

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM

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

CRP.NPD.No.3585 of 2016 and
CMP.No.18289 of 2016

Vasanthi

..Petitioner

Vs.

1.N.Rajendran

2.Arimavalavan

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the fair order and decretal order of the learned Principal Subordinate Judge (The Rent Control Appellate Authority), Cuddalore dated 21.12.2015 and passed in RCA.No.3 of 2015 allowing the appeal reversing the fair order and decretal order of the learned Principal District Munsif (The Rent Controller), Cuddalore allowing IA.No.4 of 2014 in RCOP.No.2 of 2008 by order dated 02.03.2015.

For Petitioner : Mr.R.Gururaj

For Respondents

For R1 : Mr.T.Sezhian

R2 : notice served

ORDER

The Civil Revision Petition is filed against the fair order and decretal order of the learned Principal Subordinate Judge (The Rent Control Appellate Authority), Cuddalore dated 21.12.2015 and passed in RCA.No.3 of 2015 thereby reversing the fair and decretal order passed in IA.No.4 of 2014 in RCOP.No.2 of 2008 dated 02.03.2015 on the file of the learned Principal District Munsif (The Rent Controller), Cuddalore thereby allowing the petition to implead the petitioner as second respondent in the Rent Control Original Petition.

2. The first respondent filed eviction petition as against the second respondent on the ground of wilful default in respect of the petition premises. The second respondent is none other than the petitioner's own son. While pending the Rent Control Original proceedings, the petitioner herein who is none other than the mother of the second respondent herein filed petition to implead herself as necessary party in the RCOP proceedings. On perusal of the affidavit filed

in support of her implead petition under Order 1 Rule 10 of CPC revealed that the petition premises belongs to her father. When he was employed at Singapore by his hard earned money, he purchased the petition premises in the name of the first respondent herein. In fact, so many properties purchased in his name and subsequently except the petition premises other properties were declared in favour of the petitioner's father. In fact, in respect of the petition premises also her father filed suit in OS.No.16 of 2008 for declaration. Thereafter her father died and she has been impleaded as plaintiff and the suit is pending. The second respondent also filed suit for inter-pleader in OS.No.2 of 2008 in respect of the very same petition premises and it is also pending. Therefore, the petitioner is a necessary party. Further in Tr.OP.No.109 of 2009, the learned District Court, Cuddalore ordered for joint and simultaneous trial along with the RCOP. However, though the learned Rent Controller allowed the petition, the learned Rent Control Appellate Authority dismissed the application to implead herself as party only on the ground that the Order 1 Rule 10 is not applicable to the Rent Control proceedings.

3. The learned counsel for the petitioner relied upon the judgment in the case of ***Richard Lee Vs. Girish Soni and another***

reported in **2017-4-LW 78**, in which the Hon'ble Supreme Court of India impleaded the other partners of the partnership firm in the RCOP proceedings under *suo moto* under Order 1 Rule 10 of CPC. Therefore, the petition under Order 1 Rule 10 of CPC is very much maintainable even before the Rent Control proceedings.

4. The learned counsel for the first respondent would submit that while petitioner's father was alive, he also filed similar petition to implead himself as party in the RCOP proceedings in IA.No.27 of 2008 and the same was dismissed and confirmed by this Court in CRP.No.2674 of 2009 dated 30.09.2010. This court while dismissing the CRP.No.2674 of 2009 observed as follows:

"4. The Rent Controller dismissed the application by observing that the dispute between the 3rd party and the 1st respondent is nothing to do with RCOP proceedings and admittedly the demised premises stands in the name of the 1st respondent.

5. The 2nd respondent has filed the suit in OS.No.2 of 2008 on the file of the District Munsif, Cuddalore against the 1st respondent and the revision petitioner for declaration that the demised premises belonged to him and also for

permanent injunction. The suit is pending. This revision petitioner has filed another suit in the same court in OS.No.16 of 2008 against these respondents and Cuddalore Power Company Limited for declaration and for delivery of possession and the said suit is also pending.

6. In the considered view of this Court, the petitioner is a third party to the proceedings, whose presence is not at all required in the matter of eviction of the tenant. He has already filed the title suit for declaration and recovery of possession in which he has to establish his right over the property. The dispute between the petitioner and first respondent could not be decided by the rent controller. Concededly, the property stands in the name of the first respondent and there is a tenancy agreement between the respondents 1 and 2. Hence, the petitioner is not at all a necessary party to the eviction proceedings. Impleading him as a party to the eviction proceedings would create havoc in the proceedings, which has to be avoided. Hence, this Court does not find any infirmity in the order passed by the Court below which deserves to be confirmed and accordingly it is confirmed."

5. Admittedly, the suit for declaration in respect of the very same petition premises is already pending in OS.No.16 of 2008 on the file of the District Munsif Court, Cuddalore originally filed by the petitioner as

well as the first respondent's father. After his demise, the petitioner has been impleaded as party to the suit and the suit is pending for trial. The present eviction petition is filed by the first respondent on the ground of wilful default. Though ownership of the petition premises is disputed and the suit for declaration for the very same petition premises is pending, the petitioner is no way connected to the RCOP, that too for eviction on the ground of wilful default.

6. Admittedly, the petition premises stands in the name of the first respondent herein. According to the first respondent, the second respondent is only a tenant who occupied the petition premises and as such the petitioner though happens to be the mother of the second respondent herein, she is not a necessary party for the RCOP proceedings. That apart, in respect of the petition premises already two suits are pending for declaration and inter-pleader suit in OS.No.16 of 2008 and OS.No.2 of 2008 on the file of the very same trial court. In fact, in Tr.OP.No.109 of 2009, the learned District Court ordered to try both the suits jointly and simultaneously and along with the RCOP. Therefore, though the learned Rent Control Appellate Authority dismissed the petition

to implead the petitioner as one of the party under Order 1 Rule 10 of CPC as not maintainable, the petitioner is not a necessary party to the Rent Control proceedings. As such this Court finds no irregularity or infirmity in the order passed by the court below.

7. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

16.02.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
lok

To

- 1.The learned Principal Subordinate Judge
(The Rent Control Appellate Authority),
Cuddalore
- 2.The learned Principal District Munsif
(The Rent Controller),
Cuddalore

G.K.ILANTHIRAIYAN,J.

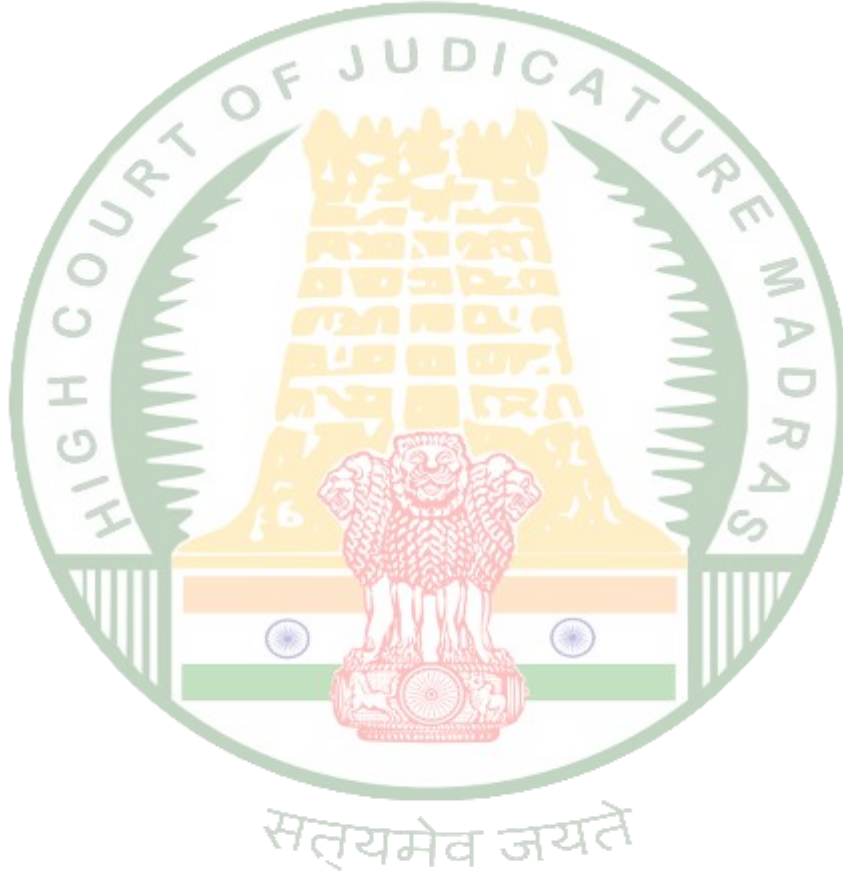
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