



WEB COPY



C.R.P. Nos. 578 & 579 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos. 578 & 579 of 2023

and

C.M.P. No.4643 of 2023

Ganesan,
S/o. Natesan

... Petitioner in
both C.R.P.s

Vs

Mohammed Mustafa,
S/o. Mohammed Ghouse

... Respondent in
both C.R.P.s

PRAYER in C.R.P. No. 578 of 2023 : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the order dated 02.11.2022 made in E.A.No.01 of 2022 in E.P. No. 27 of 2022 on the file of learned District Munsif cum Judicial Magistrate at Thirukkalukundram.

PRAYER in C.R.P. No. 579 of 2023 : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the order dated 10.01.2023 made in E.A.No.2 of 2022 in E.P. No. 27 of 2022 on the file of



C.R.P. Nos. 578 & 579 of 2023

learned District Munsif cum Judicial Magistrate at Thirukkalukundram.

WEB COPY

For Petitioner in
both C.R.P.s : Mr.B.Sudhakar

COMMON ORDER

Challenging the orders dated 02.11.2022 and 10.01.2023 passed in E.A.Nos. 01 and 2 of 2022 in E.P. No. 27 of 2022, on the file of learned District Munsif cum Judicial Magistrate at Thirukkalukundram respectively, the Revision Petitioner filed these Civil Revision Petitions.

2. The contention of the Revision Petitioner/Judgment debtor herein is that he was not served on with proper notice in the R.C.O.P. proceedings and behind his back, the respondent landlord obtained an order in R.C.O.P.No. 1 of 2019. Hence, he has filed a suit in O.S.No. 47 of 2022 praying to set aside the R.C.O.P. proceedings as null and void and till the disposal of R.C.O.P., the execution proceedings are not to be conducted and for that relief, he filed an application in E.A.No.1 of 2022. The said application was strongly objected by the respondent/decreed holder stating



C.R.P. Nos. 578 & 579 of 2023

that the lease agreement is made much earlier in the year of 2017 and after the expiry of lease agreement, he has issued proper notice, for which he also gave reply with false allegations. So, the respondent/decreed holder initiated the rent control proceedings in R.C.O.P.No. 1 of 2019 and having known all the proceedings very well, the tenant failed to appear before the learned Rent Controller. Furthermore, after expiry of lease agreement, the tenant refused to give monthly rent and till date, no rent was paid, however, he is in continuous possession of the property and now he is raising vexatious allegations. The lease agreement is also produced in the typed set of papers to show that it was executed on 06.11.2014 for the period of three years and accordingly, the property was leased out for occupation for a sum of Rs.2,50,000/- and the said lease period was completed in the year of 2017. Thereafter, the petitioner landlord had issued notice and tenant also gave reply to the notice. Both documents were filed before the rent controller. However, before the Rent Controller, the revision petitioner/tenant has not raised any objection. Now, he content that no notice was served on him properly, but, there is no proof on his side to show that proper notice was not served. In the meanwhile, he filed a suit in O.S.No.47 of 2022 stating the



C.R.P. Nos. 578 & 579 of 2023

R.C.O.P. decree obtained by the landlord behind his back and prayed to declare the decree as null and void. Considering all the facts, the trial court held that the revision petitioner/tenant has not taken any steps to set aside the exparte order, on the other hand, he prayed to stay the execution proceedings till the disposal of the suit in O.S.No.47 of 2022. Thus, it is a clear case of abuse of process of law and the trial court dismissed the said application.

3. Today, when the matter taken up for hearing, the learned counsel for Revision Petitioner argues that the respondent landlord played fraud and obtained an exparte order of decree behind his back. Hence, he prayed to set aside the order passed by the trial judge.

4. On bare perusal of records, it would reveals that Revision Petitioner has not filed any application before the Rent Controller, on the other hand, strangely, he has filed a suit to declare the R.C.O.P. decree as fraudulent one, as such, is not maintainable in law for the reason that if he is having sufficient ground, he ought to have filed the application to set aside the exparte decree before the rent controller but he failed contrarily he has filed a suit before the trial court. Since the proceedings are still pending before



C.R.P. Nos. 578 & 579 of 2023

Rent Controller and the Rent Control proceedings also not reached the finality, he ought to have raised objection before the Rent Controller as if he is having valid defence and not before the trial court. Hence, the order passed by the learned trial judge is justifiable one, which needs no interference and the suit filed by the Revision Petitioner is a clear abuse of process of law and so, this Court is not inclined to allow this Civil Revision Petitions. Accordingly, the Civil Revision Petitions are dismissed as no merit. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

16.03.2023

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

To

District Munsif cum Judicial Magistrate,
Thirukalikundram.



WEB COPY



C.R.P. Nos. 578 & 579 of 2023

T.V.THAMILSELVI, J.

rpp

C.R.P. Nos. 578 & 579 of 2023
and C.M.P. No.4643 of 2023

16.03.2023