

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.1026 and 1027 of 2013

1.M.Babu
2.Latha

.. Petitioners in
both C.R.Ps.

Vs.

Thanjai Thambi

.. Respondent in
C.R.P.No.1026/2013)

1.Thanjai Thambi
2.Selvam alias Selvaraj

.. Respondents
in C.R.P.No.1027/2013)

COMMON PRAYER: Civil Revision Petitions filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act, 1960, against the judgment and decree dated 22.08.2012 made in R.C.A.Nos.34 and 35 of 2010 on the file of the Subordinate Court, Tambaram, reversing the fair and decretal order dated 28.07.2010 made in R.C.O.P.Nos.22 and 20 of 2007 on the file of the Rent Controller (Principal District Munsif Court), Alandur.

(In C.R.P.No.1026/2013)

For Petitioner : M/s.Nandhini Devi
for Mr.R.Subramanian

For Respondent : Mr.R.Abdul Mubeen

(In C.R.P.No.1027/2013)

For Petitioner : M/s.Nandhini Devi
for Mr.R.Subramanian

For R1 : Mr.R.Abdul Mubeen

For R2 : No appearance

COMMON ORDER

These Civil Revision Petitions have been filed against the judgment and decree dated 22.08.2012 made in R.C.A.Nos.34 and 35 of 2010 on the file of the Subordinate Court, Tambaram, reversing the fair and decretal order dated 28.07.2010 made in R.C.O.P.Nos.22 and 20 of 2007 on the file of the Rent Controller (Principal District Munsif Court), Alandur.

2.The parties and the issues involved in both the Civil Revision Petitions are interlinked and therefore, they are disposed of by this common order.

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3.The petitioners are landlords and respondents in C.R.P.No.1027/2013 are the tenants in R.C.O.P.No.20 of 2007. The petitioners filed R.C.O.P.No.20 of 2007 against the respondents in C.R.P.No.1027/2013 and R.C.O.P.No.22 of 2007 against the

respondent in C.R.P.No.1026/2013 for eviction on the ground of wilful default, demolition, reconstruction and subletting. According to the petitioners, they have purchased the property from erst while owner, P.Kannan, son of Parthasarathy by the registered sale deed dated 24.01.2007. They took possession of the residential portion on the date of purchase itself. The first respondent in R.C.O.P.No.20 of 2007 is tenant on a monthly rent of Rs.650/- and he is running a Juice Stall. The second respondent is tenant in another portion on a monthly rent of Rs.1100/- and was doing ready made garments business. The petitioners requested the respondents to attorn the tenancy in their favour by paying monthly rent to them. The respondents did not do so. The petitioners by notice dated 08.02.2003 issued through their counsel informed the respondents about their purchase and called upon them to pay the rent to them. The respondents did not comply with the said request and committed wilful default in paying the monthly rent. The petitioners also came to know that the first respondent sub-letted his portion to the second respondent in R.C.O.P.No.20 of 2007, who is now in occupation of two portions. The petition building is 80 years old and residential portion is covered with country tiles. The petitioners intend to demolish and reconstruct the said building by obtaining the building plan from the local municipality and filed both the

R.C.O.Ps for eviction of the respondent in C.R.P.No.1026/2013 and respondents in R.C.O.P.No.1027/2013.

4.The second respondent in C.R.P.No.1027/2013 remained exparte. The respondent in C.R.P.No.1026/2013 and first respondent in C.R.P.No.1027/2013 filed counter affidavit. According to the first respondent in C.R.P.No.1027/2013, he entered into an agreement of sale dated 05.05.2005 with the erstwhile owner P.Kannan to purchase the property for a total sale consideration of Rs.5,00,000/- and paid advance of Rs.3,00,000/-. The erst while owner P.Kannan handed over the possession of the entire building to the respondents. The first respondent in R.C.O.P.No.20 of 2007 surrendered the portion under his occupation to the second respondent with consent of the erstwhile owner. From the date of agreement of sale, there is no landlord tenant relationship between the erst while owner, P.Kannan and the respondents. The petitioners, knowing fully well of the agreement of sale dated 05.05.2005 in favour of the first respondent, purchased the property. The first respondent filed O.S.No.77 of 2007 against the erstwhile owner P.Kannan and present petitioners for specific performance of agreement of sale and the same is pending. The

building is not an old building. After agreement of sale, the first respondent has spent huge amount and remodelled the building.

5.Before the learned Rent Controller, on behalf of the petitioners, three witnesses were examined as P.Ws 1 to 3 and marked 12 documents as Exs.P1 to P12. On behalf of the first respondent in R.C.O.P.No.20 of 2007, three witnesses were examined as R.Ws 1 to 3 and marked 5 documents as Exs.R1 to R5.

6.The learned Rent Controller, considering the pleadings, oral and documentary evidences, allowed both the R.C.O.Ps, ordering the eviction on all the grounds.

7.Against the said order dated 28.07.2010, the respondent in C.R.P.No.1026 of 2013 and first respondent in C.R.P.No.1027 of 2013 filed two R.C.A.Nos.34 and 35 of 2010. The learned Appellate Authority considering the contention of the first respondent that he is an agreement holder by entering into an agreement of sale dated 05.05.2005 and he has filed O.S.No.77 of 2007 for specific performance of agreement of sale against the erstwhile owner and petitioners, and written statement filed by the erst while owner, P.Kannan, allowed both the R.C.As, holding that it is open to the

petitioners to initiate fresh R.C.O.P for eviction after disposal of the suit in O.S.No.77 of 2007.

8. Against the said judgment and decree dated 22.08.2012 made in R.C.A.Nos.34 and 35 of 2010, reversing the fair and decretal order dated 28.07.2010 made in R.C.O.P.Nos.22 and 20 of 2007, the petitioners have come out with the present two Civil Revision Petitions.

9. The learned counsel for the petitioners submitted that O.S.No.77 of 2007 filed by the respondents was dismissed on 28.08.2017 and produced the copy to the judgment and submitted that the judgment of the learned Appellate Authority has to be set aside as R.C.As were allowed only on the ground that suit filed by the first respondent for specific performance of agreement of sale was pending and prayed for remanding the matter to the learned Appellate Authority for fresh consideration.

10. The learned counsel for the first respondent submitted that the first respondent has filed appeal against the said judgment and prayed for dismissal of both the Civil Revision Petitions.

11. Heard the learned counsel for the petitioners as well as the respondent in C.R.P.No.1026/2013 and first respondent in C.R.P.No.1027/2013 and perused the materials available on record.

12. From the materials available on record and judgment of the learned Appellate Authority, it is seen that the learned Appellate Authority has allowed the appeals only on the ground that the suit O.S.No.77 of 2007 filed by the respondents for specific performance of agreement of sale was pending and that there is bonafide dispute with regard to ownership. In view of the judgment dismissing O.S.No.77 of 2007 filed by the first respondent for specific performance of agreement of sale and the relief sought for by the first respondent is denied, the common judgment of the learned Appellate Authority is liable to be set aside and the appeals are to be remanded to the Appellate Authority for fresh disposal on merits.

13. Accordingly both the Civil Revision Petitions are allowed setting aside the judgment and decree dated 22.08.2012 made in R.C.A.Nos.34 and 35 of 2010 and remanded to the Appellate authority for fresh consideration. The learned Appellate Authority is directed to dispose of the appeals, on merits and in accordance with

law within a period of three months from the date of receipt of a copy of this order. No costs.

08.03.2018

Index : Yes/No

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V.M.VELUMANI,J.

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To

- 1.The Principal District Munsif,
Alandur.
- 2.The Subordinate Judge,
Tambaram.



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