

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P. (NPD) No.1279 of 2006  
and  
C.M.P. No.1 of 2006

Shankar Chettiar ... Petitioner/Third Party/Appellant  
Vs.

1.Sree Rangammal ...First Respondent/Decree Holder/Ist Respondent

2.Kamalakannan ... 2bd Respondent/Judgment Debtor/  
2<sup>nd</sup> Respondnet

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease And Rent Control Act) 1960 as amended by Act 23 of 1973 and Act 1 of 1980 against the Judgment and Decree dated 29.12.2005 passed in R.C.A.No.3 of 2004 on the file of the learned Rent Control Appellate Authority, Cuddalore, confirming the fair and final order dated 27.02.2004 passed in E.A.No.9 of 1999 in E.P.No.6 of 1998 in R.C.O.P.No.18 of 1996 on the file of the learned Rent Controller, Cuddalore.

For Petitioner : Mr.Kingston Jerold

For Respondents : Mrs.G.Sumitra for R1  
: No appearance for R2

सत्यमेव जयते  
O R D E R

This Civil Revision Petition, which is an off-shoot of the Second Appeal in S.A.No.440 of 2005 has been filed by the plaintiff in the suit in O.S.No.559 of 2007 against the defendants in the said suit.

2.The revision is directed against the dismissal of the application of the revision petitioner as a third party obstructor in E.A.No.9 of 1999 in E.P.No.6 of 1998 in R.C.O.P.No.18 of 1996 on the file of the learned Rent Controller (Principal District Munsif), Cuddalore, which has been confirmed by the Appellate Authority (Principal Subordinate Judge), Cuddalore.

3.The facts relating to this revision petition more or less overlaps with the details in S.A.No.440 of 2005. However, for the sake of clarity with reference to the narration of the events, the facts preceding the filing of the Civil Revision Petition herein are narrated in brief.

4.The 1<sup>st</sup> respondent herein had obtained a decree for eviction against the 2<sup>nd</sup> respondent on the ground of willfull default in respect of the property, which was the subject matter of the suit in O.S.No.559 of 1997. The 1<sup>st</sup> respondent had thereafter, initiated Execution Proceedings in E.P.No.6 of 1998 on the file of the Principal District Munsif, Cuddalore, for delivery of possession. When delivery was attempted, the revision petitioner filed an obstruction petition in which, he would contend that he had been inducted as a tenant in October 1992 and that his possession had been continuing till date and that he was running a business in the said premises in the name and style of "Sumangali Center". The 1<sup>st</sup> respondent had initially attempted to evict the petitioner forcibly from the premises, which was successfully thwarted by the revision petitioner and hence, he was constrained to move the suit in O.S.No.559 of 1997 on the file of the Additional District Munsif, Cuddalore, for a decree for permanent injunction. In the said suit, he had obtained exparte ad-interim injunction on 03.10.1997, which was later made absolute on 13.11.1997. Ultimately, the suit was dismissed and an appeal had been filed by the revision petitioner in A.S.No.153 of 2003.

5.The said judgment and decree in O.S.No.559 of 1997 were reversed. In fact, after the ad-interim injunction was made absolute, the 1<sup>st</sup> respondent herein had filed C.M.A.No.12 of 1998, but, had later not pressed the said application. The revision petitioner had further contended that the 1<sup>st</sup> respondent has deliberately impleaded the 2<sup>nd</sup> respondent as tenant, knowing fully well that, he was not in the country for over four years. He would further contend that the order in the Rent Control Petition would not be binding on him.

6.The 1<sup>st</sup> respondent had filed the counter, wherein, she had contended that, she was not the owner of the property but it is only her husband, who is the owner of the property. She would further contend that, she had never leased out the property to the revision petitioner and that the suit in O.S.No.559 of 1997 was nothing but an abuse of process of law. The learned counsel appearing for the 1<sup>st</sup> respondent, therefore, sought for dismissal of this revision petition, since, the suit filed by the revision petitioner was dismissed.

7.The 2<sup>nd</sup> respondent had filed a counter herein, where, he had submitted that, he was not a tenant under the 1<sup>st</sup> respondent and that the property was given to the revision petitioner in the month of September 1992 under certain circumstances and that the 2<sup>nd</sup> respondent had been abroad for several years and it is therefore, he had not been in possession and enjoyment of the suit property.

8.The Rent Controller, Cuddalore, has observed that the application is without basis and was not maintainable. The learned authority has also observed that the 2<sup>nd</sup> respondent has been declared to be the tenant and till such time, as the order in the Rent Control Petition was not aside, it becomes executable and the Executive Court cannot traverse beyond the decree.

9.Challenging the said order, the revision petitioner had filed R.C.A.No.3 of 2004 before the Appellate Authority (Principal Subordinate Judge), Cuddalore. Along with the said application, the revision petitioner had filed a petition to receive additional documents. In the counter to the said appeal, the land lady, viz., the 1<sup>st</sup> respondent would contend that, the revision petitioner is a trespasser. Ultimately, the Appellate Authority proceeded to dismiss the appeal on the ground that an order in execution cannot be subject to any appeal or revision and that the 2<sup>nd</sup> respondent was not a party to the suit in O.S.No.559 of 1997. The learned Judge further held that the revision petitioner is not a party to the Rent Control Petition, as well as, the Execution Petition and therefore, could not maintain the appeal and the learned Judge dismissed the appeal.

10.Challenging the above order, the revision petitioner has filed the above Civil Revision Petition.

11.It is seen from the arguments of the learned counsel for the 1<sup>st</sup> respondent that the revision petitioner is in possession of the property, since 1992. The Appellate Authority and the Rent Controller have both overlooked the fact that the 2<sup>nd</sup> respondent, whom the 1<sup>st</sup> respondent claims to be a tenant, has categorically denied the fact that he had a tenancy agreement with the 1<sup>st</sup> respondent and that he was in possession of the suit property. On the contrary, it is the revision petitioner, who has submitted the documents to show that he has been in possession and enjoyment of the suit property from the year 1992 and this statement has been proved by letting in evidence. Once

the 2<sup>nd</sup> respondent has denied the tenancy, the burden shifts on to the 1<sup>st</sup> respondent to prove the tenancy with the 2<sup>nd</sup> respondent, which burden has not been fulfilled by the 1<sup>st</sup> respondent.

12.The learned Appellate Authority has selectively read the provisions of the Section 18 of the Tamil Nadu Buildings (Lease And Rent Control Act), 1960. Section 18 would state that Execution Petition has to be filed like a regular execution, bound by the provisions of Order 21 of the Code of Civil Procedure. It is, only after the execution proceedings are ordered, Section 18(2) comes into play. Therefore, the reliance of Section 18(2) by the learned Appellate Authority is totally misconceived.

13.It is also seen that, even at the time of evidence, the respondents have stated that the 2<sup>nd</sup> respondent had sub-leased the property to the revision petitioner. Once sub-lease is detected, then the respondents ought to have impleaded the revision petitioner, even at the threshold. This also shows a total non-application of mind on the part of the authorities below. The respondents, knowing fully well that, the revision petitioner was in possession and enjoyment of the property, since 1992, have not cared to implead him in the proceedings in the suit. The learned Judge has dismissed the petition of the revision petitioner on the ground that he is not a party to the Rent Control Petition and the Execution Petition.

14.The learned Judge has overlooked the fact that the petition under Order XXI Rule 97 of the Code of Civil Procedure has been filed by him in the capacity of an obstruder and therefore, no fault can be found against the revision petitioner, who has been deliberately kept out of the proceedings by the 1<sup>st</sup> respondent herein. In fine, the fair and decretal orders of the Court below are totally erroneous and are liable to be set aside and accordingly, set aside.

15.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Subordinate Judge,  
Cuddalore.

2.The Principal District Munsif,  
Cuddalore.

3.The Rent Control Appellate Authority,  
Cuddalore.

4.The Rent Controller,  
Cuddalore.

5.The Principal District Judge,  
Cuddalore.

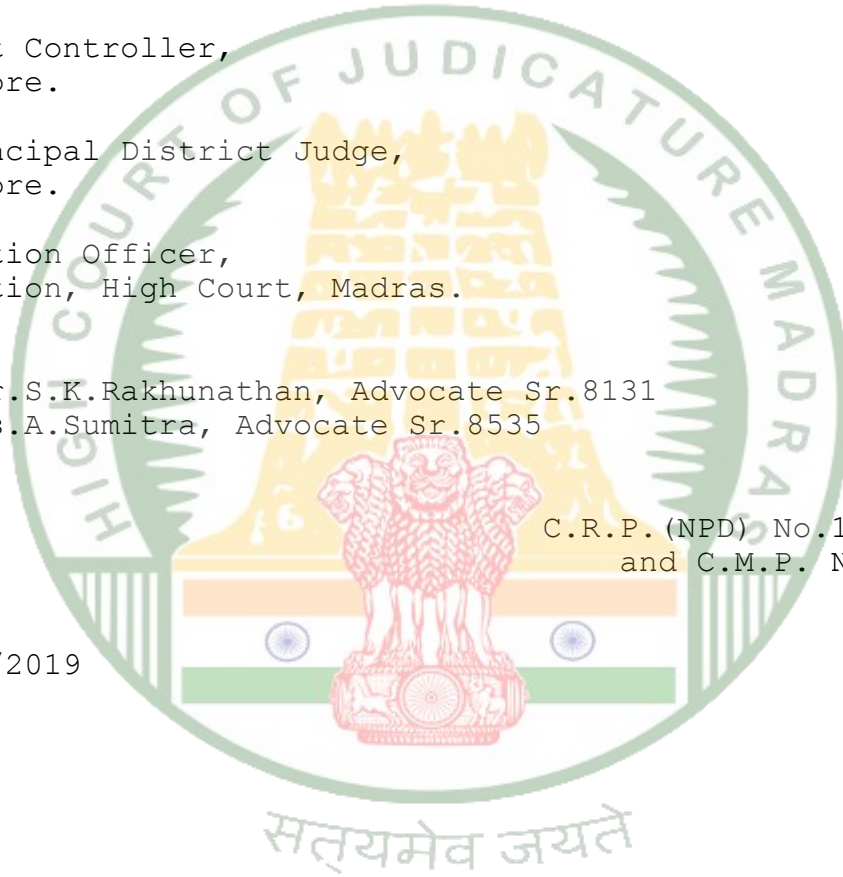
6.The Section Officer,  
VR Section, High Court, Madras.

+1cc to Mr.S.K.Rakhunathan, Advocate Sr.8131

+1cc to Ms.A.Sumitra, Advocate Sr.8535

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srg 25/06/2019



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