

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3506 of 2013

Chakkubai Ammal [died]

1. Srinivasan Alias Suresh

2. Satishkumar alias Saravanan

3. Rajesh

.. Petitioners

Vs.

1.Dhanalakshmi Ammal

2.Moorthy Achari

.. Respondents

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act, 1960, against the order and decree dated 23.01.2013, made in R.C.A.No.15/2003, on the file of Sub ordinate Judge, Vellore cum Rent Controller Appellate authority, in confirming the order and decree dated 13.10.2003, made in R.C.O.P.No.45/1998, on the file of the Rent Controller cum Principal District Munsif Court, Vellore.

For Petitioners : Mr.A.Gouthaman

For R1 & R2 : Mr.M.Bala Muthumeeran

ORDER

This Civil Revision Petition is filed against the order and decree dated 23.01.2013, made in R.C.A.No.15/2003, on the file of Sub ordinate Judge, Vellore cum Rent Controller Appellate authority, in confirming the order and decree dated 13.10.2003, made in R.C.O.P.No.45/1998, on the file of the Rent Controller cum Principal District Munsif Court, Vellore.

2. The petitioners are the landlords, first respondent is the tenant and second respondent is the husband of the first respondent. The petitioners filed R.C.O.P.No.45 of 1998 on the file of the Rent Controller cum Principal District Munsif Court, Vellore, for eviction of the respondents on the ground of Wilful default, owners occupation and act of waste.

3. According to the petitioners, the respondents are chronic defaulter of rent. The default is wilful. The respondents paid rent upto July 1998 to the Counsel for the petitioners and committed default from August 1998. The third petitioner is carrying on Pawn Broking business in their residence and it is not convenient

to carry on the business from the residence. The shop in the occupation of the respondents is more suitable for the business of third petitioner. The third petitioner is not owning any other non-residential building and he is not carrying on business in his own premises. The respondents have committed act of waste. On the above grounds, the petitioners sought for eviction of the respondents.

4. The respondents filed counter affidavit and denied all the averments made in the petition. The respondents have stated that the respondents are regular in payment of rent and petitioners only refused to receive the rent and they also refused to receive the rent sent by the Money order. After receipt of the notice by the counsel for the petitioners, the respondents paid rent to the petitioners. The third petitioner is carrying on business in his own premises. Further, the petitioners are owning a non-residential building in Vellore Chunnambukara Street and number of portions are vacant in the said building. The petitioners have put up the toilet board in the said premises and the respondents have not committed any act of waste.

5. Before the learned Rent Controller, the first petitioner examined himself as PW1 and one R.Sathish as PW2 and marked 14 documents as Exs.A1 to A14 and the second respondent examined himself as RW1 and one G.Thanmal Jain as RW2 and marked 34 documents as Exs.B1 to B34. The learned Rent Controller, considering the pleadings, oral and documentary evidence, dismissed the R.C.O.P. Against the said order, the petitioner filed R.C.A.No.15 of 2003 on the file of the Sub ordinate Judge, Vellore cum Rent Controller Appellate authority. The learned Appellate Authority independently considered the pleadings, oral, documentary evidence and order of the learned Rent Controller and dismissed the R.C.A, confirming the order of the learned Rent Controller in R.C.O.P.

6. Against the said order dated 13.10.2003, made in R.C.O.P.No.45 of 1998 and judgment dated 23.01.2013, made in R.C.A.No.15 of 2003, the present Civil Revision Petition is filed by the petitioners.

7. Heard the learned counsel appearing for the petitioners as well as the respondents and perused the materials available on record.

8. Both the Courts below have rejected the contentions of the petitioners for eviction by considering all the pleadings, oral and documentary evidence and materials available on record, and by properly appreciating the same. From the order of the learned Rent Controller and judgment of the learned Appellate Authority, it is seen that the petitioners have failed to prove the wilful default of the respondents. On the other hand, it is admitted by the petitioners that after issue of notice marked as Ex.A2 dated 26.07.1998, the respondents have paid entire rent up to June 1998 to the counsel for petitioner. The respondents have marked Refusal Money Order Coupons for Rs.1200/- dated 24.06.1998 and 30.10.1998 as Ex.B1 and Ex.B2. Considering these documents, the Courts below have held that respondents have not committed Wilful default.

9. As far as the owners occupation is concerned, the petitioners have contended that third petitioner is carrying on his

business from his residence and he is not in occupation of any non-residential building of their own. On the other hand, the PW1 and PW2 have admitted in cross-examination that third petitioner is carrying on his own business in their own premises. Further, the respondents marked the certified copies of the order and decree dated 29.12.1983 in R.C.O.P.No.139 of 1981 respectively as Exs. R33 and 34 where by MohanaChettiar, father of the petitioners who was the original owner filed the said R.C.O.P.No.139 of 1981 for eviction against the then tenant on the ground of owners occupation. After obtaining the order of eviction and taking possession of the petition premises, the MohanaChettiar did not occupy the petition premises and did not carry on the business in the petition premises. He has let out the said premises to the respondents. The learned Appellate Authority, considering the Exs. R33 and 34, concluded that petitioner's father and petitioners are in the habit of filing R.C.O.P for evicting the tenants for own occupation and subsequently letting out the said property to the third parties.

10. As far as the act of waste is concerned, the petitioners have not produced any evidence to show that

respondents have committed any default. The Courts below have considered all the materials on record, pleadings, oral and documentary evidence and judgments relied on by the parties and dismissed the R.C.O.P and R.C.A by giving cogent and valid reason. The power of this Court under revision is very limited. This Court can interfere with the finding of the Courts below only when the findings are perverse, caused injustice to the parties and not properly considered the fact on record. In view of the same, this Civil Revision Petition is dismissed. No costs.

25.10.2017

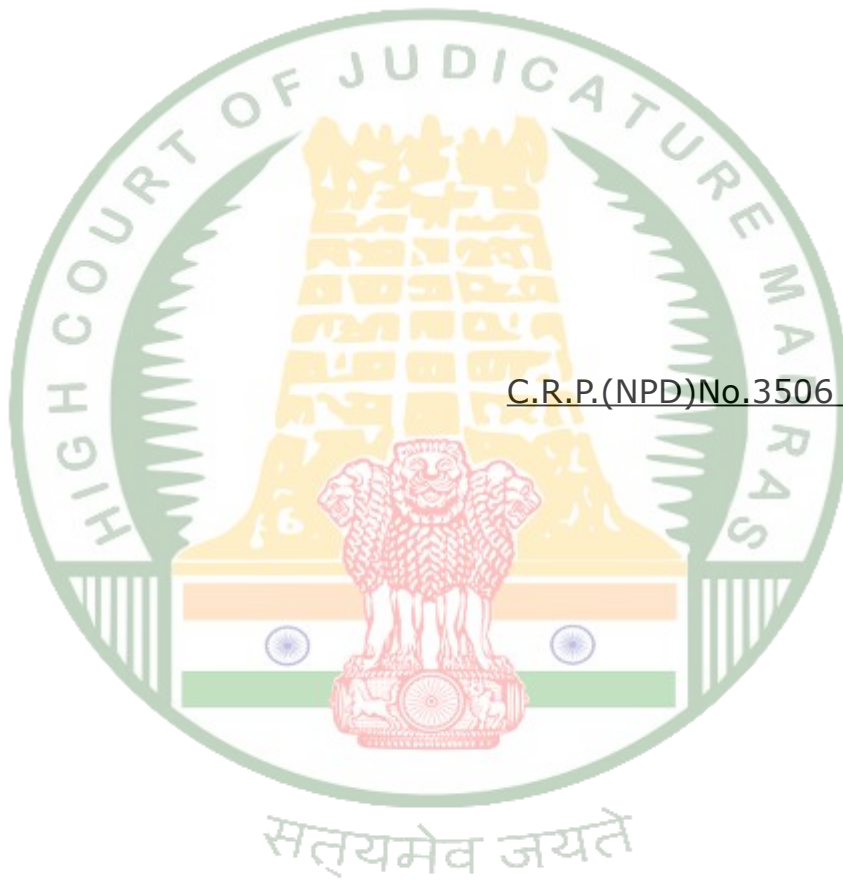
Index : Yes/No
ggi/gsa

To

- 1.The Sub ordinate Judge,
cum Rent Controller Appellate Authority
Vellore.
- 2.The Rent Controller cum
Principal District Munsif,
Vellore.

V.M.VELUMANI, J.

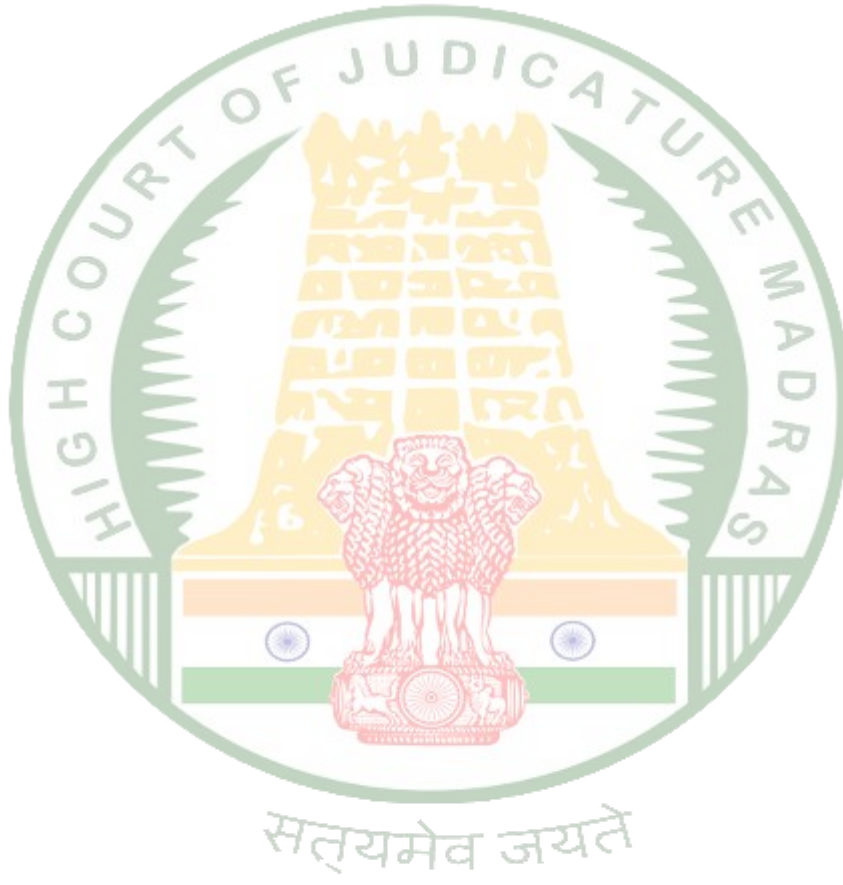
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