

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (PD) No.2741 of 2012

and

M.P.No.1 of 2012

M.Jayaramaiah

.. Petitioner

Vs.

L.Lakkappa

.. Respondent

Revision filed under Article 227 of Constitution of India against the fair and decretal order dated 17.5.2012 in I.A.No.130 of 2012 in O.S.No.121 of 2010 on the file of the Sub-Court, Hosur.

For Petitioner : Mrs.Auxilia Peter

For Respondent : Mr.N.Anand Venkatesh

For M/s.V.Nicholas

ORDER

This revision is directed against the order dated 17.07.2012 made in I.A.No.130 of 2012 in O.S.No.121 of 2010 on the file of the Sub-Court, Hosur, dismissing the application filed under Section 151 CPC read with Sections 33 and 35 of the Indian Stamp Act, 1899 and Section 49 of the Registration Act, 1908 seeking to direct the respondent to pay the stamp duty penalty to the Registration department. The petitioner herein is the defendant in the suit.

2. The respondent, who is the plaintiff in the suit, has filed the suit for recovery of a sum of Rs.8.00 lakhs being the caution deposit advance amount with interest at the rate of 12% per annum from the date of suit till the date of realisation and for costs. The plaintiff is the tenant and the defendant is the landlord. Pending suit, the petitioner herein has filed I.A.No.130 of 2012 seeking to direct the respondent to pay the stamp duty penalty to the Registration department.

3. In the affidavit filed in support of the petition, the petitioner alleged that the respondent had paid only an advance amount of

Rs.50,000/- and the petitioner filed his written statement with counter-claim for arrears of rent upto 2002 till surrendering of vacant possession. According to the petitioner, the respondent has not paid the sum of Rs.8.00 lakhs as advance and also it is false to say that the petitioner had signed the rental agreement dated 14.05.1997. The alleged rental agreement is not binding on the petitioner and the same is not a registered agreement. Since the period fixed in the alleged agreement was 12 months, it ought to have been registered. Therefore, the rental agreement cannot be marked as exhibit in the suit. Hence, the petitioner has filed the application seeking to direct the respondent to pay the stamp duty penalty to the Registration department.

4. The respondent has filed the counter stating that stamp duty penalty has already been paid and that the rental agreement is deemed to have been sufficiently stamped and the same can be received for collateral purpose. The rental agreement need not be registered since the period mentioned was from 01.06.1997 to 31.05.1998.

5. Upon consideration of the rival submissions, the trial Court

dismissed the petition. Aggrieved by the same, the petitioner has filed the present revision.

6. I heard Mrs.Auxilia Peter, learned counsel for the petitioner and Mr.N.Anand Venkatesh for M/s.V.Nicholas, learned counsel for the respondent and perused the entire records.

7. The learned counsel for the petitioner submitted that the trial Court failed to note that the respondent is defaulter in payment of monthly rent and a sum of Rs.3,89,100/- due from him. The learned counsel submitted that the respondent has kept the premises in question under lock and key without paying arrears of rent. The earlier order of the trial Court directing the respondent to pay stamp duty penalty of Rs.24,200/- is incorrect and the trial Court ought to have seen that the respondent should pay stamp duty penalty of Rs.5,27,600/-. The learned counsel would submit that the trial Court erred in holding that for collateral purpose, the rental agreement can be marked as an exhibit despite the plea of forgery alleged.

8. The learned counsel for the respondent submitted that the order under revision is a well considered one and the same need not

be interfered with.

9. The plaint in the present suit for recovery of a sum of Rs.8.00 lakhs due to him towards rental advance was originally presented before the Sub-Court, Hosur and the same was taken on file as O.S.No.78 of 1999. Later, on the point of jurisdiction, the suit in O.S.No.78 of 1999 was transferred to the file District Court, Krishnagiri and numbered as O.S.No.60 of 2004 and was pending before the Additional District Judge, Krishnagiri. Thereafter, on the enhancement of pecuniary jurisdiction, the suit in O.S.No.60 of 2004 was again transferred to the file of Sub-Court, Hosur and numbered as O.S.No.121 of 2010.

10. It is seen that when the suit was pending before the Additional District Court, Krishnagiri, the trial of the suit was began and proof affidavit of plaintiff was filed on 14.11.2007. During the course of trial, the rental agreement dated 14.05.1997 was tried to be marked as exhibits and the same was objected to by the petitioner. Therefore, the respondent has filed I.A.No.56 of 2007 to condone the delay in filing the original rental agreement and another one document.

11. By an order dated 16.04.2009, the learned Additional District Judge, Krishnagiri after an elaborate discussion, directed the respondent to pay a deficit stamp duty of Rs.24,200/-. Pursuant to the aforesaid order of the learned Additional District Judge, the respondent has paid the stamp duty of Rs.24,200/-. Aggrieved by the said order of direction to pay the stamp duty, the petitioner has filed C.R.P.No.1932 of 2009 before this Court.

12. By an order dated 01.06.2011, this Court, set aside the order of the trial Court in so far as the portion of the order, which permitted the respondent to pay stamp duty. As far as receiving of the document is concerned, this Court confirmed the finding of the trial Court and made it clear that it is open to the parties to raise their respective pleas about the admissibility of the document. Against the order made in C.R.P.No.1932 of 2009, the petitioner has not preferred any further appeal. Thereafter, in 2012, the petitioner has filed I.A.No.130 of 2012 seeking to direct the respondent to pay the stamp duty penalty to the Registration Department.

13. On a perusal of the order impugned in this revision, I find

that the trial Court upon consideration of the rival submissions made on either side held that it has not confronted with such a situation in which the parties are trying to enforce any right of tenancy or any other such right on the basis of the suit rental agreement. The real dispute between the parties is whether the sum of Rs.8.00 lakhs was paid by the respondent as rental advance and if so, whether the respondent is entitled to recover the same from the petitioner. I am in agreement with the view taken by the trial Court for the reason that there is no dispute regarding the rights under the tenancy agreement and the terms and conditions stipulated in the rental agreement are not under dispute between the parties.

14. It is settled law that unregistered rental deed is admissible in evidence only for collateral purpose. In this case, admittedly, the rental agreement can be relied upon in evidence for collateral purpose with regard to payment of the alleged advance amount of Rs.8.00 lakhs and nothing more.

15. It is order, the trial Court arrived at the stamp duty payable to the document based on the monthly rent payable to the petitioner and finally arrived at the duty as Rs.2,200/- and on such payment, the

document is admissible in evidence. The said finding of the trial Court is acceptable and this Court don't want to take a different view.

16. Qua forgery of the document alleged by the petitioner is concerned, the same cannot be decided before the trial concluded and it is a matter of evidence and the trial Court was right in saying that the plea of forgery raised by the petitioner is a point which has to be decided only on the recording of oral and documentary.

17. It is pertinent to point out that the suit is of the year 1999 and at the time of original filing of the suit, the plaintiff was aged 47 years and the defendant was aged 60 years old. Since nearly 19 years have elapsed, the suit has not been decided.

18. For the foregoing reasons, I am of the view that the order of the trial Court is well considered one and the same warrants no interference.

19. In the result:

(a) The Civil Revision Petition is dismissed by confirming the order passed in I.A.No.130 of 2012 in

O.S.No.121 of 2010 dated 17.05.2012 on the file of the Sub-Court, Hosur;

(b) The Sub-Judge, Hosur is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

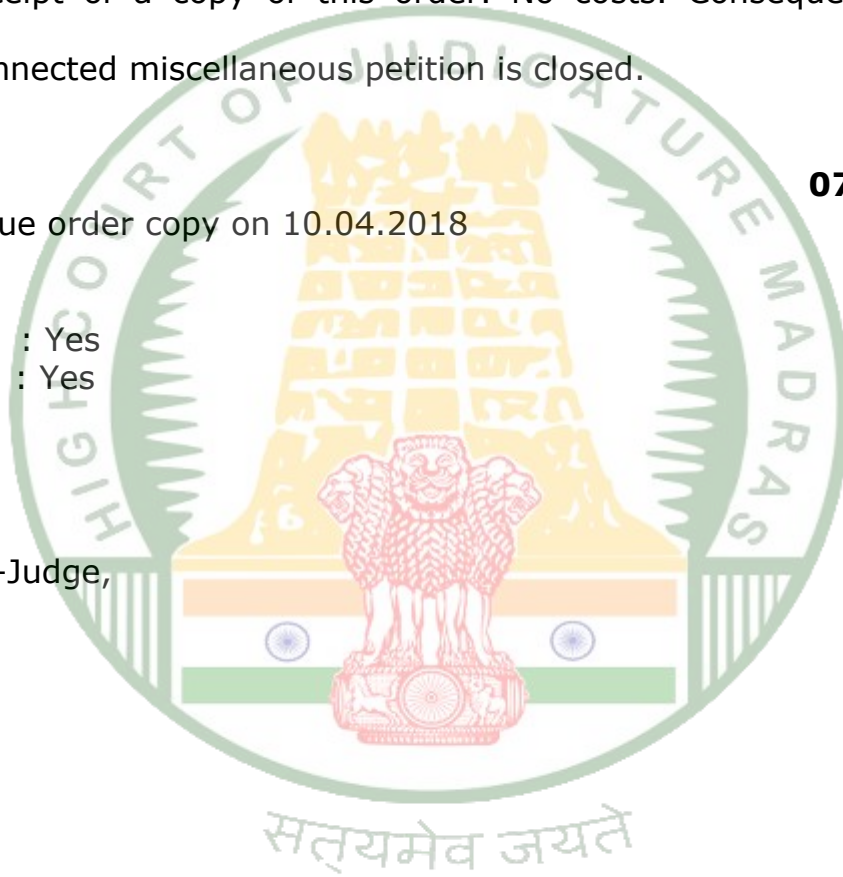
07.09.2017

Note: Issue order copy on 10.04.2018
vs

Index : Yes
Internet : Yes

To

The Sub-Judge,
Hosur.



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M.V.MURALIDARAN,J.

VS



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