

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4818 of 2012 and
M.P.No.1 of 2012

R.D.Jayakumar

..Petitioner

Vs.

1.A.Kannan(Deceased)

2.K.Kalaichelvi

3.V.K.Karthikeyan

4.V.K.Ravichandran

5.V.K.Kumaravadivel

6.V.K.Venkatarajan

.. Respondents

(R2 to R6 brought on record as LRS
of the deceased sole respondent viz.,
A.Kannan vide Court order dated 20/12/2017
made in C.M.P. Nos. 7225 & 7226 of 2016
in C.R.P.No.4818 of 2012)

PRAYER: Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, against the fair and decretal order dated 29.10.2012 made in R.C.A.No.4 of 2011 on the file of the Subordinate Court, Vellore.

For Petitioner : Mr. T.Saikrishnan
R1 : Died
For R2 to R6 : Mr.M.Sathish Kumar

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 29.10.2012 made in R.C.A.No.4 of 2011 on the file of the Subordinate Court, Vellore.

2. The petitioner is a tenant and first respondent is a landlord. The first respondent filed R.C.O.P.No.70 of 2005 on the file of the Principal District Munsif Court, Vellore, for eviction of the petitioner on the ground of owners occupation and act of waste. According to the first respondent, his son namely, Ravichandran, is a qualified technician in Radiology. His son and daughter-in-law worked in a foreign country. In order to look after the first respondent and his wife, first respondent's son and daughter-in-law resigned their job and came to India and are residing with the first respondent. The son of the first respondent worked in a hospital after coming to India and resigned the same and wanted to start x-ray unit of his own. The first respondent is not owning any other non residential building. The petitioner has not properly maintained the building

and committed act of waste and value of the property has been reduced. Hence first respondent filed the said R.C.O.P.

3. The petitioner filed counter statement on 13.04.2006 and denied all the averments made in the R.C.O.P. According to the petitioner, requirement of the first respondent for owners occupation for his son's business is not bonafide. He is owning other non residential building. The petitioner is regularly paying rent and he has no arrears. It is not possible for the petitioner to vacate the petition premises immediately and required time till December 2008. He also submitted that he has not committed any act of waste.

4. Before the learned Rent Controller, the first respondent was examined himself as P.W.1 and marked two documents as Exs.P1 & P2. The petitioner was examined himself as R.W.1 and marked two documents as Exs.R1 and R2.

5. The learned Rent Controller considering the pleadings and oral and documentary evidence, held that the requirement of the first respondent for his sons requirement to establish x-ray unit is

bonafide and allowed the R.C.O.P. The learned Rent Controller dismissed the R.C.O.P. on the ground of act of waste holding that the first respondent failed to prove the act of waste.

6. Against the said order dated 02.12.2010 made in R.C.O.P.No.70 of 2005, the petitioner filed R.C.A.No.4 of 2011 on the file of the Subordinate Court, Vellore.

7. The learned Appellate Authority independently considering the materials available on record, especially legal notice dated 23.12.2003 issued by the petitioner to the first respondent, wherein he required time till December 2005 to vacate the petition premises and in the counter statement filed by the petitioner in the R.C.O.P., wherein the petitioner required time till December 2008 for vacating the petition premises and evidence of the first respondent as P.W.1, held that the petitioner is not seriously objecting to vacate the premises and that first respondent has proved that his requirement for owners occupation is bonafide and dismissed R.C.A.

8. Against the said judgment and decree dated 29.10.2012 made in R.C.A.No.4 of 2011, confirming the order of the learned

Rent Controller dated 02.12.2010 made in R.C.O.P.No.70 of 2005, the present Civil Revision Petition is filed by the petitioner/tenant.

9. Pending Civil Revision Petition, first respondent died and respondents 2 to 6, who are the legal heirs of the first respondent, were brought on record.

10. Heard the learned counsel for the petitioner as well as the respondents 2 to 6 and perused the materials available on record.

11. The learned counsel for the petitioner contended that there are two shops vacant in the ground floor and one in the first floor of the petition premises. The first respondent can easily establish his son's x-ray unit in one of the shops vacant. The first respondent is also having other non residential buildings. Both the contentions are without merits. There is nothing on record to show that there are two shops vacant in the same shopping complex. Further, it is not for the tenant to dictate the terms to the landlord as to which portion is suitable for the landlord's occupation. It is for the landlord to choose which portion is convenient for him for own use and occupation. In the present case, petitioner has not let in

any evidence to prove that the requirement of the first respondent/landlord for owners occupation is not bonafide. On the other hand, the first respondent/R.W.1 has deposed that he requires the portion under occupation of the petitioner for establishing a x-ray unit for his son's business.

12. It is also pertinent to note that in the notice dated 23.12.2003 issued by the petitioner to the first respondent, he required time till December 2005 to vacate the petition premises and in the counter statement, the petitioner stated that he required time till December 2008 to vacate the petition premises.

13. Both the Courts below have considered the pleadings and evidence in proper perspective and held that the requirement of the first respondent for owners occupation is bonafide. There is no reason or circumstances warranting interference by this Court with the order and judgment and decree of both the Courts below.

14. In the result, the Civil Revision Petition is dismissed. The learned counsel for the petitioner submitted that the petitioner undertakes to vacate the petition premises within a period of two

months from the date of receipt of a copy of this order and he will file an affidavit of undertaking to that effect on 31.01.2018. No costs. Consequently, connected Miscellaneous Petition is closed.

Post the matter on 31.01.2018 for filing affidavit of undertaking.

25.01.2018

Index:Yes/No

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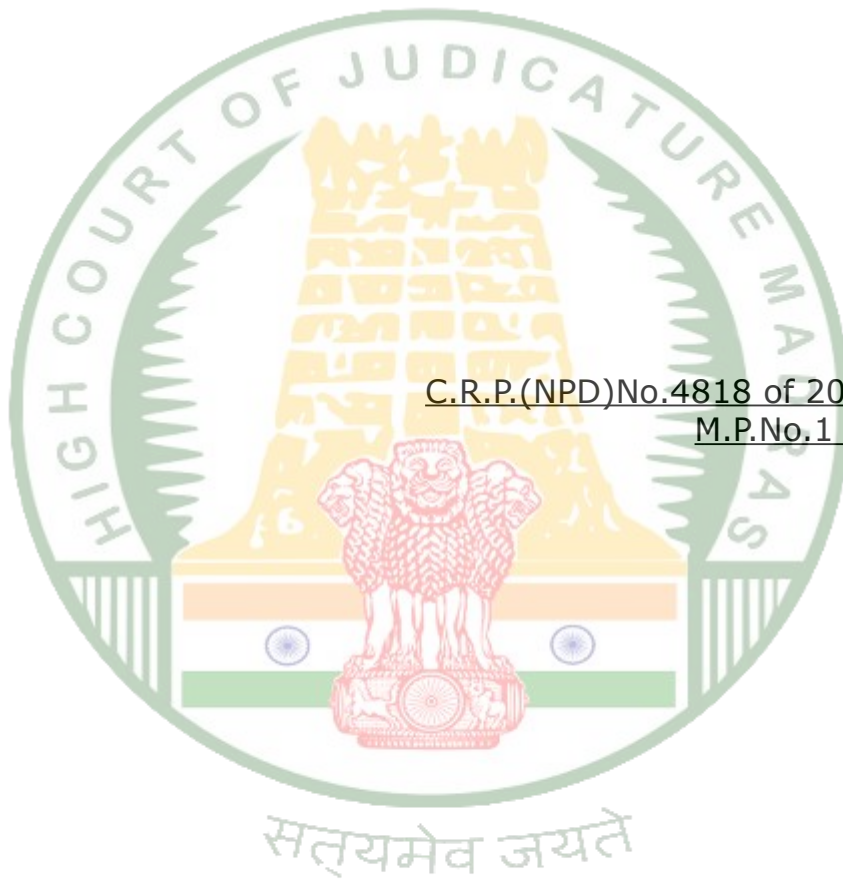
The Subordinate Judge
Vellore.



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V.M.VELUMANI,J.

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V.M.VELUMANI,J.

The Civil Revision Petition is posted today for filing affidavit of undertaking by the petitioner. The learned counsel for the petitioner filed an affidavit of undertaking to vacate and deliver vacant possession of the petition premises within a period of two months from today. The affidavit of undertaking is taken on file and the same is recorded. The same will be part and parcel of this order. The petitioner is directed to vacate and hand over petition premises to the respondents 2 to 6 within a period of two months from today.

02.02.2018

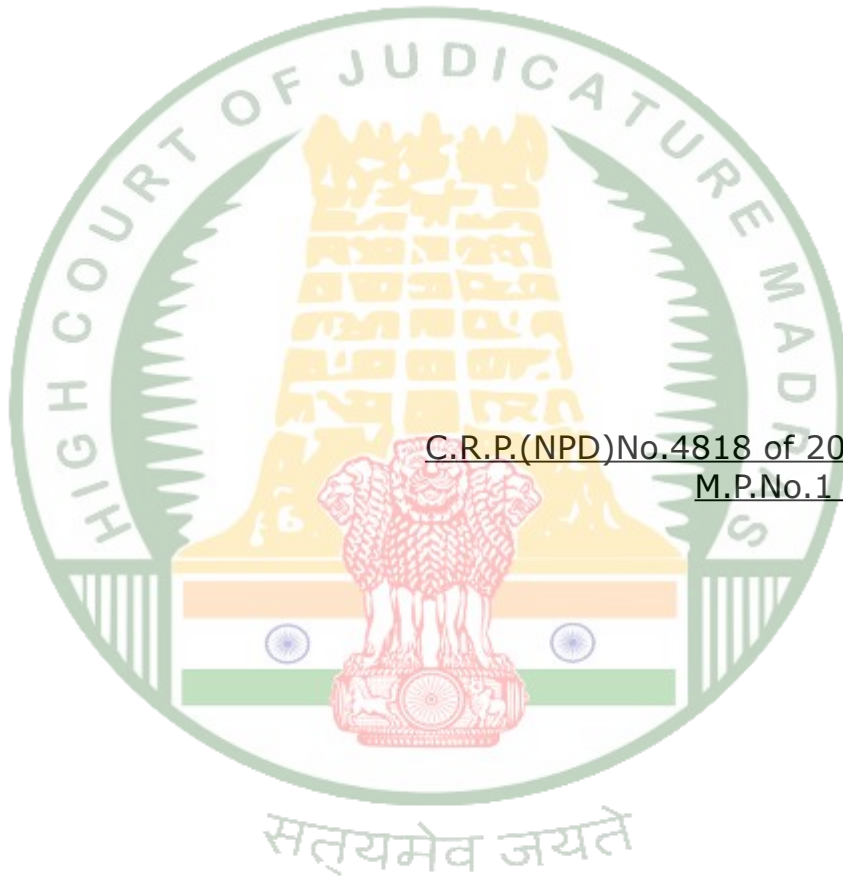
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