

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.470 and 471 of 2010
& M.P.No.1 of 2010

Hajee.S.M.A. Athullah

.. Petitioner
in both CRPs.

Vs.

Babu

.. Respondent
in C.R.P.No.470 of 2010

Rajendiran (died)

Babu

.. Respondent
in C.R.P.No.471 of 2010

PRAYER: C.R.P.No.470 of 2010 is filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960, against the order dated 27.08.2008 in E.A.No.23 of 2004 in E.P.No.1 of 2003 in R.C.O.P.No.1 of 2001 on the file of the District Munsif Court, Panrutti and confirmed by the order dated 28.08.2009 in R.C.A.No.4 of 2008 on the file of the Rent Control Appellate Authority (Subordinate Court, Panrutti).

C.R.P.No.471 of 2010 is filed against the order dated 27.08.2008 in R.C.O.P.No.1 of 2001 on the file of the District Munsif Court, Panrutti, confirmed by the order dated 28.08.2009 in R.C.A.No.6 of 2008 on the file of the Rent Control Appellate Authority (Subordinate Court, Panrutti).

For Petitioner : Mr.R.Sunil Kumar
in both CRPs.

For Respondent : Mr.M.Muthappan
in both CRPs.

COMMON ORDER

C.R.P.No.470 of 2010 is filed against the order dated 27.08.2008 in E.A.No.23 of 2004 in E.P.No.1 of 2003 in R.C.O.P.No.1 of 2001 on the file of the District Munsif Court, Panrutti and confirmed by the order dated 28.08.2009 in R.C.A.No.4 of 2008 on the file of the Rent Control Appellate Authority (Subordinate Court, Panrutti).

2. C.R.P.No.471 of 2010 is filed against the order dated 27.08.2008 in R.C.O.P.No.1 of 2001 on the file of the District Munsif Court, Panrutti, confirmed by the order dated 28.08.2009 in

R.C.A.No.6 of 2008 on the file of the Rent Control Appellate Authority (Subordinate Court, Panrutti).

3. The petitioner in both the Civil Revision Petitions is the landlord and respondent is the tenant. The petitioner filed R.C.O.P.No.1 of 2001 for eviction against the respondent and his father on the ground of wilful default. The respondent is the second respondent and his father Rajendiran is the first respondent in said R.C.O.P. According to the petitioner, petition premises and another portion originally belonged to one Senthamaraikannan and his wife Malathy. The respondent and his father purchased a portion of the property and they also continued as tenants by oral lease on a monthly rent of Rs.1,000/- in the remaining portion of the property, which is petition premises. The respondent and his father tried to purchase the petition property. But petitioner purchased the petition property on 24.05.1999. Due to that, respondent and his father developed hatred and stopped paying rent to the petitioner for petition premises. Petitioner was requesting the respondent and his father to pay the rent, also to vacate and hand over vacant possession of the petition premises to the petitioner. They did not vacate and hand over the possession. Hence, the petitioner has filed R.C.O.P.

4. The respondent filed counter and denied all the averments made in the petition. According to the respondent, there was no oral lease agreement. He has also denied that himself and his father are tenants in the petition property on a monthly rent of Rs.1,000/- and petitioner purchased the portion of petition property for valuable consideration. As far as petition premises is concerned, erstwhile owner Senthamaraikannan received Rs.40,000/- from the respondent and executed unregistered lease deed. Respondent is in occupation of the petition premises as a mortgagee and is not liable to pay any rent in lieu of interest payable by the erstwhile owner. In order to cheat the respondent and the amount given by him to Senthamaraikannan and Malathy, they sold the property to the petitioner. The petitioner never demanded any rent from the respondent and did not request the respondent to vacate and hand over the vacant possession of the petition premises. The respondent is in possession of the petition premises as mortgagee and not as a tenant.

5. Before the learned Rent Controller, petitioner examined himself as P.W.1 and marked sale deed dated 24.05.1999 as Ex.A1. Respondent/Babu examined himself as R.W.1 and he did not mark

any document.

6. The learned Rent Controller considering the pleadings and oral and documentary evidence, dismissed R.C.O.P. holding that the petitioner failed to prove the landlord-tenant relationship between the petitioner and respondent.

7. Against the said order of dismissal dated 27.08.2008 made in R.C.O.P.No.1 of 2001, petitioner filed R.C.A.No.6 of 2008. In R.C.A., petitioner filed E.A.No.23 of 2009 for permission to examine erstwhile owner as P.W.2. The learned Appellate Authority dismissed both R.C.A. and E.A. holding that the petitioner has filed E.A.No.23 of 2009 to fill up lacuna and he has failed to prove the landlord-tenant relationship.

8. Against the said judgment and decree dated 28.08.2009 made in R.C.A.No.6 of 2008, the petitioner has filed C.R.P.(NPD)No.471 of 2010.

9. Originally, R.C.O.P.No.1 of 2001 was ordered exparte on 07.03.2002. Petitioner filed E.P.No.1 of 2003 and took possession of the petition premises. Respondent filed I.A.No.9 of 2004 to set aside the exparte order of eviction passed in R.C.O.P.No.1 of 2001. The

said application was ordered on 20.07.2004 and exparte order of eviction was set aside. Respondent filed E.A.No.23 of 2004 under Section 144 of C.P.C. read with Section 18 of the Rent Control Act for redelivery of the petition premises taken by the petitioner to the respondent. The said E.A. was allowed by the order dated 27.08.2008.

10. Against the said order dated 27.08.2008 made in E.A.No.23 of 2004 in E.P.No.1 of 2003 in R.C.O.P.No.1 of 2001, petitioner filed R.C.A.No.4 of 2008. The said R.C.A. was dismissed on 28.08.2009. Against the said judgment, petitioner filed C.R.P.(NPD)No.470 of 2010.

11. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

12. The learned counsel for the parties advanced their arguments in support of the averments mentioned in both the Civil Revision Petitions. From the materials available on record, it is seen that the petitioner has sought for eviction of respondent on the ground of wilful default. According to the petitioner, respondent and

his father Rajendiran were tenants under the erstwhile owner Senthamaraikannan and Malathy in respect of petition premises on a monthly rent of Rs.1,000/- based on the oral lease. After purchasing the petition premises, petitioner demanded the respondent to pay the rent and also to vacate and hand over vacant possession to the petitioner. Respondent gave evasive reply.

13. On the other hand, respondent herein denied the landlord-tenant relationship with erstwhile owner. Respondent and his father contended that erstwhile owner borrowed a sum of Rs.40,000/- from the respondent herein and created unregistered lease deed dated 14.02.1998. The respondent is in possession of the petition premises as a mortgagee and no amount is payable as rent in lieu of interest payable by erstwhile owner.

14. On these pleadings, petitioner gave evidence as P.W.1 and marked sale deed dated 24.05.1999 as Ex.A1. Apart from that, petitioner has not produced any evidence either oral or documentary to substantiate his case that respondent/Babu was a tenant under the erstwhile owner or under the petitioner. Petitioner has not issued any notice or written a letter to the respondent

calling upon respondent and his father to pay the rent or vacate and hand over the vacant possession of the petition premises to the petitioner. Petitioner has not examined erstwhile owner to prove that the respondent and his father are tenants under them and monthly rent Rs.1,000/- to be paid by the respondent. Petitioner tried to examine erstwhile owner as P.W.2 by filing E.A.No.23 of 2009 in R.C.A.No.6 of 2008. The learned Appellate Authority dismissed the said E.A. on the ground that the petitioner filed the said application only to fill up the lacuna.

15. It is pertinent to note that R.C.O.P.No.1 of 2001 is filed by the petitioner for eviction of the respondent on the ground of wilful default. The petitioner has not stated from when the respondent has committed wilful default.

16. Considering the lack of particulars and failure on the part of the petitioner to prove the landlord-tenant relationship, C.R.P.(NPD)No.471 of 2010 is liable to be dismissed as devoid of merits and it is hereby dismissed. There is no illegality or irregularity warranting interference by this Court with the findings of the Courts below.

17. In the result, C.R.P.(NPD)No.471 of 2010 is dismissed.

18. In view of the dismissal of C.R.P.(NPD)No.471 of 2010, C.R.P.(NPD)No.470 of 2010 is also dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.12.2017

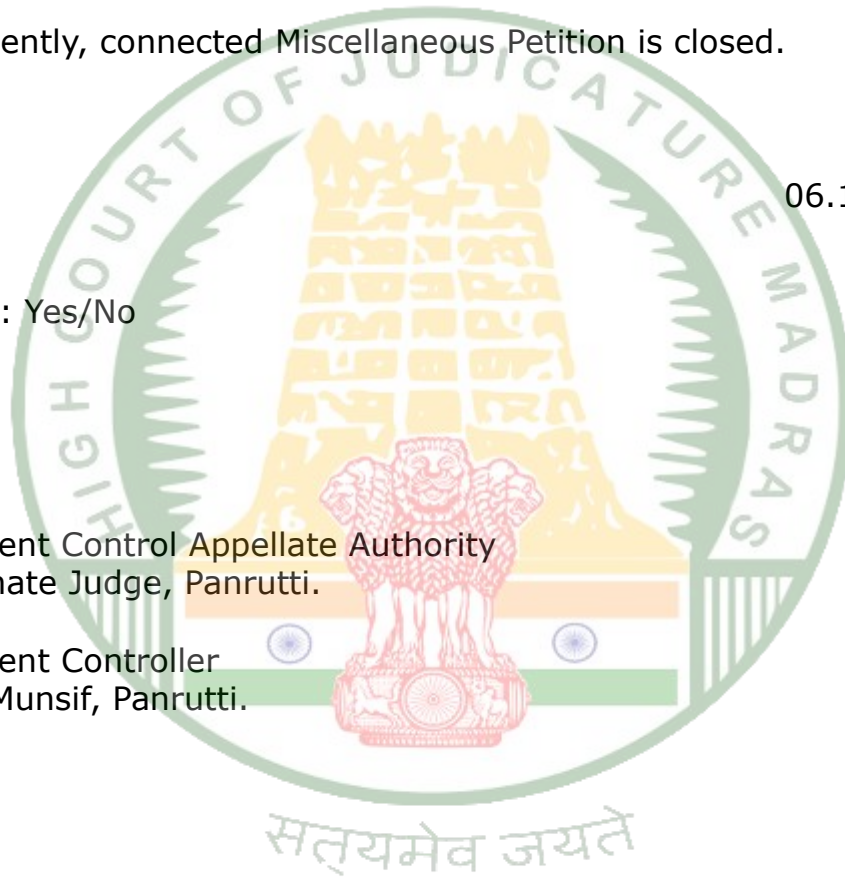
Index : Yes/No

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To

1. The Rent Control Appellate Authority
Subordinate Judge, Panrutti.

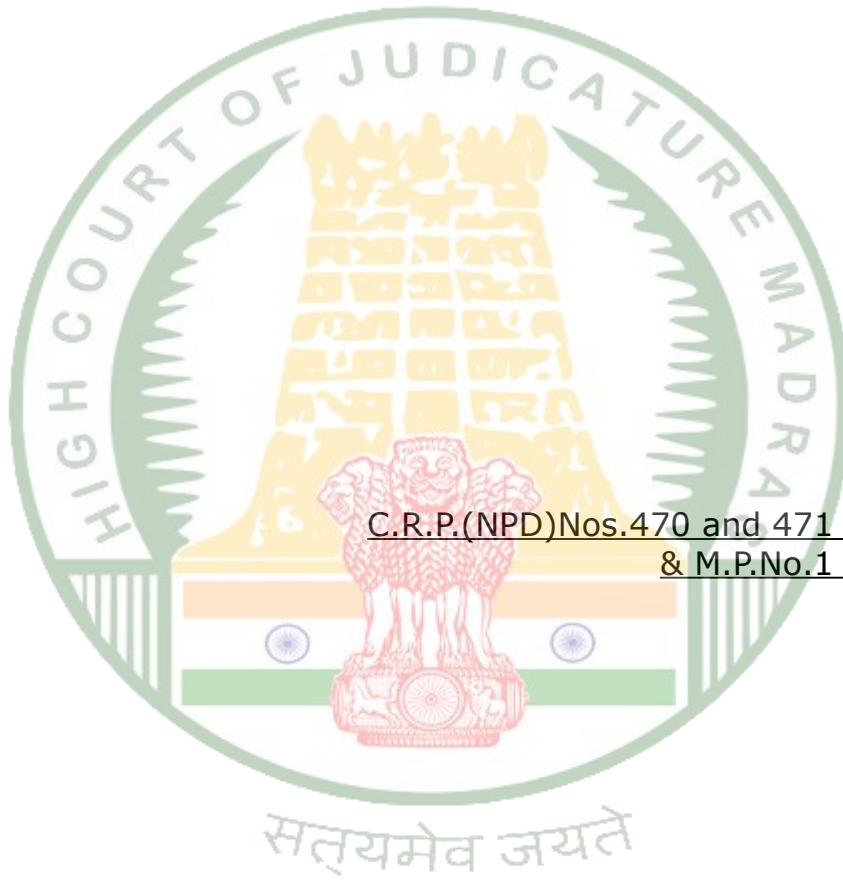
2. The Rent Controller
District Munsif, Panrutti.



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V.M.VELUMANI, J.

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