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CRP.No.3689 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.07.2022

PRONOUNCED ON : 14.10.2022

C O R A M :

The Hon'ble Mrs. Justice **J. NISHA BANU**

Civil Revision Petition No.3689 of 2013

Zulaika Bee (since deceased)

1.Syed Ahmed

2.Khamarunnissa

3.Syed Ghouse Basha

4,Shakila Begam

5.Shamshed Begam

6.Syed Saleem Basha

...Petitioners

/respondents 2 to 6 and 10

Vs

1.Vijaya Timbers,

Rep. By its Partner

Mr.V.Venkateswara Rao

....1st respondent/appellant

2.Syed Basheer

3.Tajunnisa



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4.Naseemunnissa

...Legal representatives of
sole petitioner/respondents 7 – 9
/respondents 2 to 4

5.Aftab Begam

....Newly added party in RCA
Respondent-11
/5th respondent.

PRAYER: Civil Revision Petition filed under Section 25 of Tamilnadu Building (Leasing and Rent Control) Act, as against the fair and decreetal order dated 08.03.2013 in RCA.1104/2002 on the file of VIII Court of Small Causes, Chennai, reversing the fair and decreetal order passed by XII Small Causes Judge, Chennai in RCOP.No.1194 of 1998 dated 24.09.2002.

For Petitioners :: Mr.Perumbulavil Radhakrishnan

For respondents :: Mr.K.V.Babu for R1

Mr.R.Bharath Kumar for R4 and R5

R2 and R3 – No appearance

ORDER

This civil revision petition is filed as against the fair and decreetal order dated 08.03.2013 in RCA.No.1104 of 2002 on the file of VIII Small causes court, Chennai, reversing the order passed in RCOP.No.1194 of 1998 dated 24.09.2002.



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6. The RCOP court found that the landlord is the co-owner of the property and suit for partition is pending and further the landlord is represented by the power agent who is authorised to collect rent and so fixed the fair rent and directed the tenant to pay the fair rent fixed by the Rent controller.

7. Aggrieved by the said order, the tenant filed RCA.No.1104 of 2002 taking the ground that the Power Agent is not capable of filing the Rent Control Petition and the property mentioned in the Power of Attorney and the petition premises are different. Further, according to the tenant the petitioner in RCOP did not mention any devolution of title in respect of the petition premises.

8. The Rent Control Appellate Authority, found that as per oral and documentary evidence, the petition premises was not allotted to the Petitioner in RCOP viz., Zulaikha Bee. It is further pointed out that Ex.P.4 Partition Deed is acted upon and as per the evidence of P.W.2, there is no question of undivided share and co-owner doctrines. The oral evidence of P.W.2 also reflected that the property has not been allocated to Zulaikha Bee and one Jalal has been receiving rent from the tenant, therefore, landlord definition is not



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applicable to the respondent/tenant.

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9. On the above said findings, the appellate authority answered the issues before him that the RCOP filed by the petitioner seeking fair rent before the trial court is not maintainable and so there is no necessity to analyse the fixation of fair rent. Thus, the RCA filed by the tenant was allowed and the RCOP order was set aside.

10. This court, on going through the entire typed set of materials and on hearing the arguments made before this court and on careful analysis of the RCA order, it is seen that the findings of the Appellate Authority is mainly based on landlord-tenant relationship and that Ex.P.4 Partition Deed does not show allotment of share to the petitioner who filed RCOP. But it is pertinent to note that in the RCOP order, the learned Judge had gone through the exhibits marked before him and given a finding that the petition filed by the Power of Attorney holder is maintainable. The learned Judge given a finding that even though as per Ex.P.3 the Power of Attorney document is dated 29.03.2001 and the petitioner in RCOP is of the year 1998, the earlier Power of Attorney given by the landlady is on 16.12.1994, and the same has been marked as Ex.P.10. As



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per Ex.P.10, the description of property which has been rented to the respondent/tenant is shown as No.7 which is a typographical error which should be No.17. Since corrections cannot be carried out in the Power of Attorney document after registration, Ex.P.3 Power of Attorney document has been registered with correct door number and the Power of Attorney holder represented the landlady.

11. It is further pointed out by the learned Judge [Rent Controller] that since the partition suit between the co-owners of the property is pending, even though the petitioner has not been taking the rent from the tenant directly, the landlady is the coowner of the suit property and therefore, the power of attorney holder who has filed the Rent Control Petition on behalf of the landlady is maintainable.

12. The learned Rent Controller, after taking into consideration essential factors for determination of fair rent fixation, fixed the fair rent as Rs.21,776/- per month and directed the tenant to pay the said fair rent.



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13. In the considered opinion of this court, the order passed by the Rent Controller, based on evidence and taking note of the pendency of the partition suit proceedings, would go to show that there is substance in it. Since it is the argument before the Rent Controller that the landlady is the owner of 2/24 share, the learned Judge given a finding that landlady is a cosharer of the petition premises.

14. On the other hand, the reasonings and conclusion by the Appellate Authority, that the Rent control petition filed by the Power of Attorney holder is not maintainable, is not correct, as the Power of Attorney deed is a registered one and only rectification deed with respect to door number is carried out, the Petition filed for fixation of fair rent by the Power of Attorney holder, cannot be said to be erroneous.

15. In such view of the matter, the order passed by the Rent Controller, deserves to be restored. The order of the appellate authority is to be set aside.

16. In the result, this Civil Revision Petition is allowed. The order



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passed in RCOP dated 24.09.2002 is confirmed. The order passed by the Appellate Authority in RCA.1104 of 2002 dated 08.03.2013 is set aside. No costs.

14.10.2022

Index :Yes/No

Internet :Yes/No

Speaking order/Non-Speaking order
nvsri

To

- 1.The VIII Court of Small Causes, Chennai,
2. The XII Court of Small Causes, Chennai
- 3.The Section Officer, VR Section, High Court, Madras.



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J.NISHA BANU, J.

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Order in

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