

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2019
PRONOUNCED ON : 20.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.2728 of 2014
and
C.M.P.No.19552 of 2019

1.V.Gowri (died)	...1 st Petitioner/ Landlady
2.T.Venugopal	
3.V.Jaikumar	
4.Vanipriya	...Petitioners 2 to 4/ LR's of sole petitioner

[Petitioners 2 to 4 brought on record as legal representatives of the deceased sole petitioner viz., V.Gowri vide Court order dated 13.03.2018 made in CMP.Nos 4510 & 4511 of 2017 in CRP.No.2728 of 2014]

Vs.

John Kenedy @ Murugan	...Respondent/ Tenant
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PRAYER: This Civil Revision Petition has been filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1974, to set aside the Judgment and Decree dated 02.01.2014 in RCA.No.561 of 2004, on the file of the learned VIII Judge, Small Causes Court, Chennai, in dismissing RCOP.No.663 of 2004 on the file of the XIII Judge, Small Causes Court, Chennai and to fix the fair rent to the petition premises.

For Petitioner : Mr.N.Jayabalan

For Respondents : Mr.L.Dhamodaram

ORDER

This Civil Revision Petition has been filed against the order passed by the learned VIII Judge, Small Causes Court, Chennai, passed in RCA.No.561 of 2004, dated 02.01.2014, in dismissing order passed in RCOP.No.663 of 2004, by the learned XIII Judge, Small Causes Court, Chennai, dated 23.02.2004 and to fix the fair rent to the petition premises.

2 The landlady/petitioner in RCOP.No.663 of 2003 is the revision petitioner herein.

3 Brief facts of the case are as follows:

(i) The revision petitioner/landlady has filed a petition in RCOP.No.663 of 2003 for fixation of fair rent and alleged that the land is a Government Poramboke land and she has constructed a building and she has allowed the respondent as a tenant in the building. The revision petitioner is the landlady of the premises bearing No.77/1, 77/2, Sub-division of Door No.77, New No.39, of Red Hills Road, Vilivakkam, Chennai 49 and the respondent herein is

a tenant under the revision petitioner, in respect of the entire portion in the petition premises on a monthly rent of Rs.350/-. The plinth area occupied by the respondent herein/tenant for the two shops is 140 sq.ft. The respondent herein has unauthorizedly constructed a shed and the shed was not taken into account for calculation for fixation of fair rent. The classification of the building is type 1 and the age of the building is 20 years. The petition premises is situated in commercial area and so the value of the land is more than Rs.15,00,000/- per ground. The present rent paid by the respondent is very low. Hence, the fair rent had to be fixed as Rs.15,398/-.

(ii) In the said RCOP.No.663 of 2003, the respondent has filed a written statement, alleging that the revision petitioner/landlady is the owner only in respect of a superstructure measuring about 140 sq.ft and the remaining superstructure was developed and built up by him in the said Poramboke land. Therefore, except the shop let out ad-measuring 140 sq.ft, the remaining built up area absolutely belongs to the respondent herein, for which fair rent cannot be fixed. If at all, the petitioner is entitled for fixation of fair rent, the same is only in respect of 140 sq.ft., superstructure, let out by the petitioner in the year 1984.

(iii) The respondent has further alleged that the land is Poramboke land and the road side land is road Poramboke and the rear side land is Kuttai Poramboke and developed on the banks of the Kuttai or pond. Therefore, the value of the land is very low and the same cannot be taken into account, as the petitioner is not the owner of the same. The age of the building is more than 20 years. Hence, the fair rent for the petition premises was fixed at Rs.150/-.

(iv) During the course of enquiry, on behalf of the revision petitioner, PW1 & PW2 were examined and Ex.P1 to P8 were marked. On the respondent's side RW1, RW2 were examined and Ex.R1 to R15 were marked. On 23.02.2004, the Trial Judge has fixed the fair rent for the petition premises at Rs.2,560/-.

(v) Against the said RCOP.No. 663 of 2003, the revision petitioner/landlady has filed RCA.No.561 of 2004, the respondent herein/tenant has filed RCA.No.509 of 2004, before the VIII Court of Small Causes at Chennai, wherein, the learned Appellate Authority has held that since the land is the Government Kuttai Poramboke, waterways Poramboke and the land belongs to the Government, fixation of the fair rent does not arise and accordingly,

held that the petitions are not maintainable before the Rent Control Authority and dismissed both RCA.Nos.509 & 561 of 2004, as against the same, this Civil Revision Petition has been filed by the landlady before this Court.

4 Heard both the learned counsel and perused the materials placed on record.

5 The learned counsel for the petitioner would contend that the landlady need not be the owner of the land, since she is the owner of the building, the RCOP is maintainable.

6 The learned counsel for the respondent would state that the respondent is a tenant in respect of the shop premise bearing No.77/1, 77/2, Redhills road, Villivakkam, Chennai – 600 049. As per the contention of the respondent, the revision petitioner is the owner of the superstructure ad-measuring 10 X 14 sq.ft., and the remaining extent of the shop premise has been constructed by the respondent herein. Therefore, the respondent has raised the issue of maintainability of the eviction proceeding.

7 Further, the learned counsel for the respondent herein

would state that it is not the dispute that the Government of Tamil Nadu for construction of Villivakkam Subway, has acquired the property and demolished the portion of the shop premise in the property. As such, even on this count, a portion of the superstructure is not in existence and thereby, the appeal under challenge by way of revision, is also not maintainable.

8 On a perusal of the records, this Court finds that the petition premises was built on water ways Poramboke, Kuttai Poramboke and the schedule of the property clearly stated that the area is built in Kuttai Poramboke and as per Ex.A1, the land is classified as Kuttai Poramboke as per the Government records. Both the parties admitted the same. The building is nothing but an encroachment in water ways Poramboke that itself is an offence. Hence, fixing the fair rent on a building situated in Water ways Poramboke viz., Kuttai Poramboke, does not comes within the the purview of tenancy laws. Since, the Court cannot affix a legal sanction to the unlawful land encroachment. In this view of the matter, the order passed by the Appellate Authority is held to be sustainable.

9 In the result, the Civil Revision Petition stands dismissed and the order passed by the learned VIII Judge, Small Causes Court, Chennai, in RCA.No.561 of 2004, dated 02.01.2014, is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

20.02.2020

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Index : Yes / No
Internet : Yes

To

- 1.The VIII Judge,
Small Causes Court,
Chennai.
- 2.The XIII Judge,
Small Causes Court,
Chennai.

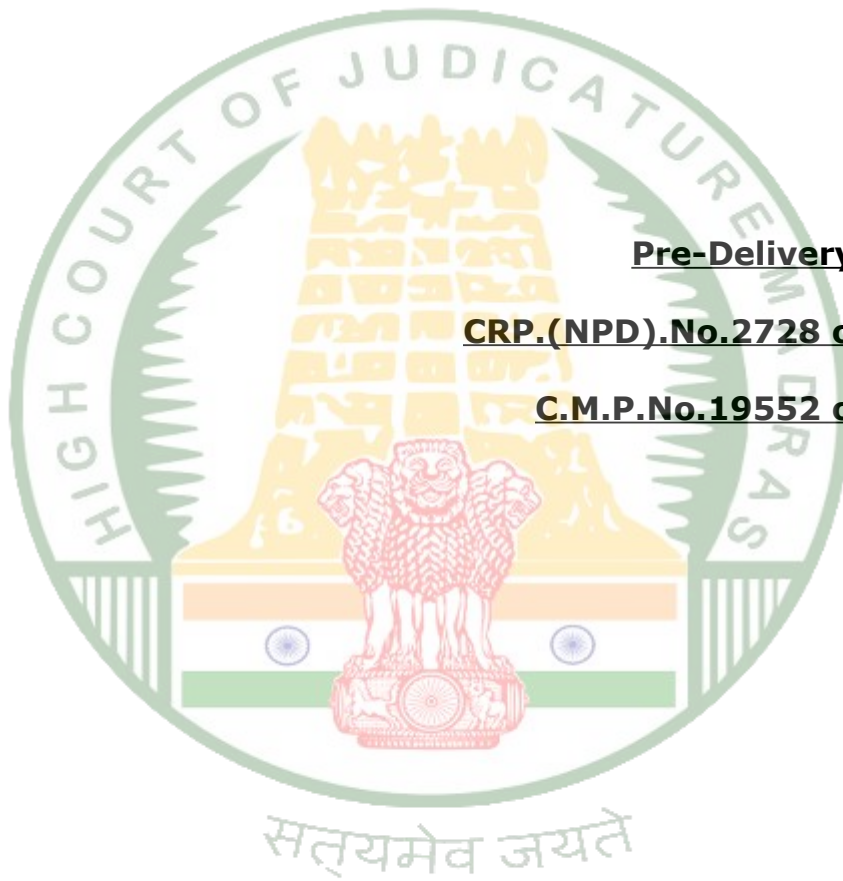


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RMT.TEEKAA RAMAN., J

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Pre-Delivery Order
in
CRP.(NPD).No.2728 of 2014
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