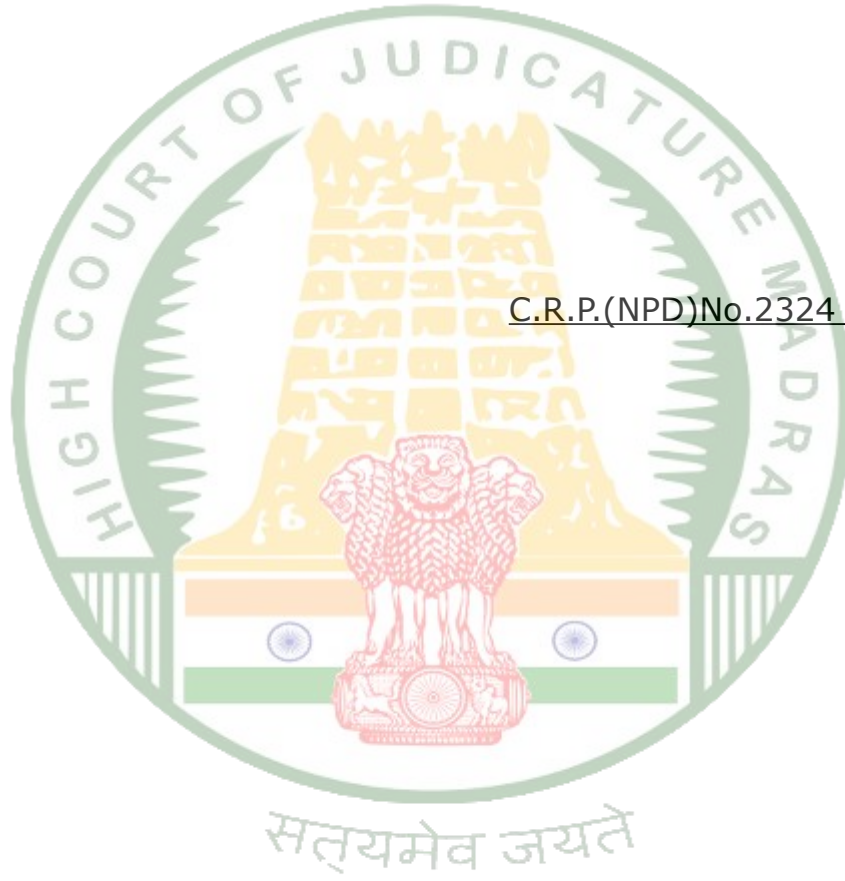
To

The Additional District Munsif,
Salem.

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V.M.VELUMANI,J.
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