

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2021

CORAM

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

CRP.PD.Nos.3373 & 3760 of 2018
and CMP.Nos.19096 & 20955 of 2018

CRP.No.3373 of 2018

1.M.Palanisamy
2.P.Vasanthamani

..Petitioners

Vs.

P.E.Wilson

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 31.07.2018 made in IA.No.1282 of 2017 in OS.No.709 of 2010 on the file of the learned I Additional Subordinate Court, Coimbatore by allowing this civil revision petition.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.K.Gangadaran

CRP.No.3760 of 2018

P.E.Wilson

..Petitioner

Vs.

1.M.Palanisamy
2.P.Vasanthamani

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order in IA.No.1283 of 2017 dated 17.07.2018 and strike off the plaint in

OS.No.709 of 2010 passed by the I Additional Subordinate Judge at Coimbatore.

For Petitioner : Mr.K.Gangadaran

For Respondents : Mr.N.Manokaran

COMMON ORDER

The Civil Revision Petition in CRP.No.3373 of 2018 is filed against the fair and decretal order dated 31.07.2018 passed in IA.No.1282 of 2017 in OS.No.709 of 2010 on the file of the learned I Additional Subordinate Court, Coimbatore, thereby dismissing the petition filed to get expert opinion from the Forensic Department by comparing the signatures found in Ex.B2, B4 & B5 and Ex.A1 along with admitted signatures.

2. The petitioners are the plaintiffs and the respondent is the defendant. The petitioners filed suit for recovery of money. The case of the plaintiffs is that they were inducted as tenant under the respondent by the lease agreement dated 06.03.2009, which is marked as Ex.A10 and they also paid a sum of Rs.8,00,000/- as security deposit. In the suit, the respondent filed written statement and specifically averred that on 16.03.2009, the petitioners entered into agreement for lease and paid a sum of Rs.3,00,000/- as advance. For the notice received by the respondent, he also replied by the reply

notice dated 18.11.2009 and the same was duly acknowledged by the first petitioner on 20.11.2009. These documents were annexed to him. It was filed on 28.03.2011. After examination of all the witnesses on both sides, the petitioners come forward with the petition to send for the documents Ex.B2, B4 & B5 and Ex.A1 with vakalat, plaint and written statement to the Forensic Department for comparison and to get expert opinion.

3. On the other hand, the respondent also filed another suit in OS.No.1245 of 2013 and averred that on the lease agreement dated 16.03.2009, the petitioners were inducted as tenant and they paid a sum of Rs.3,00,000/- as advance and committed default in payment of rents. Therefore, the respondent filed suit for recovery of rental arrears. In fact, both the suits were ordered for joint trial and after examination of both side evidence, the present petition has been filed, after lapse of several years. Therefore, the court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the court below. Accordingly, the civil revision petition in CRP.No.3373 of 2018 is liable to be dismissed.

4. The civil revision petition in CRP.No.3760 of 2018 is filed against the fair and decretal order passed in IA.No.1283 of 2017 dated 17.07.2018 to strike off the plaint in OS.No.709 of 2010 passed by the

I Additional Subordinate Judge at Coimbatore, thereby dismissing the petition for rejection of plaint.

5. The petitioner is the defendant and the respondents are the plaintiffs. The respondents filed suit for recovery of money. According to the respondents, they were inducted as tenant by the petitioner by the lease agreement dated 06.03.2009 and they also paid a sum of Rs.8,00,000/- towards advance. After completion of lease period, they vacated the premises and the petitioner failed to return the advance amount which was received by him. Simultaneously, the petitioner also filed suit for recovery of rental arrears from the respondents on the lease agreement dated 16.03.2009. According to the said lease agreement, the respondents were inducted as tenant and they paid a sum of Rs.3,00,000/- as advance and they committed wilful default in payment of rent. Therefore, there is a rental arrear and they filed suit for recovery of rental arrears. Both the suits were ordered for joint trial and in that, both side evidence were over. At that juncture, the petitioner filed petition for rejection of plaint on the ground that the suit is filed in violation of Section 69(2) of the Partnership Act, since the respondents are partners of Standard Plywood and Glass Firm and admittedly it is unregistered one and as such, the suit itself is not maintainable.

6. On perusal of records shows that as per the lease

agreement dated 06.03.2009, no where mentioned that the respondents are partners of Standard Plywood and Glass Firm and they signed on their personal capacity. That apart, in the plaint pleadings also, no where it is mentioned whether it is a partnership firm and whether it is registered or not. Therefore, while considering the petition for rejection of plaint under Order 7 Rule 11 (1) (4) of CPC, the averments in the plaint alone can be considered. Therefore, the court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the court below. Accordingly, the civil revision petition in CRP.No.3760 of 2018 is also liable to be dismissed.

7. In view of the above discussion, both the civil revision petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No order as to costs.

24.06.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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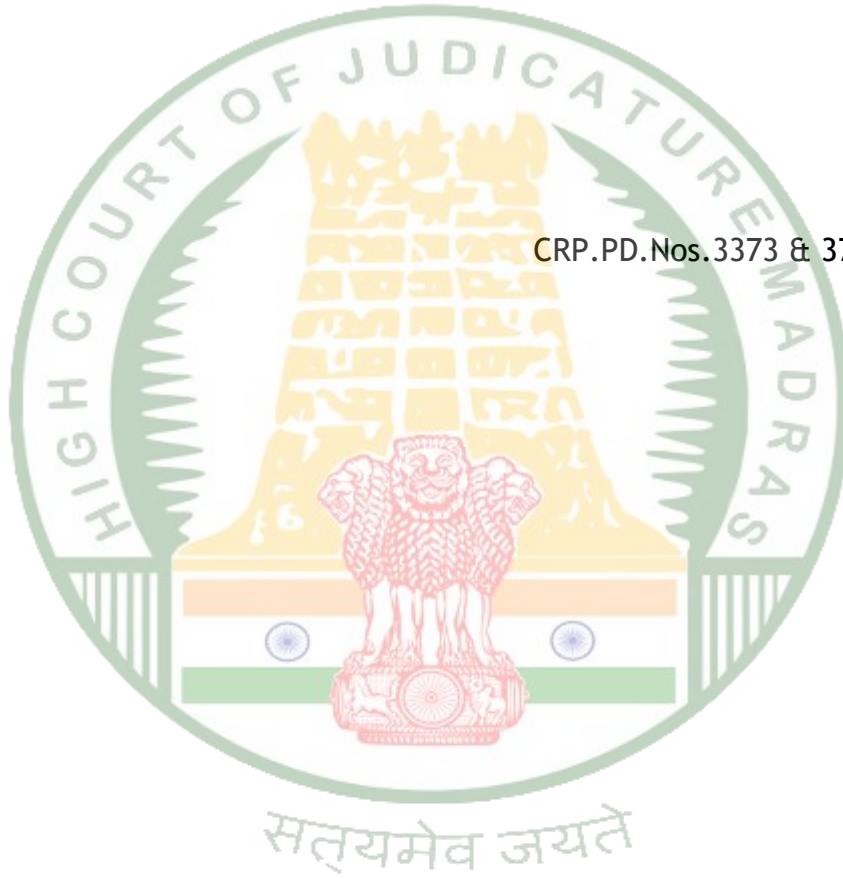
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G.K.ILANTHIRAIYAN,J.

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To

The I Additional Subordinate Judge
at Coimbatore.



CRP.PD.Nos.3373 & 3760 of 2018

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