



C.R.P. Nos.2907 to 2909 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : .04.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos.2907 to 2909 of 2017

and

C.M.P.Nos. 1316, 1315 & 1317 of 2017

M.Rajeshwari (died)

2. M. Seshan

3. M.Velan

4. M.Ravi

5. D.Karpagam

... Petitioners in
all C.R.P.s

Versus

1. Suresh Baffna,
S/o. C.J.Baffna
rep. By his power agent K.S.K. Gupta

... 1st Respondent in
all C.R.P.s

2. M/s.A.C.E.Concrete Pvt Ltd.,
rep. by its Manager

... 2nd respondent in
C.R.P.Nos.2907 &
2908 of 2017



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PRAYER in C.R.P. No. 2907 of 2017 : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the order of rejection dated 31.08.2015 passed in I.A.No.178 of 2015 in unnumbered R.C.A.....of 2013 refusing to condone the delay of 845 days in filing the R.C.A. on the file of Hon'ble Subordinate Judge's Court at Poonamallee.

PRAYER in C.R.P. No. 2908 of 2017 : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the order of rejection dated 31.08.2015 refusing to implead the petitioners in I.A.No.179 of 2015 in unnumbered R.C.A.....of 2013 on the file of Hon'ble Rent Control Appellate Authority (Honourable Sub-Court), Poonamallee.

PRAYER in C.R.P. No. 2909 of 2017 : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the order of rejection dated 31.08.2015 passed in I.A.No.276 of 2015 in the unnumbered R.C.A.....of 2015 allowing the I.A.No.276 of 2015, which sought for rejection of the R.C.A. on the file of Hon'ble Subordinate Judge's Court at Poonamallee filed by the petitioners herein against the exparte order of eviction dated 26.07.2010 passed in RCOP No.19 of 2010 on the file of Hon'ble Rent Controller (DMC), Ambathur.



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For Petitioners in
all C.R.P.s

: Ms. R.V.Gayatri for
Mr.M.P.Muthukumaran

For 1st Respondent in
all C.R.P.s

: Mr.M.V.Seshachari

COMMON ORDER

Challenging the impugned orders passed in I.A.Nos.178, 179 and 276 of 2015 in an unnumbered R.C.A.No. Of 2015, on the file of Sub-Judge, Poonamallee, the Revision Petitioners, who are third parties to the petition filed in R.C.O.P.No. 19 of 2010, have preferred the present Civil Revision Petitions.

2. The 1st respondent herein is said to be a landlord in RCOP.No.19 of 2010 and the 2nd respondent herein is said to be a tenant under the 1st respondent, against whom the said petition in RCOP.No.19 of 2010 was filed for evicting him from the petition mentioned property situated at No.109/169, Munuswamy Street, Vanagaram Road, Athipet, Ambattur,



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Chennai-600 058. The 1st Revision Petitioner herein is viz., Rajeswari claiming herself as an absolute owner of the property situated in S.No.169/1B measuring an extent of 90 cents and the same was settled in favour of 2nd and 3rd petitioners and they became absolute owners of the property. While being so, her husband Munuswamy borrowed a sum of Rs.11 lakhs from the 1st respondent herein/so-called landlord to meet his personal needs and as a security for the said loan, he was forced to sign in blank stamp papers, post-dated cheques and blank promissory notes. However, with the help of those documents, the 1st respondent created a fabricated sale deed as if the said Munuswamy sold the property to an extent of 36 cents in Survey No.165/2 in his favour and he has also created a power of attorney in favour of Manager Dinesh Jain, who in turn sold the property to the 1st respondent in respect of the property in Survey No.165/2 with an extent of 36 cents. The said Munuswamy challenged the bogus sale deeds by filing a suit in O.S.No.265 of 2012 before the Sub-Court, Poonamallee and the same is pending. The property covered in the said sale deed is the suit property herein. In fact, the 2nd respondent was the original tenant under the petitioners 2 and 3 ever since from the year of 2005 and he



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paid rent to them and as he sustained loss in the business, he has not paid the rent regularly. But, using the fabricated sale deed, the 1st respondent issued a notice to the 2nd respondent as if he became owner of property and demanding him to pay the rent. Accordingly, for the period of 10 months, he paid the rent to him. Thereafter, he committed default. Hence, the 1st respondent filed a Rent Control Original Petition in RCOP.No.19 of 2010 praying to vacate him from the property in 90 cents in Survey No.169/13 with the plan and evict him from the property belong to the petitioners 2 and 3. In the said RCOP, the 2nd respondent remains exparte and the 1st respondent obtained exparte order of eviction. When he attempted to take possession of the property in the execution proceedings and when the bailiff came to the property, the petitioners came to know about the alleged RCOP proceedings. Accordingly, they have filed a claim petition before the Executing Court, but the same was returned stating that proper procedure was not followed. After vacation court holidays, they represented the same. In the meanwhile, the 1st respondent recorded the delivery of possession of incorrect property, which is totally different from the schedule mentioned property in the RCOP proceedings. The objections was raised at the time of



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bailiff visiting the property, but it was not considered. The Village Administrative Officer, who has accompanied him also wrongly identified the property in Survey No.169/1B measuring 90 cents instead of Survey No.165/2 measuring an extent of 36 cents. They have preferred a claim petition before the Executing Court and the same was rejected, against which, they preferred Civil Revision Petition, but the same was withdrawn seeking liberty to work out their remedy before the Executing Court.

3. In order to putforth their case, they have preferred Rent Control Appeal along with application to condone the delay and to implead themselves as a party in the appeal proceedings were filed, but the 1st respondent filed application in I.A.No.276 of 2015 to reject all the applications filed by them and the same was allowed by the Rent Control Appellate Authority, as such, is totally unfair and the same is liable to be set aside. Further, the petitioner contended that by getting fraudulent order in the proceedings in R.C.O.P.No. 19 of 2010, the 1st respondent attempted to grab the entire property belong to them with larger extent, however these petitioners 2 and 3 are collecting rent from 22 tenants, so, they have to



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safeguard the property and to establish the fraud committed by the petitioner, they should be given an opportunity to implead themselves as necessary parties to the RCOP proceedings. Hence, they have preferred R.C.A., but still it is unnumbered and they have filed various interlocutory applications viz., (1) I.A.No. 178 of 2013 under Sec.5 of Limitation Act to condone the delay of 897 days in filing the above RCA and (2) I.A.No.179 of 2013 under Order 1 Rule 10 of C.P.C. to implead themselves as appellants in RCA and also filed an application in (3) I.A.No.243 of 2013 under Order 39 Rule 1 and 2 of C.P.C. to pass an order of interim injunction restraining the respondents from effecting any name transfer in respect of electricity service connection standing in the name of petitioners 1 to 3 (4) another application in I.A.No.245 of 2013 under Order 39 Rule 1 and 2 of C.P.C. to grant ad-interim injunction restraining the respondents 1 and 2 from doing any further activities, (5) other application in I.A.No. 247 of 2013 under Order 39 Rule 1 and 2 of C.P.C. to grant ad-interim injunction restraining the respondents 1 to 3 from effecting any name transfer in respect of tenanted property and another application in I.A.No.249 of 2013 under Order 26, Rule 9 of C.P.C. to appoint an advocate commissioner to



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inspect the tenanted property and to note down its physical features.

However, the 1st respondent filed an application in I.A.No.276 of 2015 under Rule 11 of TNBLRC Rule (hereinafter called as “Rules”) to reject all the applications filed in I.A.Nos. 178, 179, 243, 245, 247 and 249 of 2015. The revision petitioners have raised strong objections stating that under Rule 11 of the said Rules, the landlord has no right to file an application praying to reject all the applications and even as per Order 7 Rule 11 of C.P.C., the rejection of plaint alone is permitted and the said legal proposition not applied to the rejection of memorandum of appeal also. But, without following proper procedures, the Rent Control Appellate Authority erroneously taken on file the said application. Accordingly, they prayed to dismiss the same.

4. On hearing both sides, the learned Rent Control Appellate Authority held that the petition in RCOP.No.19 of 2010 filed by the 1st respondent/landlord against tenant/2nd respondent herein for willful default was ordered in favour of landlord and to implement the same, an Execution Petition in E.P. No.40 of 2011 was filed seeking for delivery, but the



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revision petitioners have filed interlocutory application praying to stay the proceedings, which was dismissed. Against which, they preferred Civil Revision Petition and the same was subsequently withdrawn. However, father of the revision petitioners filed a suit in O.S.No.265 of 2012 to cancel the sale deed and the same is stayed by this court. So, the revision petitioners have no locus standi to file the applications disputing the decree obtained by the landlord. So, they are not necessary parties to the proceedings and the application filed by them are vexatious one. Accordingly, all the applications were rejected by allowing the application filed in I.A.No.276 of 2015. Challenging the said findings, the Revision Petitioners preferred this Civil Revision Petition.

5. At the outset, the learned counsel for Revision Petitioners argues that the applications filed by them in I.A.Nos. 178, 179, 243, 245, 247 and 249 of 2015 for condoning the delay and to implead themselves as a party to the proceedings and for temporary injunction were rejected by the learned Rent Control Appellate Authority under Rule 11 of the said Rules, as such, is totally erroneous one. Since there is no provision under the Rules to



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reject the applications and even assuming that under Order 7 Rule 11 of C.P.C. came into force to rescue the landlord, but the same will not apply to the rejection of memorandum of appeal.

6. By way of reply, the learned counsel appearing for the 1st respondent would submit that in the year of 2010, he has filed eviction proceedings against the 2nd respondent/tenant herein and while taking delivery of the property, these petitioners have filed vexatious applications, but they are not having any right over the property and the same was rightly appreciated by the learned Rent Control Appellate Authority, which needs no interference. On considering both side submissions and on perusal of records, it reveals that the 1st respondent, alleged landlord filed an application under Rule 11 of TNBLRC Rules to reject the unnumbered RCA as well as interim applications filed by the Revision Petitioners herein. As rightly pointed out by the learned counsel for Revision Petitioners, Rule 11 of TNBLRC Rules reads as follows :-

“11. Applications under the Act.- (1) Every application under the Act shall, in addition to the particulars necessary for its support contain also the particulars specified in rule 3 or 4



so far as they may be applicable. Every application for release under section 3-A or for eviction under section 10 or for recovery of possession under section 12 or 14 shall also state the grounds on which the application is made.

(2) Every application under the Act shall be accompanied by a spare copy or sufficient number of spare copies thereof for service on the respondent or respondents mentioned therein.

(3) Every application shall be signed by the applicant and his counsel, if any, and be presented to the Controller[x x x] or an officer authorised by him, as the case may be, by the applicant himself personally or by his recognised agent or by his counsel at any time during office hours on a working day.

(4) No documents or proceedings which is sent by post or telegraph shall be received or filed by the Controller,[x x x] or an officer authorised by him, as the case may be."

So, as per Rule 11 of the said Rules, it would insist the applicant to furnish necessary particulars as required under Rule 3 and 4, which clearly indicates that every landlord and tenant of the building shall furnish correct particulars of the building with door number and street name and those particulars are to be furnished in the application for eviction along with sufficient number of copies and the same should be signed by the applicant



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and his counsel etc. Therefore, Rule 11 of the TNBLRC Rule requires the landlord and tenant to furnish correct particulars in the petition filed before the learned Rent Control Appellate Authority. Therefore, Rule 11 does not contain any proviso to reject the appeal as well as interim applications filed by the parties concerned before the learned Rent Control Appellate Authority. But, the learned Rent Control Appellate Authority erroneously rejected all the applications including unnumbered RCA filed by these petitioners by relying Rule 11 of the TNBLRC Rule as such, is totally perverse and misconception of law and the same is liable to be set aside.

7. Furthermore, as per the submissions made on the side of revision petitioners, it reveals that the landlord/1st respondent took delivery of possession of vast extent of property by using the exparte decree, in which he mentioned only lesser extent in the suit property, but took away larger extent of the property, which belongs to these revision petitioners. However, there is a civil suit pending between the parties, but the executing court also should not go beyond the decree and there is no finding till date that RCOP proceedings was initiated only with regard to the rent property belong to the



1st respondent.

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8. On perusal of RCOP decree, it is an exparte one and learned Rent Controller also not discussed with regard to the nature of the property nor about ownership of the alleged landlord and the decree was simply passed like a cryptic order without discussing any of the above said facts. So, if the 1st respondent got delivery of the property beyond the property what he described in the schedule of property, the same is liable to be set aside. However, the 2nd respondent/tenant remains exparte and he has not raised any objections, on the other hand, these petitioners claimed themselves as owner of the property and also contented that they are having valid document to prove their title and right over the property. Therefore, if opportunity is not given to these petitioners, their valuable right over the property would be defeated. Furthermore, nearly after lapse of 10 years, these revision petitioners have approached the civil court to declare the alleged sale deed as null and void. Hence, the order passed by the learned Rent Control Appellate Authority in I.A.No.276 of 2015 is liable to be set aside and the Interlocutory Applications, which were rejected by the trial



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judge in I.A.Nos. 178, 179, 243, 245, 247 and 249 of 2015 are ordered to be taken on file and the learned Rent Control Appellate Authority is directed to dispose all the applications by giving opportunity to both parties. Accordingly, these Civil Revision Petitions are allowed. No costs. Consequently, the connected C.M.P.s are closed.

.04.2023

Index: Yes/No
Internet: Yes/No
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To

Principal District Judge, Namakkal



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T.V.THAMILSELVI, J.

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