

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD) No.829 of 2014

1. K.M.S. Thahir Jalal

2. H. Fathima Munavara

... Petitioners

V.

1. V. Thangavel

2. John Amalraj

3. Angel Marry

... Respondents

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973 against the Judgment and decree dated 10.07.2013 in R.C.A.No.82 of 2007 on the file of the VII Judge, Court of Small Causes, Chennai, confirming the order and decree passed in R.C.O.P.No.2219 of 2005, dated 04.12.2006 on the file of the XII Court of Small Causes, Chennai.

For Petitioners : Mr.P.B. Balaji

For Respondents : No Appearance

ORDER

Since notices sent to the respondents were not served, the petitioners effected paper publication pursuant to the orders of this Court and the names of the respondents were printed in the cause list, however, none appeared for the respondent.

2. Challenging the Judgment and Decree passed in R.C.A. No.82 of 2007 on the file of the VII Judge, Court of Small Causes, Chennai, confirming the order passed in R.C.O.P.No.2219 of 2005 on the file of the XII Judge, Court of Small Causes, Chennai, the landlords have filed the above Civil Revision Petition.

3. The petitioners filed R.C.O.P.No.2219 of 2005 for eviction on the ground of demolition and reconstruction.

4.1 It is the case of the petitioners that they purchased the petition property from one Ammani under the registered sale deed dated 18.03.2005 for valuable consideration. Subsequently, the petitioners' vendor filed a Civil Suit in C.S.No.378 of 2006 on the file of this Court to set aside the sale dated 18.03.2005 executed in favour of the petitioners and also for other reliefs.

4.2 In the said suit, the petitioners' vendor also filed an application in O.A.No.409 of 2006 to restrain the petitioners from dealing with the property in any manner either by way of sale, lease or any other mode of conveyance or creating any charge over the property and consequentially collecting rents from the tenants.

4.3 The learned Single Judge, dismissed the injunction application. Aggrieved over the same, the petitioners' vendor filed an appeal in O.S.A.No.103 of 2012 and the Division Bench of this Court also confirmed the order of dismissal by the learned Single Judge.

5. Mr.P.B. Balaji, learned counsel appearing for the petitioners submitted that the Civil Suit is still pending.

6. After the dismissal of the application in O.A.No.409 of 2006, there is no impediment for the petitioners to collect the rents from the respondents-tenants.

7. It is also brought to the notice of this Court that the petitioners had already filed Original Petitions in R.C.O.P.Nos. 2217 and 2218 of 2005 for fixation of fair rent. Though the Rent Controller dismissed the Rent Control Original Petitions, on appeal preferred by the petitioners, the Rent Control Appellate Authority, set aside the order passed by the Rent Controller and fixed the fair rent for the building.

8. The learned counsel appearing for the petitioners submitted that the building is more than 150 years old and is in a dilapidated condition.

9. Though the respondents contended that the building was in a good and sound condition and it does not require any demolition, the learned counsel appearing for the petitioners produced a Newspaper report published in November 2015, wherein it has been stated that the building in question had crashed and fell down. The learned counsel also produced some photographs, which would reveal that the building is in a dilapidated condition. The learned counsel further submitted that since November 2015 the tenants are not in occupation of the premises. However, the Rent Controller as well as the Rent Control Appellate Authority had dismissed the petition for eviction on the ground of demolition and reconstruction without going into the merits of the matter.

10. Since the interim injunction application filed by the petitioners' vendor had already been dismissed by this Court, the Rent Controller as well as the Rent Control Appellate Authority should have decided the matter on merits. The Rent Control Appellate Authority had dismissed the appeal only on the ground that the learned counsel

appearing for the petitioners gave an undertaking that the petitioners have no intention of making any further alienation. Mr. P.B. Balaji, learned counsel appearing for the petitioners also reiterated that the petitioner shall not alienate the property till the disposal of the Civil Suit.

11. However, the undertaking given by the learned counsel for the petitioners shall not stand in the way of petitioners seeking for eviction on the ground demolition and reconstruction. It is made clear that the petitioners shall not sell or mortgage the property till the disposal of the Civil Suit.

12 In such view of the matter, the Judgment and Decree passed by the Rent Control Appellate Authority in in R.C.A.No.82 of 2007 are set aside and the matter is remitted back to the Rent Control Appellate Authority, viz., VII Judge, Court of Small Causes, Chennai to decide the appeal in R.C.A.No.82 of 2007 filed against R.C.O.P.No.2219 of 2005, afresh, on merits and in accordance with law. The Rent Control Appellate Authority is directed to decide the appeal taking into consideration the oral and documentary evidences, within a period of

three months from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is allowed.

No costs.

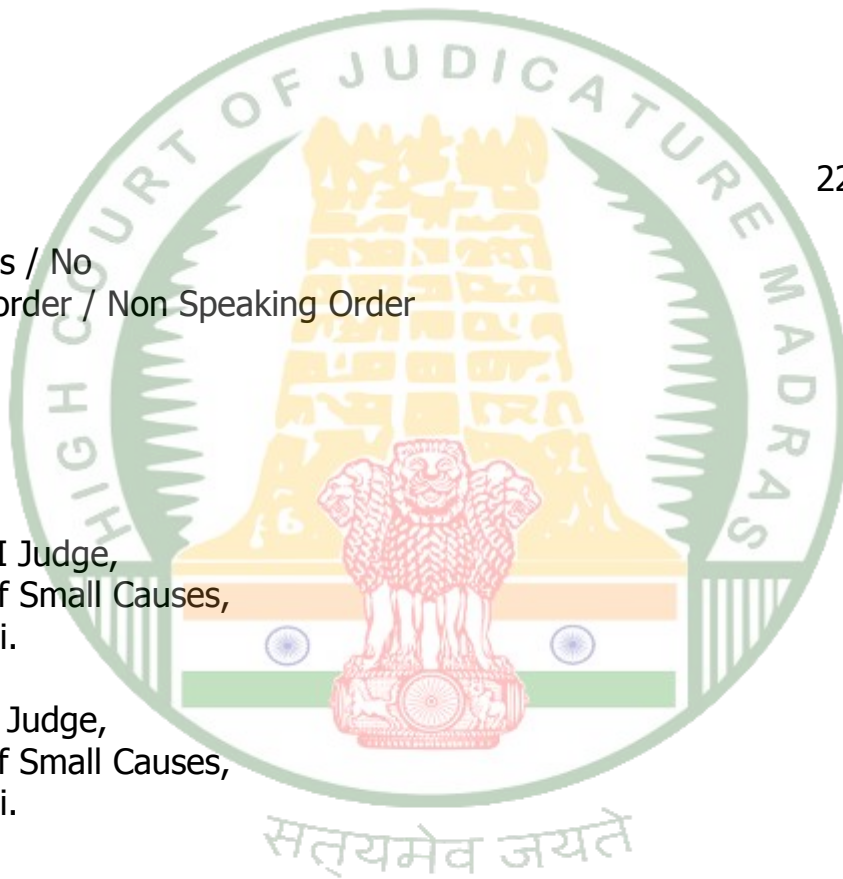
22.10.2019

Index : Yes / No
Speaking order / Non Speaking Order

Rj

To

1. The VII Judge,
Court of Small Causes,
Chennai.
2. The XII Judge,
Court of Small Causes,
Chennai.



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M.DURAIWAMY, J.

Rj



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