

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)Nos.833 to 835 of 2012
and
M.P.Nos.1, 1 and 1 of 2012**

CRP(NPD)No.833 of 2012

1.E.Valliammal

2.E.Shanmugam

3.E.Venkatesan

..Petitioners

Vs.

1.R.Ravichandran

2.Gopi

..Respondents

(No relief is sought as against the 2nd respondent.
Hence 2nd respondent is given up)

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act), against the Judgment and Decree passed in RCA.No.524 of 2005 by the VIII Small Causes Court, Chennai on 22.06.2011, reversing the Judgment and decree passed by the XV Small Causes Court, Chennai in RCOP.No.1696 of

2003 on 01.04.2005.

CRP(NPD)No.834 of 2012

1.Annadurai

2.E.Valliammal

3.E.Shanmugam

4.E.Venkatesan

.. Petitioners

Vs.

R.Ravichandran

..Respondent

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act), against the Judgment and Decree passed in RCA.No.525 of 2005 by the VIII Small Causes Court, Chennai on 22.06.2011, reversing the Judgment and decree passed by the XV Small Causes Court, Chennai in RCOP.No.1697 of 2003 on 01.04.2005.

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CRP(NPD)No.835 of 2012

E.Shanmugam

.. Petitioner

Vs.

R.Ravichandran

..Respondent

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act), against the Judgment and Decree passed in RCA.No.523 of 2005 by the VIII Small Causes Court, Chennai on 22.06.2011, reversing the Judgment and decree passed by the XV Small Causes Court, Chennai in RCOP.No.1695 of 2003 on 01.04.2005.

For Petitioners : Mr.K.S.Kumar
(All CRPs)

For Respondents : Mr.V.Ravi (for R1)
(All CRPs)

R2 – Given up (in CRP.No.833/2012)

COMMON ORDER

All these Civil Revision Petitions are arising out of Common Judgment made in R.C.O.Ps and R.C.As. Therefore Common Order is delivered in these Civil Revision Petitions. Out of three Civil Revision Petitions, two revision petitions are filed by the respective tenants and the respondents 2 to 4 in the R.C.O.P.Nos.1695 and 1697 of 2003. The C.R.P.No.833 of 2012 is filed by the respondents 2 to 4 in R.C.O.P.No.1696 of 2003 and the 1st respondent/tenant has not

preferred any revision as against the order of eviction and he was arrayed as 2nd respondent in C.R.P.No.833 of 2012. In fact, the tenant Gopi who is 2nd respondent in C.R.P.No.833 of 2003 has vacated and handed over possession of the petition mentioned premises to the respondent herein/landlord even prior to the filing of this Civil Revision and to that effect he has executed Full and Final Settlement agreement to the landlord/respondent herein on 10.11.2011.

2.It is the case of the Revision petitioners/tenants and other petitioners 2 to 4 that one R.Ravichandran claims to be landlord of the petition premises on the ground that he has purchased the property under Ex-P-1 sale deed dated 07.12.2000. On the basis of the sale deed the respondent/landlord had taken constructive possession of the property on 07.12.2000. According to the revision petitioners 2 to 4, they are the owners of the petition mentioned property.

3.It is the case of respondent herein/landlord is that he, as a petitioner has filed three R.C.O.P against tenants R.Shanmugam (R.C.O.P.No.1695 of 2003), Gopi (R.C.O.P.No.1696 of 2003) and Annadurai (R.C.O.P.No.1697 of 2003) for eviction on the ground of willful default. According to him, he is the owner of the commercial

shops i.e., the respective petition premises by virtue of a registered sale deed dated 07.12.2000. At the time of purchase of petition mentioned premises, the respondent in the respective R.C.O.Ps are tenants under the predecessor in title of the respondent herein. Therefore an oral agreement was entered into between the revision petitioners/tenants and respondent herein/landlord that the respective tenants should vacate and hand over possession of the respective petition premises within eight months from the date of purchase, or as soon as they got already accommodation whichever is earlier. In fact, the revision petitioners have paid monthly rent for month of March and April 2001 and thereafter they have not paid the monthly rent and thereby committed willful default in payment of monthly rent. Further the revision petitioners / tenants failed to vacate petition premises as per the oral agreement. Therefore, the landlord / respondent herein filed three R.C.O.Ps against three tenants for eviction on the ground of willful default from May 2001 onwards.

4.The case of the revision petitioners/tenants is that the respondent herein is not the owner of the petition premises and they have no knowledge about the purchase of petition mentioned property and there is no adornment of tenancy between the revision petitioners

and respondent herein. The revision petitioner Annadurai and Gopi, 2nd respondent in C.R.P.No.833 of 2012 are still paying monthly rent to the real owners. The other respondents namely Valliammal, Shanmugam and Venkatesan who were impleaded as respondents 2 to 4 in R.C.O.P.No.1696 and 1697 of 2003 claim to be the true owners of the petition premises and other property. It is their case that the property originally belonged to the Grand Father of Shanmugam and Venkatesan and after the demise of their grandfather, they have inherited the entire property. One Selvaraj attempted for dispossession the respondents 2 to 4 in the R.C.O.P and he failed in his legal battle. The respondent herein suppressed the fact that from whom he has purchased the petition premises. The further contention of the respondents 2 to 4 is that in the year 1997 one Mr.Selvaraj and his men attempted to dispossess these respondents. Hence a suit for permanent injunction was filed by these respondents and the same was decreed. Further, the said Selvaraj filed a suit for recovery of possession as if the said Selvaraj purchased the property and the same was dismissed.

5.Before the learned Rent Controller joint trial was conducted in R.C.O.P.Nos.1696 and 1697 of 2003 and in which the petitioner was

examined as P.W.1 and on his side Exs.P-1 to P-6 were marked. On the side of the respondents, the 1st respondent in both RCOP were examined as RW-1 and RW-2 and on their side Exs.R1 to R8 were marked. In RCOP.No.1695 of 2003, the petitioner was examined himself as PW-1 and marked Exs.P1 to P4 and on the side of the respondent, himself was examined as RW-1 and on his side Exs.P1 to P9 were marked. Aggrieved over the same, the landlord had preferred R.C.A.Nos.523 to 525 of 2005 before the VIII Small Causes Court, Chennai and the Learned Rent Control Appellate Authority was pleased to reverse the order passed by the learned Rent Controller and thereby ordered eviction on the ground of willful default by common Judgment and decree dated 22.06.2011. As against the same, the present Civil Revision Petitions are filed.

6.I heard Mr.K.S.Kumar, learned counsel appearing for the petitioner and Mr.V.Ravi, learned counsel appearing for the respondent and first respondent in CRP.No.833 of 2012 and perused the entire available material records. According to the Landlord /respondent herein, he purchased the petition mentioned premises under Ex.P-1 registered sale deed dated 07.12.2000. At the time of purchase of the property, the revision petitioners/tenants already were in occupation of

their respective commercial shops as tenants under the vendor of the landlord/respondent herein. Therefore, there was an oral agreement between the petitioner herein and the respondent that the petitioners herein should vacate and handover possession of the petition premises to the respondent herein with a period of eight months or until they get alternative accommodation. As per the oral agreement, the revision petitioners paid monthly rent for the month of March and April 2001. Subsequently the revision petitioners/tenants neither paid monthly rent nor vacated the petition premises as promised by them. Therefore, they have committed willful default in payment of monthly rent. Hence, the respondent herein has filed three eviction petitions against the tenants for eviction.

7.The learned Rent Controller by a Common Judgment dated 22.06.2011 dismissed all the three eviction petitions on the ground that the petitioner has failed to prove the landlord and tenant relationship between petitioner and respondent and therefore the question of willful default in payment of rent will not arise.

8.As against the said dismissal order, the Landlord has filed three Rent Control Appeal as against the Judgment and Decree passed

in above R.C.O.P, in R.C.A.No.523 of 2009 before the Rent Control Appellate authority VIII Court of Small Cause at Chennai. The Learned Rent Control Appellate Authority by common Judgment dated 22.06.2012 reversed the Judgment and Decree passed by Learned Rent Controller and thereby ordered eviction by holding that the respondent herein is the owner of the petition mentioned premises and came to conclusion that the revision petitioners/tenants have committed willful default in payment of monthly rent form May 2009 onwards.

9.Per contra, the revision petitioners contented that there is no adornment of tenancy between them and the Respondent herein. They further contented for they have no knowledge of the purchase of property by the respondent herein and they also denied payment of rent for the month of March and April 2001 to the respondent. The revision petitioners stated that the well considered Judgment passed by the learned Rent Controller on merits and the same cannot be set aside the Learned Rent Appellate Authority without going into the merits of the case and without considering the oral and documentary evidence adduced on the side of revision petitioners has erroneously allowed the appeal filed by the respondent herein/landlord.

10.The revision petitioners further contented that the learned Rent Control Appellate Authority failed to look into the Judgment and Decree passed in O.S.No.3729 of 1997 which was filed by tenant Shanmugam and his mother against the vendor of the respondent herein namely Selvaraj wherein the suit for permanent Injunction filed by the revision petitioner herein Shanmugam and his mother against the vendor of the respondent herein was decreed and the same is binding on the respondent herein also. But the Lower Appellate Court has not considered the above said Judgment and erroneously ordered eviction.

11.This Court has put its anxious consideration to the arguments advanced on both side. From the perusal of the Judgment passed by Learned Rent Controller, this court found that the finding rendered by the Learned Rent Controller is perverse. The Learned Rent Controller without considering Ex.P-1 registered sale deed dated 07.12.2000 executed in favour of landlord/respondent herein and also the oral evidence of R.W.1 Shanmugam in O.S.No.4458 of 2001 wherein the tenant Shanmugam has clearly admitted that respondent herein is the owner of the property at the rear side of the petition mentioned

premises and he further deposed that he do not have any right over the rear side of property. As far as the front portion of property is concerned, it was allotted to the share of Veerapathiran Pillai and others. They have sold the same to Mr.Selvaraj who is the vendor of the respondent herein. The Learned Rent Controller failed to consider the rental receipts Ex-P3 series produced by the landlord. The tenants have paid two months rents for the month of March and April 2001 by admitting the 1st respondent herein as their landlord. The payment of monthly rents by the tenants to the landlord is clinchingly proved the title of the 1st respondent. The Lower Appellate Court by analyzing all the above said facts, has rightly come to conclusion that there is a landlord and tenant relation between the revision petitioners and respondent herein.

12.That apart the Judgment relied by the respondent herein reported in **2001 (2) CTC 321** supported the case of respondent herein, wherein it is held that "non-payment of rent on account of denial of title of landlord constituted willful default as denial of title by tenant was not bonafide". As per the dictum laid down in the above said Judgment, the revision petitioners have committed willful default in payment of rent. The reason is that if the tenant is shown his

bonafidy, he should have taken recourse to make the payment of rents as per the act before the Revenue Divisional Officer concern. If no such legal action is taken, he can't take shelter that he was crippled to make the payment of rent as because of the disputed ownership of the property concerned. As the petitioners have not made out any case that he was initiated legal action to deposit the rent before the Officer concerned, he will lose is immunity as contemplated under the act. As the revision petitioners have failed to make out any case, it is unwarranted to interfere with the common judgment passed by the learned Rent Control Appellate Authority.

13.Further, one of the tenants Gopi, the 2nd respondent in C.R.P.No.833 of 2012 had vacated his portion the petition premises on 10.11.2011 and to that effect he executed Full and Final Settlement Agreement in favour of the landlord. It shows, the 1st respondent herein is the owner of the petition premises.

14.In view of fore going discussion, the revision petitioners have not assigned any valid or acceptable reason to interfere with the well considered Judgment Passed by the learned Rent Control Appellate Authority. I do not find any merits in this three Civil Revision Petitions

and the same are liable to be dismissed.

15.In the result, all the three Civil Revision Petitions are dismissed and the Common Judgment passed by learned Rent Control Appellate Authority is confirmed. No costs. Consequently connected miscellaneous petitions are closed. Time for eviction 3 months.

03.04.2017

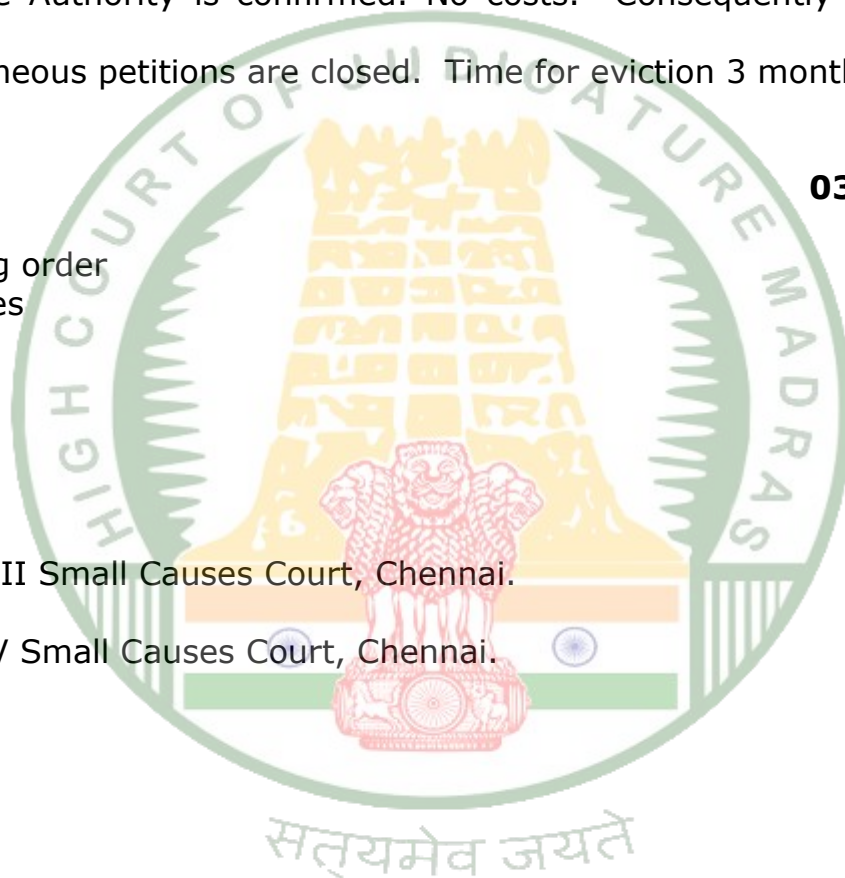
Speaking order
Index:Yes

vs

To

1.The VIII Small Causes Court, Chennai.

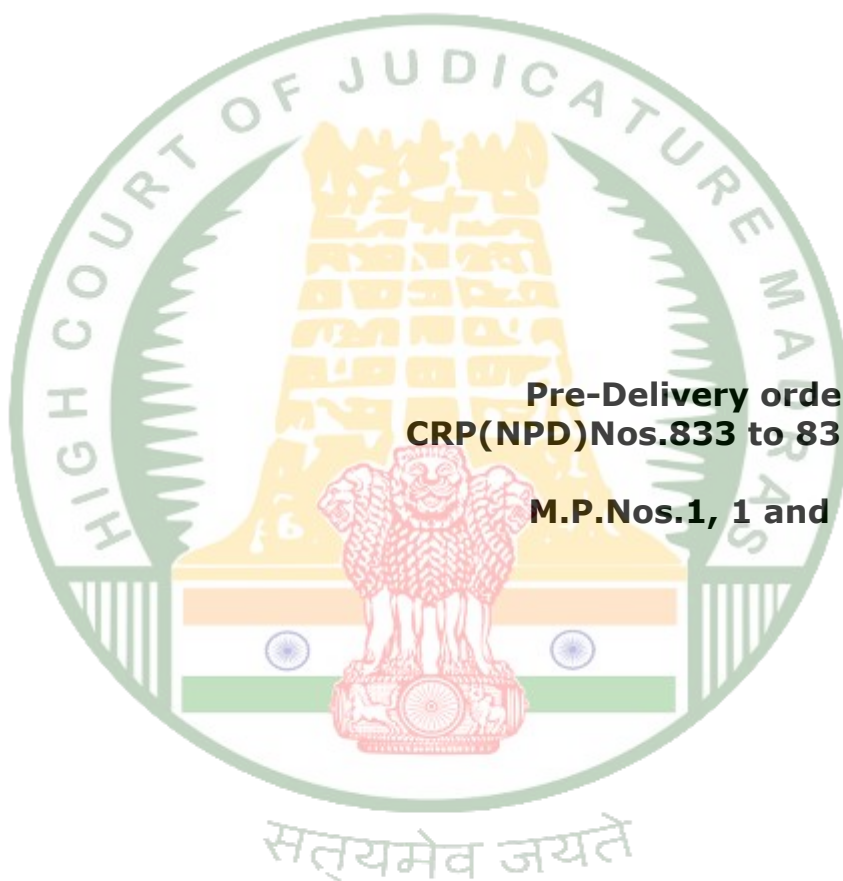
2.The XV Small Causes Court, Chennai.



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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(NPD)Nos.833 to 835 of 2012
and
M.P.Nos.1, 1 and 1 of 2012**

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C.R.P.Nos.833 to 835 of 2012**M.V.MURALIDARAN,J.**

Challenging the order passed in R.C.A.Nos.523 to 525 of 2005, the Civil Revision Petition Nos.833 to 835 of 2012 have been filed and the same were dismissed on 03.04.2017.

2.The above Civil Revision Petitions have been listed under the caption "for being mentioned" at the instance of the learned counsel for the petitioners.

3.The learned counsel for the petitioners has submitted that while drafting decree in C.R.P.No.833 of 2012, R.C.A. number has been wrongly mentioned as R.C.A.No.105 and R.C.O.P.No.16 of 2013 instead of R.C.A.No.524 of 2005 and R.C.O.P.No.1696 of 2003 respectively in the docket, in C.R.P.No.834 of 2012, R.C.A. number has been wrongly mentioned as R.C.A.No.105 instead of R.C.A.No.525 of 2005 in the prayer portion and also in the docket and in C.R.P.No.835 of 2012, R.C.A. number has been wrongly mentioned as

R.C.A.No.523 of 2005 instead of R.C.A.No.524 of 2005 in the order portion.

M.V.MURALIDARAN, J.

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4.This Court perused the decrees made in C.R.P.Nos.833 to 835 of 2012, wherein the above mentioned mistakes have been crept in.

5.Hence, the Registry is directed to carry out the necessary corrections in the decrees made in C.R.P.Nos.833 to 835 of 2012 and issue a fresh order copy to the petitioners.

10.06.2017

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C.R.P.Nos.833 to 835 of 2012