

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2020

PRONOUNCED ON : 10.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.1397 of 2013

and

CM.P.No.5669 of 2017

Jaya

... Petitioner

Vs.

Rajan

... Respondent

Prayer: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act against the fair and decreetal order dated 30.11.2012 made in R.C.A.No.1 of 2010 on the file of the Sub Ordinate Judge at Villupuram reversing the fair and decreetal order dated 30.11.2009, made in RCOP.No.6 of 2007 on the file of the Rent Controller cum Principal District Munsif at Villupuram.

For Petitioner : Mr.P.Mohanraj

For Respondent : Mrs.Hema Sampath
Senior Counsel
for M/s.R. Meenal

ORDER

This Civil Revision Petition has been filed by the petitioner/landlord against the order passed by the Rent Control Appellate Authority (Principal Sub-Judge) Villupuram in R.C.A.No.1 of 2010 dated 30.11.2012 reversing the order passed by the learned Rent Controller (Principal District Munsif), Villupuram in RCOP.No.6 of 2007 dated 30.11.2009.

2. The petitioner herein had filed RCOP.No.6 of 2007 on the file of the learned Rent Controller (Principal District Munsif), Villupuram under Sections 10(2)(1) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (herein after referred to as 'TN Rent Control Act') for evicting the respondent herein from the petition mentioned property on the ground of wilful default in paying rent and for additional accommodation of her family members. The learned Rent Controller by the order dated 30.11.2009 had allowed the said petition with costs, directing the respondent to vacate the petition mentioned premises within two months. Feeling aggrieved, the respondent had filed an appeal in RCA.No.1 of 2010 on the file of the (Principal Sub-Judge), Rent Control

Appellate Authority Villupuram. The learned Appellate Authority by the order dated 30.11.2012 had allowed the said appeal and set aside the order passed by the Rent Controller and dismissed the RCOP.No.6 of 2007, however, the parties are directed to bear their respective costs. Feeling aggrieved, the petitioner/landlord has filed the present Civil Revision Petition.

3. Heard Mr.P.Mohan Raj, the learned counsel for the petitioner and Mrs.Hema Sampath, the learned Senior Counsel assisted by Ms.R.Meenal, the learned counsel for the respondent.

4. The learned counsel for the petitioner has submitted that the petitioner had purchased the petition mentioned property as vacant site from one Lakshmi Ammal under a Sale Deed dated 31.01.1976 and thereafter, she put up construction thereon and leased out a portion of the property to the respondent during the year 1997 for monthly rent of Rs.250/-. He further submitted that the respondent is the son of petitioner's husband's brother Pavadai and taking into consideration, the close relationship, no written lease agreement was executed. He further submitted that the respondent had paid rent upto July 2004 and

thereafter, he did not pay the rent. Further, he denied the title of the petitioner with malafide intention. Further, the said premises is required for additional accommodation of petitioner's family members. He further submitted that the petitioner had issued a lawyer's notice dated 17.02.2007 calling upon the respondent to pay the arrears of rent of Rs.7,500/- and also give in writing that he will not deny the title of the petitioner. He further submitted that the respondent after receipt of the said notice, did not come forward to pay the rent nor to deliver vacant possession of the premises and hence, the petitioner was constrained to file the above RCOP on the ground of wilful default for non-payment of rent and also for additional accommodation. He further submitted that the Rent Controller had allowed the said petition and directed the respondent to deliver vacant possession of the premises within two months, but the Appellate Authority without considering the aforesaid facts in proper perspective had allowed the appeal filed by the respondent and dismissed the Rent Control Petition filed by the petitioner. He further submitted that the Appellate Authority has held that by virtue of Ex.P1 Sale Deed, the petitioner is the owner of the property, but allowed the RCA on the ground that the petitioner failed to establish the relationship of landlord and tenant. He further submitted that the aforesaid findings are against

the evidence available on record and therefore, he prayed to allow the Civil Revision Petition and set aside the order passed by the learned Appellate Authority in RCA.No.1 of 2010 and restore the order passed by the rent controller in RCOP.No.6 of 2007.

5. Per contra, the learned Senior Counsel for the respondent, relying upon a Constitution Bench decision of the Hon'ble Supreme Court in *Hindusthan Petroleum Corporation Limited Vs. Dilbahar Singh, 2014 (9) SCC 78*, submitted that the Revisional Court under Section 25 of the Tamil Nadu Rent Control Act cannot reverse the findings of the first Appellate Authority Court upon a reassessment of evidence. She further submitted that the consideration or examination of the evidence by the High Court in revisional jurisdiction under the Rent Control Act is confined to find out the findings of facts recorded by the Court/authority below is according to law and does not suffer from any error of law. She further submitted that the petitioner had sent a notice (Ex.R.1) through her Advocate on 14.12.2006 stating that the respondent trespassed into the petition mentioned property in the month of November 2006 when she went to her relative's house, but contrary to the said notice, she issued another notice vide, Ex.P.4 on 17.02.2007

stating that she had leased out the suit property to the respondent eight years back. She further submitted that since the petitioner had stated in her first notice (Ex.R1) that the respondent had trespassed into the property in the year 2006, she cannot change her stand and took a plea that the respondent was inducted into the petition mentioned property as a tenant in the year 1997. She further submitted that the petitioner has not even produced a single scrap of paper to show that the respondent has paid any rent to the petitioner. She further submitted that knowing fully well that the respondent is not a tenant under the petitioner only with a view to take possession of the petition mentioned property in a short cut method, she filed RCOP. The learned Rent Controller without considering the aforesaid facts had allowed the said RCOP and hence, the learned Appellate Authority had rightly interfered with the findings of the learned Rent Controller and dismissed the RCOP and in the said findings, this Court need not interfere and therefore, she prayed to dismiss this Civil Revision Petition.

6. A perusal of Ex.R1 shows that on 14.12.2006, the petitioner had issued a notice through her Advocates to the respondent stating that when she went to her relative's house in the month of November 2006,

the respondent trespassed into the petition mentioned property and called upon the respondent to hand over the vacant possession of the suit property within a month. Since the petitioner while examining herself as PW1 had admitted in her cross-examination that she had sent the said notice, the same was marked through her as Ex.R1. Contrary to the averments made in the said notice, the petitioner had sent another notice vide Ex.P.4 dated 17.02.2007 through another counsel stating that the respondent was inducted as tenant 8 years back and paid rent regularly, till July 2004, but, refused to pay rent from 01.08.2004 and also denied her title over the property and she called upon the respondent to pay the arrears of rent within a week from the date of receipt of said notice and also give in writing that he will not deny her right and title over the property.

7. It is to be pointed out that in the said Ex.P.4 notice, the petitioner did not call upon the respondent to surrender vacant possession of the premises. However, she filed RCOP for eviction on the ground of wilful default in not paying the rent and for additional accommodation. Though in Ex.P4 notice, the petitioner had stated that the respondent is denying her title over the petition mentioned property,

the petitioner did not ask for eviction on that ground. However, the learned Rent Controller, without framing any point for consideration, as to whether eviction can be ordered on the ground of denial of title, had allowed the said petition on that ground also. It appears that the Appellate Authority also did not notice the fact that the petitioner has not asked for eviction on the ground of denial of title.

8. As already pointed out that the petitioner had sent Ex.R.1 notice dated 14.12.2006 stating that in the month of November 2006, the respondent had trespassed into the petition mentioned property and in such a case, she should have filed a suit for delivery of possession, but, she changed her mind and issued Ex.P.4 notice dated 17.02.2007 stating that the respondent was inducted as a tenant in the petition mentioned property eight years back. Therefore, it is clear that only for taking possession through short cut method, she took a plea that the respondent is in possession of the property as a tenant. The learned Rent Controller without considering the aforesaid facts, in proper perspective, had allowed the Rent Control Petition and ordered for eviction. The Appellate Authority has rightly interfered with the said findings of the Rent Controller and allowed the Rent Control Appeal and dismissed the

Rent Control Petition as the petitioner failed to prove the relationship of landlord and tenant between herself and the respondent.

9. In *Hindusthan Petroleum Corporation Limited Vs Dilbarar Singh* (cited Supra), a Constitution Bench of the Hon'ble Supreme Court has held that the Revisional Court under Section 25 of the Tamil Nadu Rent Control Act cannot reverse the findings of the first Appellate Court upon a reassessment of evidence. Further, it has held that the consideration or examination of the evidence by the High Court in Revisional jurisdiction in the Rent Control Act is confined to find out that the findings of facts recorded by the court/authority below is according to law and does not suffer from any error of law.

10. In this case, as already pointed out that the Appellate Authority, based on the materials placed before it, has held that the petitioner has failed to establish the relationship of land lord and tenant between herself and the respondent. It cannot be said that the said findings are perverse and without any evidence. Therefore, this Civil Revision Petition is liable to be dismissed.

11. In the result, this Civil Revision Petition is dismissed confirming the order passed by Rent Control Appellate Authority, Villupuram in R.C.A.No.1 of 2010 dated 30.11.2012 reversing the order passed by the Rent Controller (Principal District Munsif), Villupuram, in RCOP.No.6 of 2007 dated 30.11.2009. Consequently, the connected miscellaneous petition is closed. No costs.

10.11.2020

Index :Yes/No
Internet : Yes/No
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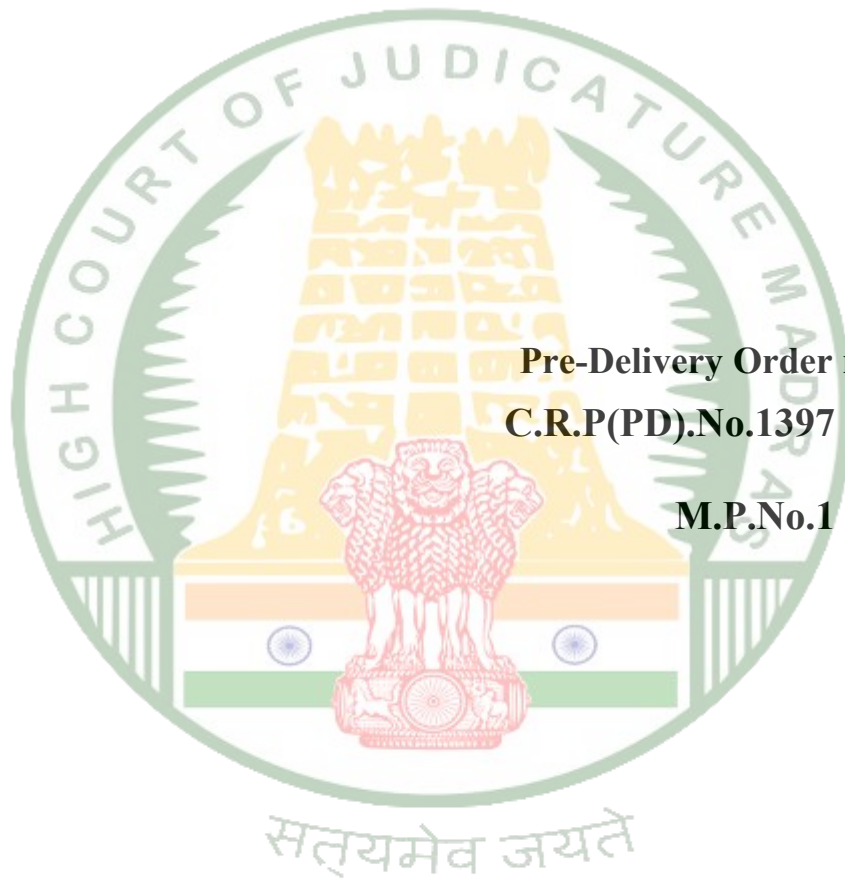
To

1. The Sub-Ordinate Judge,
Villupuram.
2. The Rent Controller cum Principal District Munsif,
Villupuram.

CRP (NPD).No.1397 of 2013

P.RAJAMANICKAM.J.,

Vv



**Pre-Delivery Order made in
C.R.P(PD).No.1397 of 2013
and
M.P.No.1 of 2015**

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