

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3905 of 2009

1.A.V.Subramania Reddiar

2.V.Mahendra Babu

.. Petitioners

Vs.

Pachaiyappan Naicker

.. Respondent

PRAYER: Civil Revision Petition is filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 Amended by Act No.XVIII/1960, against the fair and decretal order dated 16.09.2009 made in R.C.A.No.244 of 2006 on the file of the VIII Small Causes Court (Appellate Authority), Chennai, confirming the fair and decretal order dated 09.12.2005 made in R.C.O.P.No.1829 of 1998 on the file of the XIV Small Causes Court, (Rent Controller), Chennai.

For Petitioners : Mr.P.Veeraraghavan

For Respondent : Mr.R.C.Manaoharan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 16.09.2009 made in R.C.A.No.244 of 2006 on the file of the VIII Small Causes Court (Appellate Authority), Chennai, confirming the fair and decretal order dated 09.12.2005 made in R.C.O.P.No.1829 of 1998 on the file of the XIV Small Causes Court, (Rent Controller), Chennai.

2. The petitioners are the landlords and respondent is the tenant. The petitioners filed R.C.O.P.No.1829 of 1998 on the file of the Court of Small Causes (Rent Controller), Chennai, against the respondent for eviction on the ground of wilful default and demolition and reconstruction.

3. According to the petitioners, the petition premises consisting of land, hut and thatched shed was leased out to the respondent on a monthly rent of Rs.575/-. The respondent committed wilful default to pay the rent from 01.01.1997 to 31.11.1997. The hut and thatched shed are in dilapidated condition.

Therefore, the petitioners wanted to demolish and reconstruct the same and to put up modern construction, issued notice to the respondent on 03.01.1998 and filed the said R.C.O.P. for the above stated relief.

4. The respondent filed counter statement and denied that he is a tenant in respect of the hut and thatched shed. According to the respondent, he is a tenant under the petitioners only in respect of the land on monthly rent of Rs.30/- and subsequently, it was increased. The respondent put up super structure and he is residing there. The respondent supplied milk to the petitioners for a total sum of Rs.1,15,000/- till the end of 1995 and the said amount is due and payable by the petitioners. When respondent demanded payment, the petitioners agreed to sell the land for a total sale consideration of Rs.1,50,000/-. The respondent also agreed to pay the remaining amount of Rs.35,000/- after deducting the amount of Rs.1,15,000/- towards cost of supply of milk to the petitioners. At the time of registration of sale deed also, the respondent paid a sum of Rs.15,000/- for purchase of stamp payers for the sale deed. The petitioners failed to execute the sale deed. Subsequently, the petitioners put up the compound wall demarcating the portion let

out to the respondent and the respondent also obtained separate electricity connection in his name for the building under his occupation. The corporation also assigned Door No.30, Ramakrishnapuram 2nd street, West Mambalam, Chennai-33 for the ground and building premises under possession and enjoyment of the respondent. The petitioners knowing fully well to avoid execution and registration of the sale deed have come out with the R.C.O.P and there is no landlord-tenant relationship between the petitioners and respondent.

5. Before the learned Rent Controller, the first petitioner examined himself as P.W.1 and examined one Chellaiah Sarathy as P.W.2 and marked 25 documents as Exs.P1 to P25. The respondent examined himself as P.W.1 and examined four other witnesses as R.W.2 to R.W.5 and marked 11 documents as Exs.R1 to R11.

6. The learned Rent Controller considering the pleadings, oral and documentary evidence, came to the conclusion that the respondent is a tenant only in respect of the land and he is not a tenant in respect of the building. In view of the said findings, the learned Rent Controller dismissed the R.C.O.P.

7. Against the said order of dismissal dated 09.12.2005 made in R.C.O.P.No.1829 of 1998, the petitioners filed an appeal in R.C.A.No.244 of 2006.

8. The learned Appellate Authority considering the pleadings, oral and documentary evidence and order of the learned Rent Controller, dismissed the appeal confirming the order of the learned Rent Controller, dated 09.12.2005 made in R.C.O.P.No.1829 of 1998.

9. Against the said judgment dated 16.09.2009 made in R.C.A.No.244 of 2006, the present civil revision petition is filed by the petitioners.

10. Heard both sides and perused the materials available on record.

11. The point for consideration in the present civil revision petition is whether the respondent is the tenant in respect of hut and thatched shed or in respect of the land alone.

12. The learned counsel for the petitioners contended that the respondent is a tenant in respect of land and building and not land alone. He relied on the judgment of the Hon'ble Apex Court reported in **AIR 2002 SC 1061 (J.J.Lal Pvt. Ltd. and others, v. M.R.Murali and another)** and submitted that burden of proof is on the tenant.

13. From the materials on record, it is seen that both the petitioners and respondent have let in oral and documentary evidence. Both the learned Rent Controller and Appellate Authority considering Ex.P.20/partition deed dated 15.08.1982 filed by the petitioners before the learned Rent Controller, held that the petition premises was a vacant land on 15.08.1982. Further, Ex.P22/photographs marked before the learned Rent Controller shows that there is a superstructure and not hut or thatched shed. The petitioners have marked Exs.P6 and P7/rental agreements, dated 05.01.1975 and 12.08.1983 respectively to prove their case that they let out both the land and building to the respondent. The respondent denied the signature in the rental agreements. The petitioners have not taken any steps to disprove the said contention

of the respondent.

14. The Courts below considering the documents marked in R.C.O.P. accepted the evidence of respondent and held that the respondent has become tenant only in respect of the vacant land and there is no landlord-tenant relationship between the petitioners and respondent. Both the Courts below have properly appreciated the pleadings, oral and documentary evidence and rightly dismissed the R.C.O.P. and R.C.A. respectively. There is no illegality or irregularity warranting interference by this Court with the order of both the Courts below.

15. In the result, this Civil Revision Petition is dismissed. No costs.

Index : Yes/No
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04.09.2017

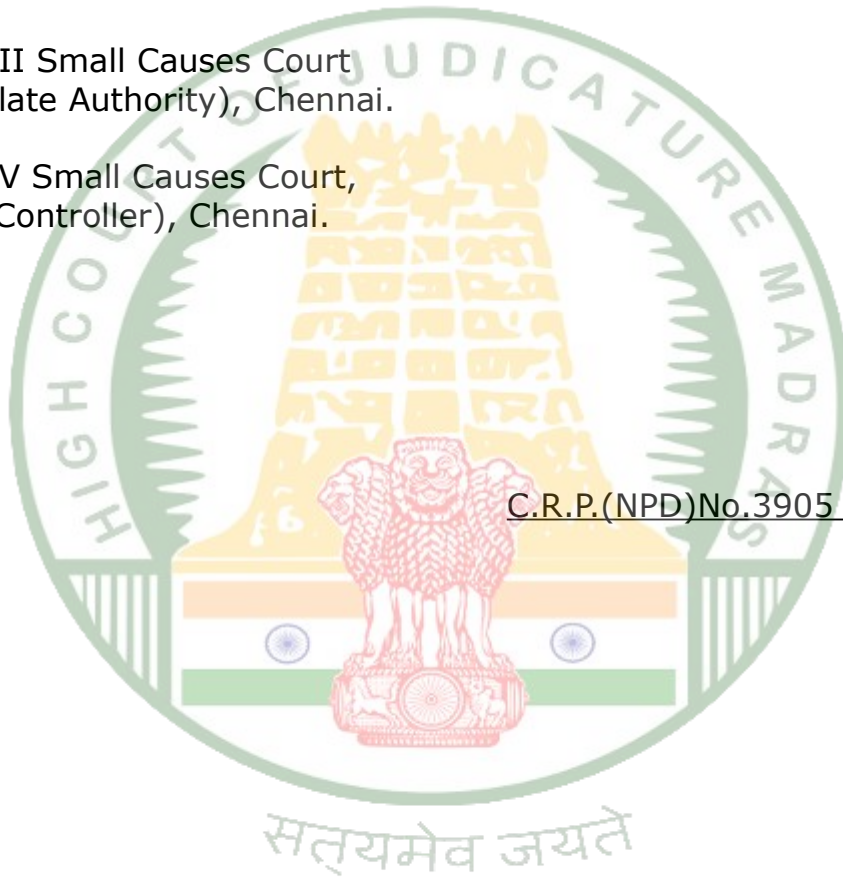
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V.M.VELUMANI, J.

dm/kj

To

- 1.The VIII Small Causes Court
(Appellate Authority), Chennai.
- 2.The XIV Small Causes Court,
(Rent Controller), Chennai.



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