

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:19.04.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**CRP(PD).No.1233 of 2018 &
C.M.P.No.6301 of 2018

E.Kuppu Reddy .. Petitioner

vs.

K.Kumar .. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree dated 05.02.2018 passed in M.P.No.409 of 2017 in R.C.O.P.No.1568 of 2015 by the learned XIII Judge, Small Causes Court, Chennai and allow the petition to discard the Exhibits P1 Series by allowing this Civil Revision Petition.

For Petitioner ... M/s.S.S.Swaminathan

ORDER

This Civil Revision Petition has been filed by the petitioner against the order passed by the trial Court in M.P.No.409 of 2017 in R.C.O.P.No.1568 of 2015 by the learned XIII Judge, Small Causes Court, Chennai.

2. The learned counsel for the petitioner submits that the respondent had filed RCOP for eviction on the ground of wilful default. The respondent had filed proof affidavit and also documents to be marked as Exhibits.

3. The petitioner filed an application before the trial Court in M.P.No.409 of 2017 in R.C.O.P.No.1568 of 2015 stating that the respondent/landlord was unable to produce and mark the lease deed dated 19.3.1997 as the same is inadmissible in evidence and surreptitiously marked the lease deed by marking the typed set of papers prepared for writ proceedings Ex.P.1 series. Hence Ex.P.1 series contains inadmissible document and marking of the same was contrary to the rules of evidence and thus prayed to discard the Ex.P.1 series and renumber the other exhibits.

4. The said I.A.No.409 of 2017 was dismissed by the learned trial Judge holding that electricity connection was obtained to the rental portion by an order in the Writ petition No.4352 of 2008 which had entire rental agreement marked in the same, hence this petition praying to discard Ex.P.1 series is not sustainable in law.

5. The learned counsel for the Revision petitioner would submit that the land lord has preferred RCOP.No.1645 of 2008 on the file of XII Court of Small Causes, Chennai for fixation of fair rent and on merits, the learned Small Causes Judge fixed a fair rent of Rs.43,614/- per month, against which, both parties have preferred R.C.A.No.153 of 2009 and RCA.No.595 of 2009 by the landlord and tenant respectively, wherein, the order passed by the Rent Controller was confirmed. Subsequently, R.C.O.P.No.1568 of 2015 was filed by the landlord stating that subsequent to the disposal of the appeals, the tenant has not come forward to pay the entire arrears and a sum of Rs.17,06,004/- which was due towards water and sewerage charges have been deducted unlawfully and kept by the respondent after giving credit to the payments so far made. Hence, he prayed for vacating and handing over of vacant possession of the rented premises. In the R.C.O.P.No.1568 of 2015, the landlord filed a proof affidavit along with documents to be marked as exhibits. Before marking of documents, he filed a petition in M.P.No.661 of 2016 to eschew certain portions in the proof affidavit and the same was allowed. Thereafter, the documents filed by the landlord were marked as Exhibits in the absence of tenant and his counsel.

6. Subsequently, during cross examination of landlord, the revision petitioner received the copy of the proof affidavit and came to know that the document marked as Ex.P1 series contains inadmissible document. Therefore, he filed the application before the trial Court praying to discard Ex.P.1 and consequently renumber the other exhibits.

7. Further, one of the xerox copy of the documents can be found in rental agreement which was more than 12 months and therefore which is required to be registered under Registration Act. Since it was not registered and not properly stamped, it is an inadmissible document and the Rent Controller has not considered the same and dismissed that application. The said order passed by the Rent Controller is liable to be set aside.

8. Admittedly, the revision petitioner has not raised any objections at that time of marking of the document on 15.03.2017 the date on which the matter was posted for marking of the document after filing the proof affidavit. Now, he cannot say that he was not served with the copy of the proof affidavit and in his absence, the document was marked and therefore he could not raise any objection.

Once the document is marked, subsequently it cannot be objected later regarding the admissibility of the document, if at all any objection was raised on the same day, at the time of marking the documents, the Rent Controller could have considered his objection.

9. Moreover, as per Section 36 of the Indian Stamps Act, which speaks about admission of instruments, where not to be questioned; It reads as follows;

"Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. "

10. Hence, as per Section 36 of the Indian Stamp Act, once the document is marked, the same cannot be questioned later that it is not admissible in evidence. The legislature has by Section 36 in the conditions set out therein removed the bar only against admission in evidence of the instrument.

11. However, the validity of the documents could be decided in the Rent Control Original Petition. This Court finds that there is no infirmity or irregularity in the order passed by the trial Court.

P.VELMURUGAN.J,
ub

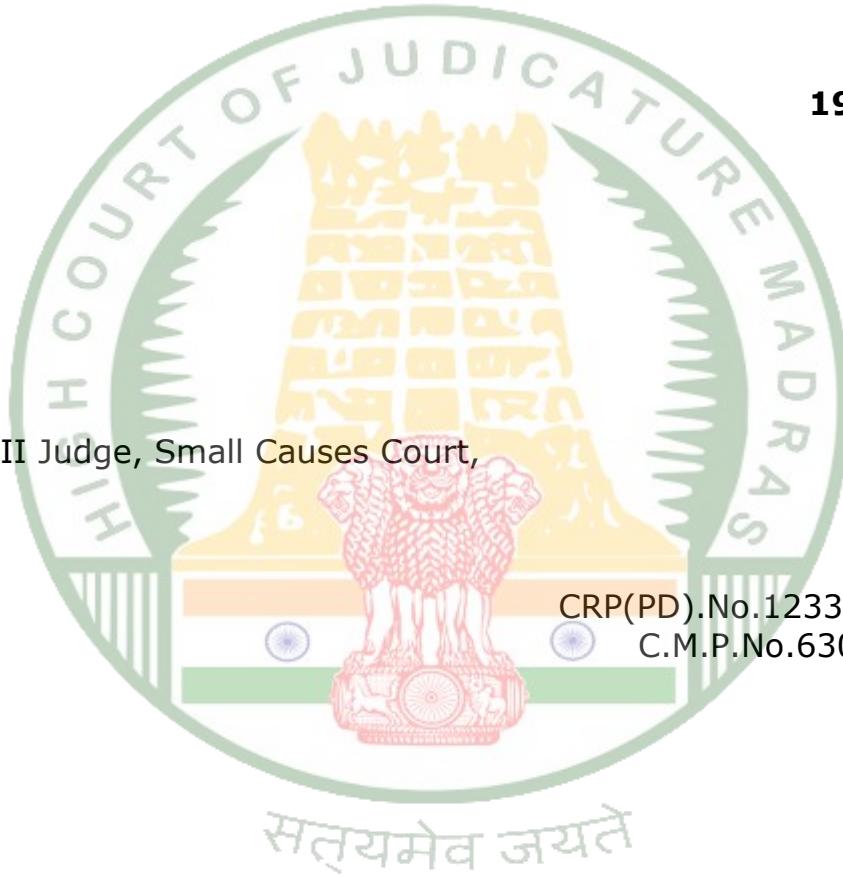
12. Hence, this Civil Revision Petition is dismissed. No costs.
Consequently connected miscellaneous petition is closed.

19.04.2018

ub

To

The XIII Judge, Small Causes Court,
Chennai.



CRP(PD).No.1233 of 2018 &
C.M.P.No.6301 of 2018

WEB COPY