

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.04.2021**

CORAM:

THE HON'BLE MR.JUSTICE **C.V.KARTHIKEYAN**

C.R.P.(NPD).No.772 of 2021

Haji Syed Mohamed Rowuthar Trust
By its Trustee Mohamed Sirajudeen
No.3A, Ellaiyamman South Street,
(Pallivasal Street), Vijayapuram,
Tiruvarur Taluk and Tiruvarur Munsif.

.. Petitioner

Vs.

J.Salavudeen

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 05.01.2021 passed on R.C.A.No.4 of 2017 on the file of the Subordinate Judge (Rent Control Appellate Authority), Tiruvarur confirming the fair and final order dated 14.06.2017 passed in R.C.O.P.No.3 of 2015 of the District Munsif Court / Rent Controller at Tiruvarur.

For Petitioner : Mr.K.V.Ananthakrushnan

ORDER

This Civil Revision Petition has been filed to set aside the order dated 05.01.2021 passed in R.C.A.No.4 of 2017 on the file of the Subordinate Judge / Rent Control Appellate Authority at Tiruvarur confirming the order dated 14.06.2017 passed in R.C.O.P.No.3 of 2015 by District Munsif / Rent Controller at Tiruvarur.

2. Heard Mr.K.V.Ananthakrushnan, learned counsel for the petitioner.

3. The revision arises from the concurrent findings in R.C.O.P.No.3 of 2015 on the file of the District Munsif Court, Tiruvarur and the appeal therefrom in R.C.A.No.4 of 2017 on the file of the Sub Court, Tiruvarur.

4. The petitioner / Trust had filed an application under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1860, seeking eviction of the respondent for wilful default in the payment of rent. A counter had been filed and the respondent had stated that though there is default, it is not wilful.

5. All these facts had been pointed out by Mr.K.V.Ananthakrushnan, learned counsel, who pleaded that the pleadings were complete and the respondent / tenant had not raised any issue with regard to the title or locus of the petitioner. At any rate, the parties went to trial. On behalf of the petitioner herein, Mohammed Sirajudeen, had been examined as P.W.1. He marked Exs.P1 to P5. The documents included the property tax receipt of the year 2014, the exchange of advocate notices and reply notices of the year 2015. During the cross examination of P.W.1, the respondent marked exhibits, particularly Exs.R3 and R5. Ex.R3 was a notice issued by the Hindu Charitable and Religious Endowments Department, Tanjavur to the respondent / tenant, wherein it was stated that the land belongs to Renukadevi Amman Temple. According to Ex.R3

notice, there was a payment due to the tune of Rs.1,10,000/- (Rupees One Lakh Ten Thousand only), towards arrears of lease amount.

6. In the Rent Control Petition, there is absolutely no pleading or disclosure that the land belongs to a Temple. The witness for the petitioner admitted to the said notice. It is only at the time of cross examination of P.W.1 that the witness admitted that the petitioner was not the absolute owner of the property.

7. Mr.K.V.Ananthakrushnan, pointed out Section 2(6) of the Tamil Nadu Lease and Rent Control Act, the definition of a 'landlord' where it is stated that the landlord need not be the owner, but any person who is an agent with right to receive rent. But, the fact that the land belongs to a temple had not been stated in the petition. That was brought about only during cross examination of P.W.1. It is also seen from the Order of the Rent Controller that the respondent herein had settled the demand of Rs.50,000/- and only thereafter had questioned the title of the petitioner herein.

8. Primarily, even before examining the issues it must also examined whether the party can be permitted to come to Court without proper disclosure of all the relevant facts. The petitioner herein has alleged wilful default of the payment of rent. It is true that it is not necessary that the petitioner should be the owner of the property. However, the petitioner should have disclosed the fact that the land belongs to a temple. These facts had come up only during evidence. The issue is then whether the Court should close their eyes towards the evidence which had been adduced and recorded by them.

9. Evidence pointed out that the land actually belongs to the temple. Then there was an obligation on both the trial Judge and the First Appellate Judge to answer the particular evidence. They had both stated that the petitioner herein had come to Court suppressing facts and therefore cannot claim to be entitled to seek the rent from the tenant.

10. As a matter of fact, the respondent herein had paid a sum of Rs.50,000/- to the temple authorities.

11. The learned counsel for the petitioner also pointed out Section 116 of the Evidence Act and stated that the issue of estoppel would come to play when the respondent herein, in the year 2015 had not denied landlord / tenancy relationship. But as pointed out earlier, at that particular point of time, that was a fact not known to the respondent.

12. Thereafter in the year 2020 when the witness of the petitioner came to the witness box was confronted with Ex.A3 which had been served on the respondent in the year 2020 the fact that the petitioner was not the owner of the land came to light. This puts a very serious question over the very right of the petitioner to claim rents from the respondent. The petitioner will have to settle the issue of their status and locus first to be entitled to collect rents.

13. I hold that the authorities below are justified in questioning the status of the petitioner herein and dismissing the petition seeking eviction. The petitioner will necessarily have to first seek a declaration with respect to his title / ownership / entitlement over the property.

14. I find no reasons to interfere with the well considered orders of both the Courts below.

15. This Civil Revision Petition is dismissed. No costs.

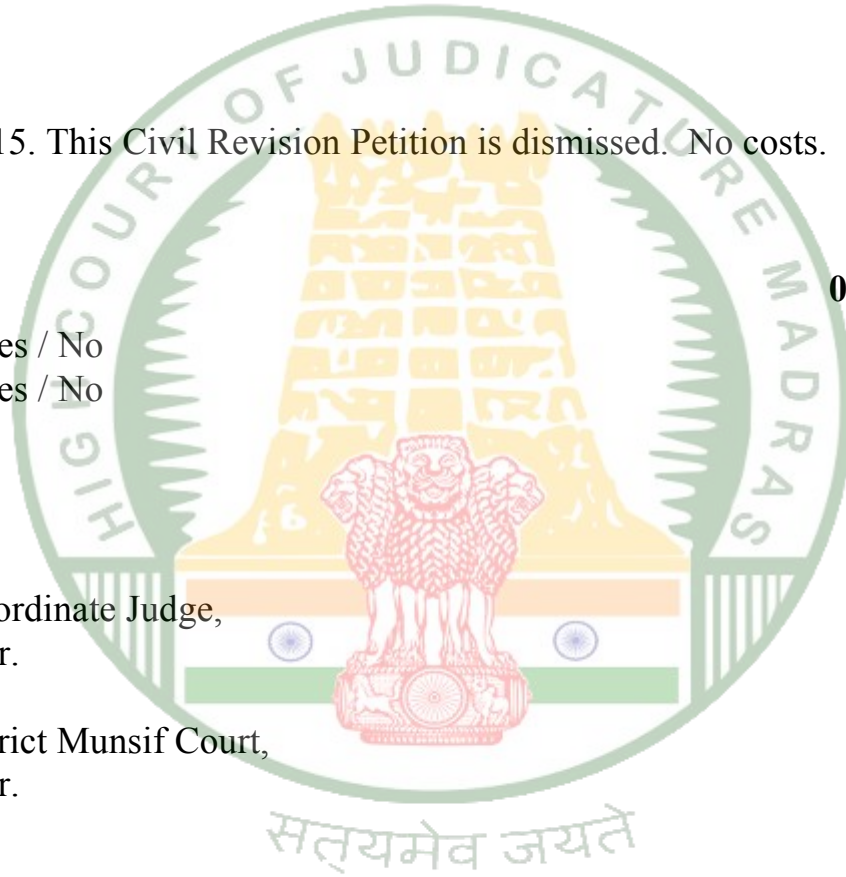
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Index : Yes / No
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To

1.The Subordinate Judge,
Tiruvarur.

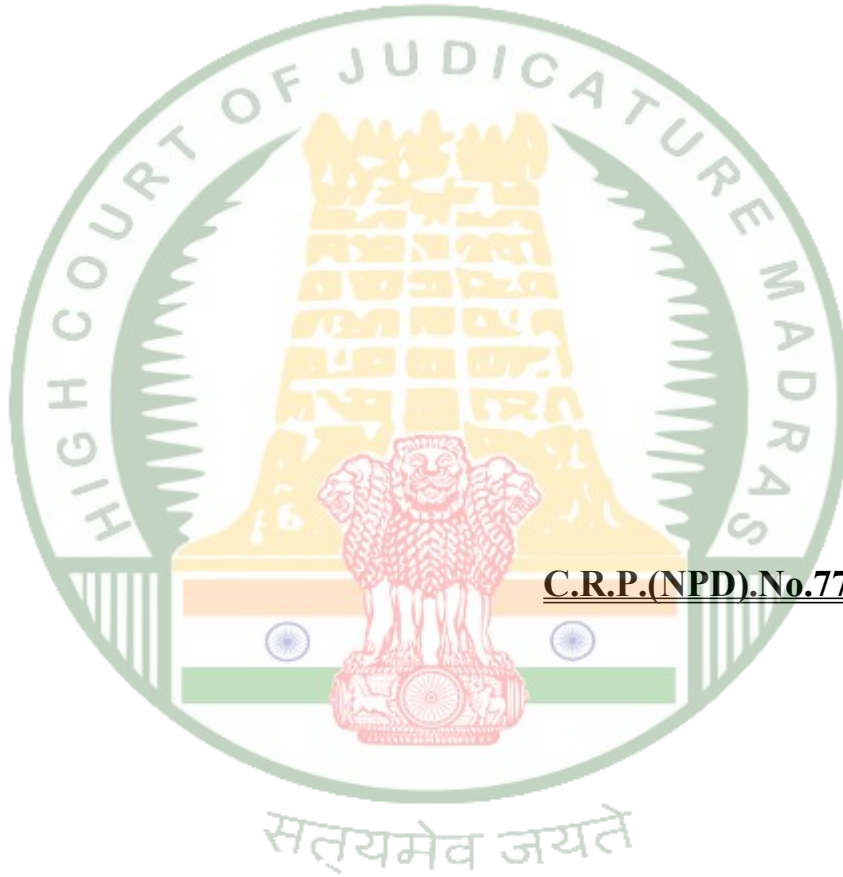
2.The District Munsif Court,
Tiruvarur.



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C.V.KARTHIKEYAN, J

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