

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.R.P (PD).No.2568 of 2017

Tmt. Chinnapappa

.. Petitioner

Vs

Thiru.S.Palanivel

..Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree passed in R.C.A.No.680 of 2010 dated 02.12.2016 on the file of the learned Appellate Authority IX Judge, Court of Small Causes, Chennai, confirming the order and decree dated 13.09.2010 passed in M.P.No.279 of 2010 in R.C.O.P.No.926 of 2008 on the file of X Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.S.Krishnasamy

For Respondent : No appearance

J U D G M E N T

This Civil Revision Petition has been filed against the Judgment and decree passed in R.C.A.No.680 of 2010 dated 02.12.2016 on the file of the learned Appellate Authority IXth Judge, Court of Small Causes, Chennai, confirming the order and decree passed in M.P.No.279 of 2010

in R.C.O.P.No.926 of 2008 on the file of X Judge, Court of Small Causes, Chennai.

2. The petitioner herein filed petition for eviction under Section 10 (2) (i) and Section 2 10 (2)(ii) of Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 on the file of the Small Causes Court, Chennai in R.C.O.P.No.926/2008. During the enquiry, the respondent/tenant marked the document as Ex.R2. Thereafter, the petitioner filed an application in M.P.No.279 of 2010 in R.C.O.P.No.926/2008 to delete the document, marked as Ex.R.2, filed along with Proof Affidavit in R.C.O.P.No.926 of 2008 as inadmissible in evidence. The said petition was allowed by the Rent Controller vide order dated 13.09.2010. Challenging the said order passed by the Rent Controller in M.P.No.279 of 2010, the petitioner herein filed an Appeal before the Rent Control Appellate Authority in R.C.A.No.680 of 2010. The Appellate Authority also dismissed the Appeal filed by the petitioner/landlord and confirmed the order passed by the Rent Controller. Challenging the same, the petitioner/landlord has filed the present revision before this Court.

3. The learned counsel for the petitioner would submit that the respondent herein marked the partition deed as Ex.R2 in the absence of the petitioner. Subsequently, the petitioner filed an application to delete

the said document from the file of R.C.O.P. alleging that the said document is only partition deed entered into between the petitioner and her legal heirs and the same was not sufficiently stamped and registered under the Indian Registration Act. The learned counsel for the petitioner would further submit that since it is not registered and not properly stamped, it is not admissible in evidence. But the learned Appellate Authority failed to consider the same. The learned counsel for the petitioner further contended that if the rights of the parties has been effected in the documents, it has to be necessarily registered. But whereas the Rent Controller as well as the Rent Control Appellate Authority failed to consider the said aspect and dismissed the application filed by the petitioner and therefore it warrants interference by this Court. He had also placed reliance on the various Judgments of the Hon'ble Supreme Court as well as this Court, in support of his submissions.

4. Despite several opportunities being given to the respondent, there is no representation on behalf of the respondent. Heard the learned counsel for the petitioner. Perused the materials available on record.

5. It is seen that the petitioner is the landlady and she filed the

eviction petition against the respondent/tenant on the file of the Rent Controller (Small Causes Court, Chennai) in R.C.O.P.No.926/2011. During enquiry, after completing the petitioner's side evidence, the respondent filed Proof Affidavit and documents were marked and at the time of marking the documents, the petitioner was not available. Subsequently, the petitioner filed an application to delete the document namely Partition Deed marked as Ex.R.2 from the file of R.C.O.P. stating that the said document is a partition deed and it has to be compulsorily registered. Admittedly, the said document is unregistered one. But the Rent Controller failed to consider the same and dismissed the application filed by the petitioner. An appeal filed before the Appellate Authority was also dismissed and therefore the petitioner is before this Court.

6. A perusal of the order passed by the Rent Controller would go to show that R.C.O.P. itself has been filed for eviction and in the said petition, the partition deed was marked as Ex.R2. Since the rights of the party has been given effect to in the said document, it has to be compulsorily registered. But, the learned Rent Controller failed to consider the said aspect. Though the Rent Control Appellate Authority considered and wrongly stated that the recitals of the deed does not say that the document is a partition deed. Further, the Rent Controller Appellate Authority has failed to consider that if the document is required

to be registered, and is not registered, it should not be marked and therefore the documents is inadmissible in evidence.

7. Under these circumstances, this Court found that there is perversity in the order passed by the Rent Controller as well as the Rent Control Appellate Authority.

8. Hence, the order passed by the learned Rent Controller dated 13.09.2020 as well as the order passed by the Rent control Appellate Authority are set aside. The learned Rent Controller is directed to delete Ex.R2 from the file of the R.C.O.P.No.680 of 2010 and proceed the same in accordance with law. However, since R.C.O.P is pending from 2008, the learned Rent Controller (X Judge, Court of Small Causes) Chennai, is directed to dispose of the R.C.O.P. within a period of three months from the date of receipt of a copy of this order.

9. This Civil Revision Petition is disposed of with the above directions. No costs.

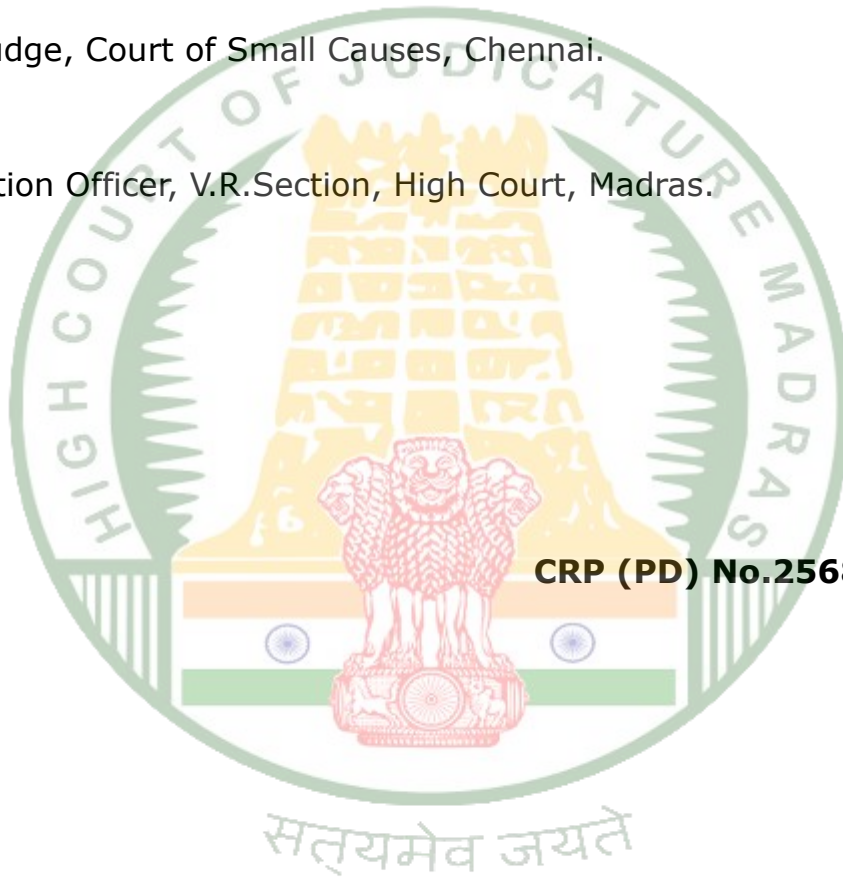
04.08.2020

Index : Yes/No
Internet : Yes/No
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P. VELMURUGAN, J.

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1. The learned Appellate Authority
IX Judge, Court of Small Causes, Chennai.
2. The X Judge, Court of Small Causes, Chennai.
3. The Section Officer, V.R.Section, High Court, Madras.



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