

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.2351 of 2018

J.Sukumar

..Petitioner

Vs.

E.Mohideen Kutty(deceased)

1.Salim Mohideen

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act to set aside the order and decretal order dated 14.11.2017 passed in RCA.No.169 of 2013 on the file of the VII Judge Small Causes Court, Chennai, confirming the order and decretal order dated 26.03.2013 passed in RCOP.No.656 of 2009 on the file of X Judge, Small Causes Court, Chennai and allow the civil revision petition.

For Petitioner : Mr.M.Rajasekar
for Mr.V.V.Sairam
For Respondent : no appearance

ORDER

This Civil Revision Petition is filed against the order and decretal order dated 14.11.2017 passed in RCA.No.169 of 2013 on the file of the VII Judge Small Causes Court, Chennai, thereby modifying the order dated 26.03.2013 passed by the learned Rent Controller in RCOP.No.656 of 2009 and thereby fixing fair rent for the petition premises.

2. The petitioner is the tenant and the respondent is the landlord. The landlord filed petition for fixation of fair rent for the petition premises. The case of the landlord is that he is the landlord of the premises situated at door No.339, Arcot Road, Kodambakkam, Chennai-24 and the tenant was inducted in respect of shop No.4 in the said premises for the monthly rent of Rs.1,500/- for tenancy. The petition premises consists of ground floor and Mezzanine floor. The plinth area of the ground floor is 255 sq.ft. and that of the Mezzanine floor is 255 sq.ft. The petition premises is provided with common toilet and basic amenities and the building is aged about 40 years. The petition premises is situated in busy commercial locality near banks and commercial establishments. Therefore, the landlord filed petition for fixation of fair rent before the learned Rent controller.

3. Resisting the same, the tenant filed counter stating that the landlord is not the owner of the petition premises, or his father during his life time. The petition premises does not consist of toilet facility and water connection. The petition premises is aged about more than 60 years and the monthly rent of Rs.1,500/- is correct and the tenant is paying the rent regularly without fail.

4. In support of the landlord's case, PW1 and PW2 were examined and four documents were marked as Ex.P1 to Ex.P4. On the side of the tenant, RW1 was examined and Ex.R1 to Ex.R4 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the learned Rent Controller fixed fair rent for the petition premises at Rs.12,850/- per month payable by the tenant. Aggrieved by the same, the tenant preferred appeal before the learned Rent Control Appellate Authority and the same was modified by the learned Rent Control Appellate Authority. Aggrieved by the same, the present Civil Revision Petition is filed.

5. The learned counsel for the petitioner contended that when the tenant has taken specific stand that the landlord is not the owner of the petition premises, or his father during his life time, the landlord has no locus to file petition for fixing of fair rent. Both the courts below failed to consider this ground and fixed fair rent. In respect of fair rent is concerned, it is very high and liable to be reduced. He further submitted that the plinth area of the petition premises was taken as 267.35 sq.ft. and fixes common toilet area as 240.3 sq.ft. Whereas the tenant occupied only a small shop. Therefore, he sought for setting aside the fair rent fixed by the court below.

6. Heard, Mr.M.Rajasekar, the learned counsel for the

petitioner. Though notice was served, no one appeared on behalf of the respondent before this Court in person or through pleader.

7. The tenant categorically admitted that monthly rent for the petition premises at Rs.1,500/- and it is situated at door No.339, Arcot Road, Kodambakkam, Chennai-24. The tenant nowhere stated that the landlord is not collecting rent and did not even whisper about the owner of the premises. The respondent also failed to let in evidence to substantiate the said contention. On perusal of the evidence of PW1, he deposed that his father entered into an agreement for lease with the tenant. He possessed agreement for lease entered between his father and the tenant. There was not even any suggestion put up by the tenant in respect of the ownership of the petition premises.

8. In support of his contention with regard to denial of title, the learned counsel for the petitioner relied upon the judgment in the case of **East India Corporation Ltd Vs. Shree meenakshi Mills Ltd** reported in **(1991) 3 SCC 230**, wherein the Hon'ble Supreme Court of India held as follows:

What is stated in the second proviso to section 10(1) is the sole circumstance in which the civil court is

invested with jurisdiction in matters of evictions. But this jurisdiction cannot be invoked otherwise than as stipulated in the second proviso. This means that the condition precedent to the exercise of jurisdiction by a civil court is that the tenant should have denied the title of the landlord or claimed right of permanent tenancy and the Controller should, on such denial or claim by the tenant, reach a decision whether such denial or claim is bona fide. Upon such decision, the Controller must record a finding to that effect. In that event, the landlord is entitled to sue for eviction of the tenant in a civil court. Where these conditions are satisfied, the civil court will have jurisdiction to pass a decree for eviction on any of the grounds mentioned, in section 10 or Sections 14 to 16, notwithstanding that the Court has found that the tenant's denial of the landlord's title does not involve forfeiture of the lease, or, his claim of right of permanent tenancy is unfounded. Except to this limited extent, the jurisdiction of the civil court in matters of eviction of a tenant is completely barred and the jurisdiction in such matters is vested in the tribunals set up under the statute.

9. In the case on hand, the tenant just denied the ownership of the petition premises. Whereas, the tenant failed to state as to who is the owner of the building premises and not even put any suggestion while cross examining PW1 in this regard. That apart, the tenant

categorically admitted that the rent for the petition premises is Rs.1,500/- per month. Therefore, the above judgment cited by the learned counsel for the petitioner is not helpful to the case on hand.

10. Insofar as fixation of fair rent is concerned, the petition premises is type A-1 building and aged about 55 years. Both the engineers submitted their report and stated that the petition premises has all amenities and fixed 18% towards basic amenities for the petition premises. The plinth area of the petition premises is 235 sq.ft and the plinth area of the Mezzanine floor is 225 sq.ft. with common toilet area is 240.3 sq.ft. Insofar as market value of the petition premises is concerned, as per Ex.P4, the value for the property in Ex.P3 is at Rs.79,08,000/- in the year 2007. Accordingly, the court below, with appreciation of 20%, fixed market value of the premises at Rs.96,00,000/- per ground. After depreciation and as per basic amenities provided to the petition premises, the building value fixed at Rs.1,43,501/-. Accordingly, the learned Rent Controller fixed fair rent at Rs.12,850/-. The petition premises is located in the commercial area and heart of the city. Therefore, the fair rent fixed by the learned Rent Controller is quite reasonable and the learned Rent Control Appellate Authority slightly modified the same. Therefore, this Court finds no infirmity or illegality in the orders passed by the courts below.

11. Accordingly, this civil revision petition is dismissed. No order as to costs.

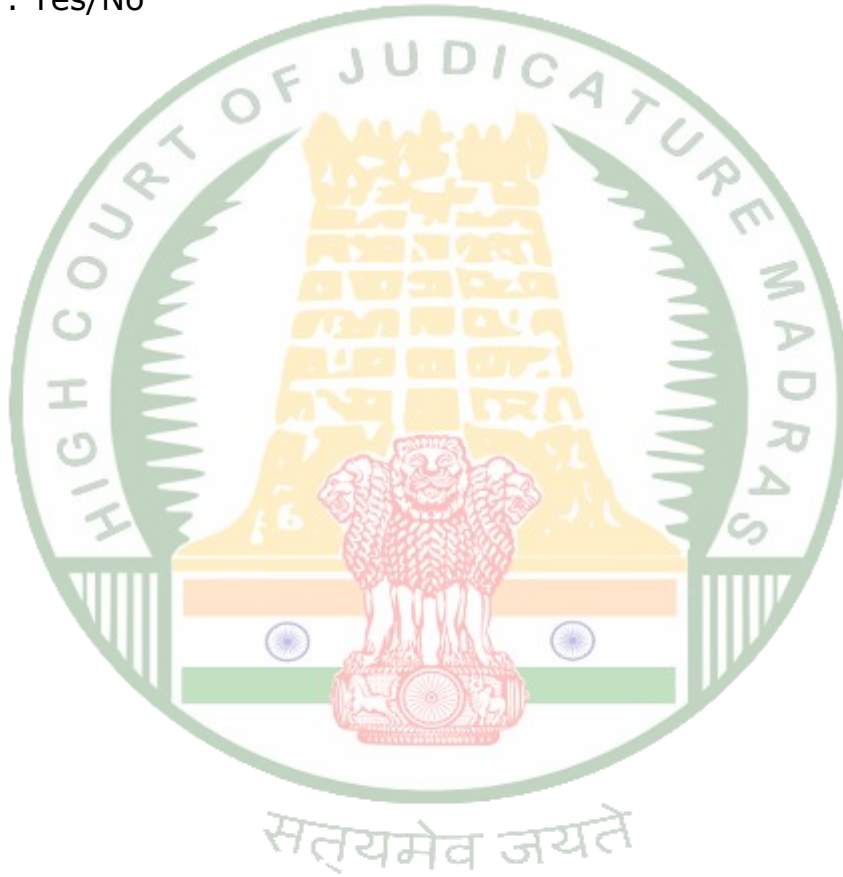
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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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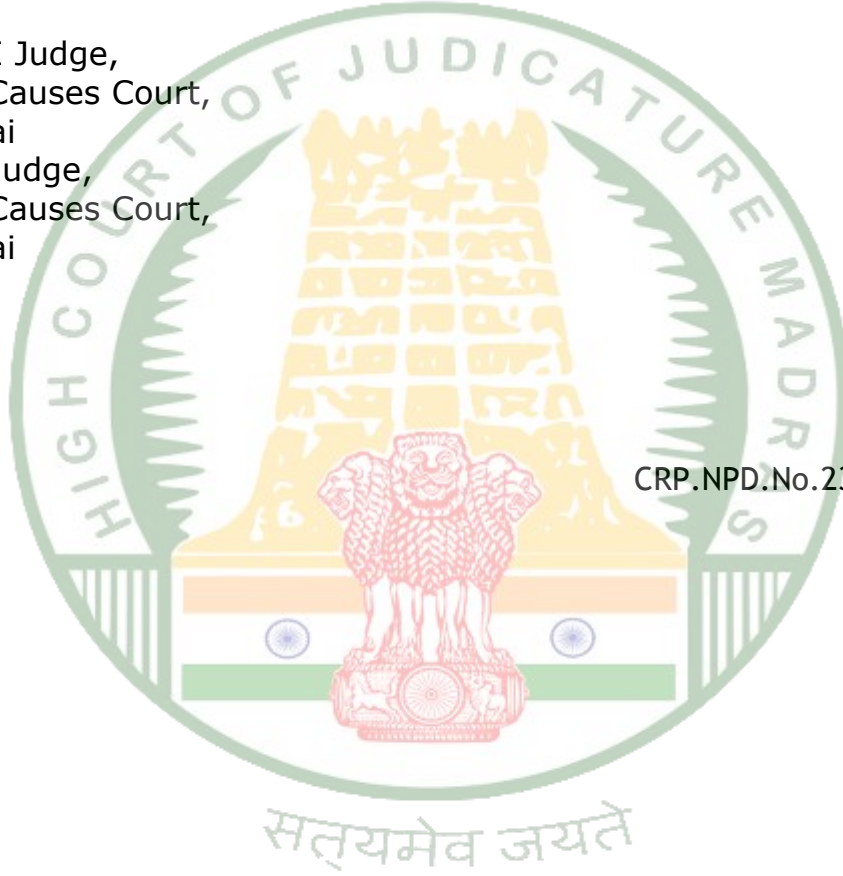
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G.K.ILANTHIRAIYAN,J.

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To

- 1.The VII Judge,
Small Causes Court,
Chennai
- 2.The X Judge,
Small Causes Court,
Chennai



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