

C.R.P.(PD)Nos.2236 and 2237 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.2236 and 2237 of 2017
and C.M.P.No.10610 of 2017

Suresh S.

.. Petitioner
in both CRPs.

Vs.

D.Jambu

.. Respondent
in both CRPs.

PRAYER in C.R.P(PD)No.2236 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 04.04.2017 made in M.P.No.647 of 2016 in R.C.O.P.No.1995 of 2015 on the file of the XIII Small Causes Court, Chennai.

PRAYER in C.R.P(PD)No.2237 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and

C.R.P.(PD)Nos.2236 and 2237 of 2017

decretal order dated 09.01.2017 in M.P.No.522 of 2016 in R.C.O.P.No.243 of 2016 on the file of XV Small Causes Court, Chennai.

In both CRPs.

For Petitioner : Mr.N.Sreenivasalu

For Respondent : Ms.S.Ananda Bagavathi

COMMON ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

C.R.P.(PD)No.2236 of 2017 is filed against the fair and decretal order dated 04.04.2017 made in M.P.No.647 of 2016 in R.C.O.P.No.1995 of 2015 on the file of XIII Small Causes Court, Chennai.

C.R.P.(PD)No.2237 of 2017 is filed against the fair and decretal order dated 09.01.2017 in M.P.No.522 of 2016 in R.C.O.P.No.243 of 2016 on the file of XV Small Causes Court, Chennai.

2.Issues involved in both the Civil Revision Petitions and the parties are one and the same and hence, they are disposed of by this

common order.

3.The petitioner is tenant and respondent is landlord. The respondent filed R.C.O.P.No.1995 of 2015 on the file of XIII Small Causes Court, Chennai, under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for eviction of the petitioner on the ground of owner's occupation and filed R.C.O.P.No.243 of 2016 on the file of XV Small Causes Court, Chennai, under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for wilful default of payment of rent. The petitioner filed M.P.No.647 of 2016 in R.C.O.P.No.1995 of 2015 and M.P.No.522 of 2016 in R.C.O.P.No.243 of 2016 under Rule 11 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to decide the issue of maintainability of said R.C.O.Ps. and for dismissal of the same.

4.According to the petitioner, the respondent purchased the petition property in the year 1997 as a vacant site and constructed ground floor completely. He could not complete the construction in the first floor. The

respondent offered the petitioner to complete the construction of first floor at his own cost, use as factory unit and till respondent repays the cost of construction, the petitioner need not pay any rent. The petitioner constructed first, second and third floors at the cost of Rs.41,50,000/-. The respondent permitted the petitioner to use the rear side staircase with generator room, first, second and third floors till the respondent pays the cost of construction to the petitioner. The petitioner is not a tenant and there is no jural relationship of landlord and tenant. The petitioner filed C.S.No.818 of 2009 before this Court for declaration that the petitioner is entitled to occupy the premises till the respondent pays cost of construction of Rs.41,50,000/- to the petitioner. This Court granted interim injunction, subsequently made absolute and the petitioner prayed for deciding the issue of maintainability and dismissal of both R.C.O.Ps.

5.The respondent filed separate counter affidavits in both the M.Ps. and denied all the averments made by the petitioner. According to the respondent, the petitioner is a tenant on a monthly rent of Rs.40,000/-,

paid rent upto 2008 and subsequently, failed to pay the rent. In the suit filed by the petitioner, he did not deny that he is a tenant under the respondent and prayed for dismissal of both the M.Ps.

6.The learned Judge considering the relief sought for in C.S.No.818 of 2009 and averments made in the affidavit and counter affidavit, held that the suit in C.S.No.818 of 2009 filed by the petitioner is for recovery of money, jural relationship of landlord - tenant can be decided by the learned Rent Controllers only after full-fledged trial and dismissed both the M.Ps.

7.Against the said fair and decretal orders dated 04.04.2017 made in M.P.No.647 of 2016 in R.C.O.P.No.1995 of 2015 on the file of XIII Small Causes Court, Chennai and dated 09.01.2017 in M.P.No.522 of 2016 in R.C.O.P.No.243 of 2016 on the file of XV Small Causes Court, Chennai, the petitioner has come out with the present two Civil Revision Petitions.

8.The learned counsel appearing for the petitioner contended that the learned Rent Controllers failed to consider that there is no landlord – tenant relationship between the respondent and petitioner and only when status of the landlord - tenant subsists, the rent control proceedings is maintainable. The learned Rent Controllers erred in holding that the landlord – tenant relationship can be decided only after full-fledged trial. While the trial in C.S.No.818 of 2009 filed by the petitioner is already pending before this Court, the petitioner need not face another trial. The learned Rent Controllers failed to see that this Court granted injunction restraining the respondent from selling the petition property and not to interfere with the possession of the petitioner. The learned Judge failed to consider the documents Exs.P1 to P4 filed by the petitioner and mechanically dismissed the M.Ps. The learned Rent Controllers passed vague orders without giving clear finding on the basis of which he arrived at conclusion. The learned Rent Controllers failed to consider that the petitioner did not deny the ownership of the landlord, whereas the petitioner denies only the ownership of the building, which is the subject

matter of the rent control proceedings, right of the tenant accrues only on the building and not on the land and prayed for allowing the Civil Revision Petitions.

9.The learned counsel appearing for the respondent contended that the petitioner is tenant on monthly rent of Rs.40,000/-, he continued to pay the rent till 2008 and subsequently, he did not pay the rent. The suit filed by the petitioner is only for recovery of money and in the suit, the landlord - tenant relationship cannot be decided. Only before the learned Rent Controllers, by letting in evidence, the same can be decided. The learned Rent Controllers considered all the materials and rightly dismissed both the M.Ps. There is no error in the order of the learned Judge and prayed for dismissal of the Civil Revision Petitions.

10.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials on record.

11.From the materials available on record, it is seen that both R.C.O.Ps. were filed by the respondent for eviction of the petitioner from the petition premises on the ground of owner's occupation and wilful default of payment of rent. According to the petitioner, he is not a tenant under the respondent. The respondent after purchasing the land, constructed only ground floor and he could not complete the construction in the first floor. The respondent offered the petitioner by permitting him to complete the construction in the first floor and occupy the petition premises for his factory unit. As per the permission granted by the respondent, the petitioner constructed first, second, third floors and occupied the same. The petitioner is not liable to pay any rent till the respondent pays cost of construction of Rs.41,50,000/-. In view of the same, there is no landlord – tenant relationship. The petitioner further stated that he filed C.S.No.818 of 2009 on the file of this Court for the following relief:

“(i) For declaration declaring the plaintiff is entitled to permanently occupy the rear side staircase with generator room

and the first, second and third floor building situated at No.58/2, Madhavaram High Road, Perambur, Chennai-600 011 morefully described in the suit schedule until the defendant pays the cost of construction to the plaintiff;

(ii) Directing the defendant to pay a sum of Rs.41,50,000/- being the cost and expenses of construction of first, second and third floor building situated at No.58/2, Madhavaram High Road, Perambur, Chennai-600 011 morefully described in the suit schedule to the plaintiff;

(iii) For permanent injunction restraining the defendant, his men, agents, henchmen, sub-ordinates or any one claiming through or under him from in any manner interfering with the peaceful possession and enjoyment of the building and the functioning of the factory situated in the suit schedule;

(iv) For permanent injunction restraining the defendant his men, agents, or any person claiming through him from in any manner selling or conveying or further encumbering the suit schedule mentioned property to any third party except to the plaintiff;

(v) For mandatory injunction directing the defendant to return back the original cheque books, vouchers, bill books, LCs, letter pads etc., raided from the plaintiffs company situated at suit schedule mentioned property.”

In view of the same, R.C.O.Ps. filed by the respondent are not maintainable and filed M.Ps. to decide the issue of maintainability of R.C.O.Ps. On the other hand, it is the case of the respondent that the petitioner is a tenant on a monthly rent of Rs.40,000/-, he paid rent till 2008 and subsequently, he defaulted in payment of rent. It is the further case of the respondent that in the suit, the petitioner has not denied landlord – tenant relationship and he has not made any averments with regard to denial of his tenancy.

12.The issue to be decided is whether R.C.O.Ps. are maintainable or not?

A landlord is entitled to file R.C.O.P. against the tenant, when the tenant commits default in payment of rent, when the landlord requires the said building for his own occupation and among other grounds. When the tenant denies landlord – tenant relationship, the learned Rent Controller must decide whether such denial is bonafide or not. When the

respondent in the R.C.O.Ps. denies the landlord – tenant relationship, the issue whether the respondent in R.C.O.Ps. is a tenant or not has to be decided as a preliminary issue. The said issue cannot be decided based on the averments made in the affidavit and counter affidavit filed in M.P. to decide the issue of maintainability. The same can be decided only after considering the evidence let in by both the parties before the learned Rent Controller. When the relationship of landlord – tenant is denied, as rightly pointed out by the learned Rent Controller, the respondent in C.R.Ps. has to prove that the petitioner is tenant under him. This can be done only by giving opportunity to the respondent to let in oral and documentary evidence to prove his case. Similarly, the petitioner is also entitled to rebut the said contention of the respondent and also prove his stand that he is not a tenant by letting in oral and documentary evidence. The learned Rent Controllers have rightly held that issue can be decided after full-fledged trial. In view of the contrary stand taken by the petitioner with regard to jural relationship of landlord – tenant, the learned Rent Controllers have to decide this issue as preliminary after permitting the

parties to let in evidence. Only based on the finding in the preliminary issue, the learned Rent Controllers can proceed further.

13.For the above reasons, both the Civil Revision Petitions stand dismissed with a direction to the learned Rent Controllers to decide the issue of landlord— tenant relationship as preliminary issue in both R.C.O.Ps. No costs. Consequently, connected Miscellaneous Petition is closed.

08.09.2021

Index :Yes/No
Internet:Yes/No
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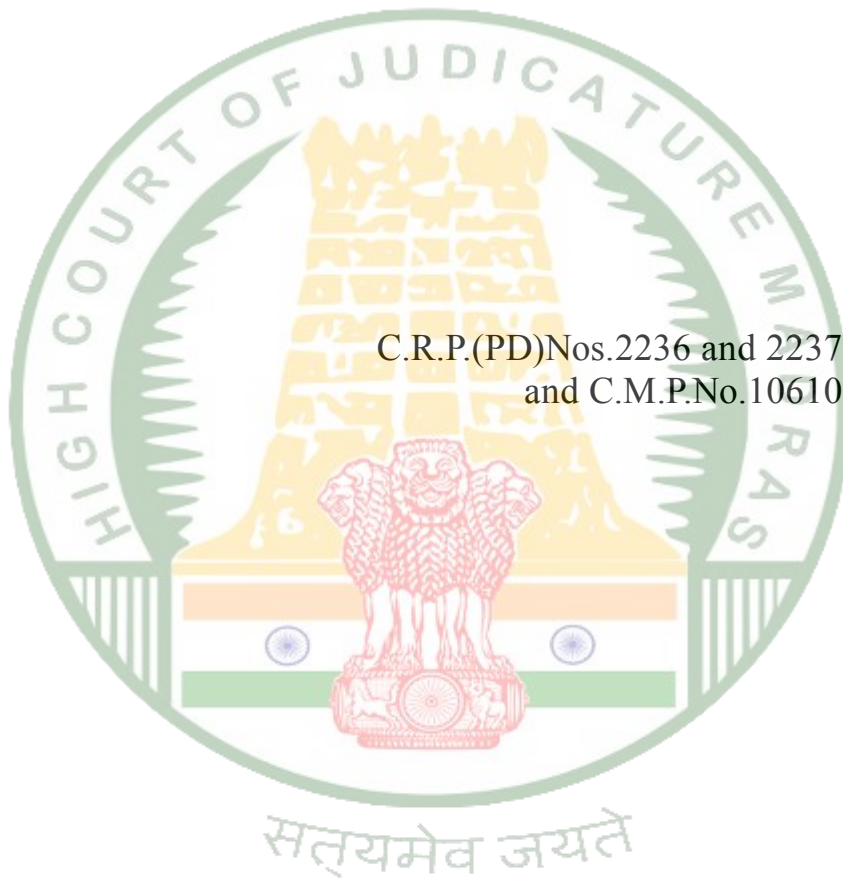
1.XIII Judge
Small Causes Court
Chennai.

2.XV Judge
Small Causes Court
Chennai.

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V.M.VELUMANI, J.

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