



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).4062 of 2015
and
MP.No. 1 of 2015

Selvam

...Petitioner/Respondent/Tenant

Vs.

1.D.Ganesan
S/o.Dhanushkodi Nadar

2.Malathi
S/o.D.Ganesan

...Respondents/Appellant/Landlord

Prayer: Civil Revision Petition is filed under Section 25(1) of Tamil Nadu Buildings Lease and Rent Control to allow the above Civil Revision Petition and set aside the fair and decreetal order passed in RCA No.700 of 2005 dated 03.07.2005 passed by the learned VIII Judge, Court of Small Causes, Chennai (Rent Control Appellate Authority) reversing the fair and decreetal order passed in RCOP. No.2167 of 2004, dated 31.03.2005 passed by the learned XIV Judge, Court of Small Causes, Chennai, (Rent Controller).

For Petitioner : Mr.Ashok Menon

For Respondents: Mr.T.Velumani

ORDER

This Civil Revision Petition has been filed by the respondent/tenant against the Judgment passed by the Rent Control Appellate Authority (VIII Small Causes, Chennai) in R.C.A.No.700 of 2005 dated 03.07.2015.

2.The respondent herein had filed R.C.O.P.No.2167 of 2004 on the file of the Rent Controller (XIV Court of Small Causes, Chennai) under Sections 10(3)(c) and 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, to evict the petitioner herein from the petition mentioned property on the



grounds of owners' occupation and additional accommodation. The learned Rent Controller by the order dated 31.03.2005 had dismissed the said petition. Feeling aggrieved, the respondents herein had filed an appeal in R.C.A.700 of 2005 on the file of the Rent Control Appellate Authority (VIII Small Causes Court, Chennai). The learned Rent Control Appellate Authority by the Judgment dated 03.07.2015 had allowed the said appeal and set aside the order passed by the learned Rent Controller in RCOP No.2167 of 2004 dated 31.03.2005 and directed the petitioner herein/tenant to hand over the possession of the property within 2 months. Feeling aggrieved, the tenant has filed the present Civil Revision Petition.

3. Heard, Mr.Ashok Menon, the learned counsel for the petitioner and Mr.T.Velumani, the learned counsel for the respondents.

4. The learned counsel for the petitioner has submitted that the respondents herein had filed Rent Control Petition for eviction on the grounds of owners' occupation and also additional accommodation. The learned Rent Controller had dismissed the said petition as the petitioners have not proved that the petition mentioned property is bonafidely required for owners' occupation and also for additional accommodation. Aggrieved by the same, the landlords had filed an appeal in R.C.A.No.700 of 2005 on the file of the Rent Control Appellate Authority (VIII Small Causes, Chennai) and also filed an application to receive a settlement deed said to have been executed by the first respondent herein infavour of the second respondent as additional documentary evidence. He further submitted that the learned Rent Control Appellate Authority had allowed the said application and thereafter, without marking the said document as Exhibit, it had straight away relied upon the said document and allowed the appeal. He further submitted that the procedure followed by the Appellate Authority is against the provisions of law. He further submitted that since the said application has been filed under Order 41 Rule 27 CPC, after allowing the said application, the Appellate Authority should have followed the procedure prescribed under Order 41 Rule 28 CPC and should have either recorded the evidence by itself or directed the Rent Control Appellate Authority to record the evidence by marking the said document and thereafter, opportunity should have been given to the opposite party for adducing rebuttal evidence. But, without following the aforesaid procedure, it had simply referred the said document and allowed the appeal. He further submitted that the Appellate Authority failed to consider the hardship that was caused to the tenant. He further submitted that the first respondent claimed the property for additional accommodation, whereas, the second respondent claimed the said property for own use and occupation



and the said claims are inconsistent to each other. He further submitted that after executing the alleged settlement deed infavour of the second respondent herein, the first respondent herein had lost the status of landlord and as such, he cannot ask the building for additional accommodation and therefore, he prayed to allow the Civil Revision Petition and set aside the Judgment passed by the Rent Control Appellate Authority and restore the order passed by the learned Rent Controller.

5.Per contra, the learned counsel for the respondents submitted that the respondents are husband and wife and they were the Co-owners of the petition mentioned property and only on that ground, both of them had filed a petition for eviction on the grounds of owners' occupation and also for additional accommodation. He further submitted that the learned Rent Controller without appreciating the evidence in proper perspective had erroneously dismissed the Rent Control Petition and hence, the Appellate Authority had rightly allowed the appeal and set aside the order passed by the Rent Controller and in the said judgment this Court need not be interfere and he prays to dismiss the Civil Revision Petition.

6.A perusal of the typed set of papers filed by the petitioner shows that the respondents herein had filed R.C.O.P.No.2167 of 2004, seeking eviction of the petition mentioned property on two grounds namely for owners' occupation and for additional accommodation. The learned Rent Controller had dismissed the said petition. As against the same the respondents herein had filed an appeal before the appellate authority and also filed an application under Order 41 Rule 27 of CPC seeking permission of the appellate authority to receive the settlement deed executed by the first respondent herein in favour of the second respondent herein. It appears that the appellate authority had allowed the said application and there is no specific order to that effect in the Judgment passed by the appellate authority. Further, the appellate authority without marking the said document as exhibit, had straight away referred the said document and allowed the appeal. The procedure followed by the appellate authority is against the provisions of law.

7.At this juncture it would be relevant to extract Order 41 Rule 28 of CPC:

"whenever additional evidence is directed or allowed to be taken, the Appellate Court may either take such evidence or direct the Court from whose decree the appeal is preferred or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court."



8. In this Case, as already pointed out, the learned Appellate Authority after allowing the said application to receive the additional documentary evidence without marking the document as exhibit had referred the said document and allowed the said appeal. Therefore, the judgement of the appellate authority has to be set aside on that ground alone and the matter has to be remanded back to the appellate authority to follow the procedure prescribed under order 41 Rule 28 of CPC and dispose of the appeal thereafter.

9. In the result, the Civil Revision Petition is allowed. No Costs. The matter is remanded back to the Rent Control Appellate Authority. The Rent Control Appellate Authority is directed to mark the Settlement deed by following the procedure prescribed under order 41 Rule 28 of CPC and thereafter give an opportunity to the opposite party to adduce rebuttal evidence, if any, and dispose of the appeal within a period of 3 months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

tta
To

1. The VIII Judge, Court of Small Causes,
Chennai
2. The XIV Judge, Court of Small Causes,
Chennai

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr. T. Velumani, Advocate sr 42371.

C.R.P (NPD) .4062 of 2015
and
MP.No. 1 of 2015

VD (CO)
SP (01/09/2021)