

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:20.04.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**

CRP(PD).No.1218 of 2018 &
C.M.P.No.7030 of 2018

Y.Sathish

.. Petitioner

vs.

K.G.Jothisankar (Deceased)

1.Padmashankar

2.Rakesh Jothisankar

3.Ramya Jothisankar

.. Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, against the order and decretal order dated 20.02.2018 passed in I.A.No.617 of 2017 in R.C.O.P.No.1453 of 2015 on the file of the learned XVI Small Causes Judge, Chennai.

For Petitioners

... M/s.S.Baskaran

For Respondents

... Ms.R.Girija

for M/s.M.Chidambaram for Caveat

ORDER

The Civil Revision Petition has been filed by the petitioner against the order in I.A.No.617 of 2017 in R.C.O.P.No.1453 of 2015 on the file of the learned XVI Small Causes Judge, Chennai.

2. The case of the petitioner/tenant is that one K.G.Upendra is his landlord and that he had been paying the rents to him without any default. Since all of a sudden his landlord demanded exorbitant rent, he had filed O.S.No.6882 of 2014 on the file of VIII Assistant City Civil Court, Chennai. The petitioner further submitted that his landlord was admitted in hospital and bedridden unconsciously for more than two months and thereafter died. Meanwhile, when his landlord was in the hospital the alleged settlement deed had been executed on 03.11.2014 on the file of Sub Registrar, T.Nagar, in book No.1, vide Document No.2637 of 2014 in favour of one K.G.Jothishankar and further submitted that K.G.Jothishankar is not the only brother of the deceased landlord and the said Jothishankar has filed the above RCOP claiming title to the petition property based on the settlement deed as if he is the landlord and no photo's of both the parties to the settlement deed has been affixed in the document and above all, the landlord deceased K.G.Upendra is a literate but he had affixed his thumb impression in the alleged settlement deed from which it is clear that the settlement deed is a fabricated one. Petitioner filed M.P.NO.617 of 2017 in R.C.O.P.No.1453 of 2015 to summon the Sub-Registrar, T.Nagar, to give evidence with regard to alleged settlement deed dated 03.11.2014. Such petition was dismissed by the Rent

Controller. Aggrieved by the order passed by the Rent Controller, the revision petitioner/tenant has filed the present revision petition.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

4. The learned counsel for the petitioner would submit that the landlord claiming title on the basis of alleged settlement deed dated 03.11.2014. The respondent has produced the original settlement deed and it is not registered as contemplated under the Tamil Nadu Act 48/2001 and the Registration Act 1908 as amended 32-A.

5. The revision petitioner has produced the Registration copy of the said alleged settlement deed, in which there is no photos and other attesting witnesses as contemplated in the amended Act. Therefore, it is necessary to examine the concerned Registrar, who registered the same.

6. The learned counsel for the respondent would submit that when the document was registered, the alleged settlor was hospitalized and

he was taking treatment. Therefore, he could not affix his signature in the document and there is an exemption. Therefore, Section 32-A of the the amended Act 48/2001, which was came into effect from 01.07.2006, will not apply. Hence, the petition is liable to be dismissed.

7. It is not in dispute that the respondent claims title under registered settlement deed dated 03.11.2004. Admittedly in the said settlement deed only Thumb impression of testator was affixed and the settlement deed was not attested as contemplated under sec 123 of the Transfer of Property Act and no photo of the testator of the settlement deed was affixed as per section 32-A of amendment Act 48 of 2001 (Registration Act) which came into effect from 01.07.2006.

8. Considering the facts and circumstances of the case, this Court is of the view that in the interest of justice, in order to establish as to whether the document was registered as contemplated under amended Act or not, it is necessary to examine the registrar.

9. In view of the above reasons, the Civil Revision Petition is allowed and the order passed by the Rent Controller in I.A.No.617 of

2017 is set aside. The respondent is directed to produce the original settlement deed before the Rent Controller and the Rent Controller is directed to issue subpoena for Sub-Registrar, T.Nagar. Further the trial Court is directed to examine the Registrar who registered the document and decide the matter in accordance with law. No costs. Consequently connected miscellaneous petition is closed.

20.04.2018

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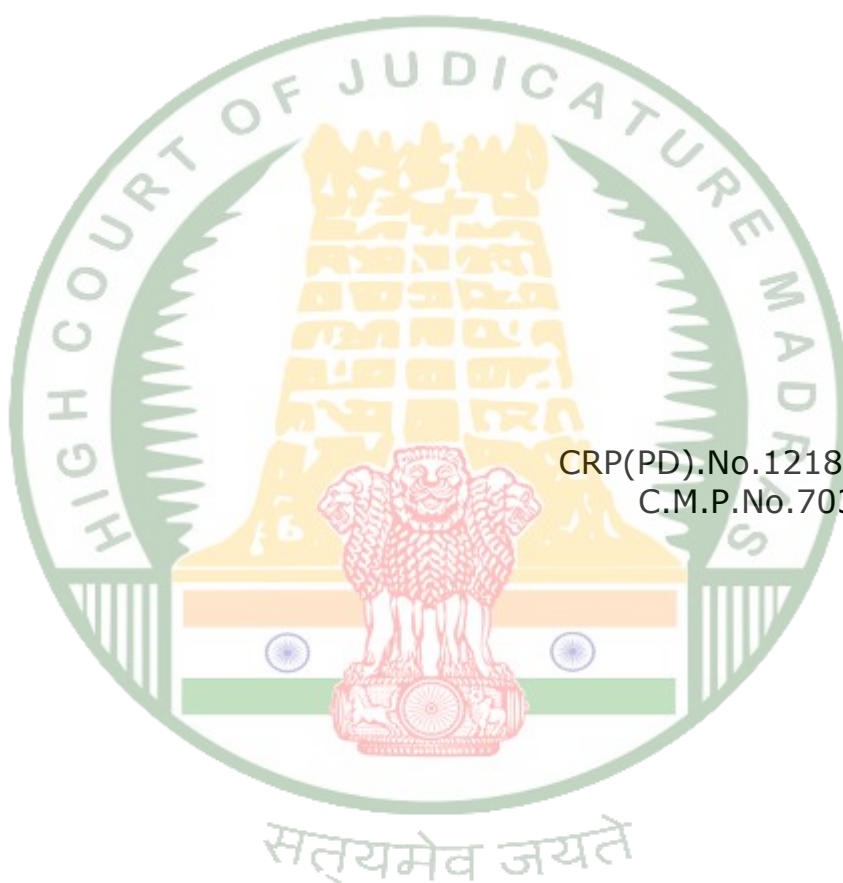
To

The XVI Judge,
Small Causes Court,
Chennai.



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P.VELMURUGAN.J,
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