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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.09.2023
Delivered on : 27.09.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.1653 of 2023
and
C.M.P(MD)No.8261 of 2023

D.Suseela ... Petitioner/Petitioner/3rd Party

Vs.

1.S.Elangovan ...1st Respondent/1st Respondent/
Petitioner
2.Faritha Begum ...2nd Respondent/2nd Respondent/
Tenant

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside fair and decreetal order dated 09.01.2023 made in I.A.No.23 of 2022 in O.P.No.14 of 2017 on the file of the Principal District Munsif Court, Dindigul.

For Petitioner :Mr.Arumugam
for M/s.Ajmal Associates

For Respondent :Mr.S.A.Ajmalkhan

**ORDER**

This civil revision petition is filed as against the fair and decreetal order, dated 09.01.2023 made in I.A.No.23 of 2022 in O.P.No.14 of 2017 by the Principal District Munsif Court, Dindigul.

2. According to the revision petitioner/3rd party, the first respondent filed a petition in R.C.O.P.No.14 of 2017 before the Rent Controller (Principal District Munsif Court) Dindigul, against the second respondent for eviction. During the pendency of the said proceedings, the petitioner/3rd party filed an application under Order 1 Rule 10(2) of C.P.C., to implead herself as necessary party in the RCOP proceedings. The said application was dismissed. Against which, the present civil revision petition is filed.

3. The learned counsel appearing for the petitioner would submit that the Court below failed to take note of the fact that the presence of the proposed party is absolutely necessary for the disposal of the said R.C.O.P, especially for the reason that the first respondent has no *locus standi* to file the RCOP. The learned counsel would further submit that the title of the first respondent is recognized by virtue of the Registered partition deed, dated 10.10.2005 executed in favour of the proposed party's predecessor in title. The suit in O.S.No.33 of 2016 filed before the Principal Sub-Court, Dindigul, by the predecessor of the first respondent was withdrawn and



liberty was not granted to file a fresh suit. In the said proceedings, the first respondent was also made as a party. When the title of the first respondent's predecessor was not determined, the first respondent also do not derive any title in the petition property and it is well established principle that no man can pass a better title than what he got. Therefore, direction given by the Rent Controller, Dindigul, to file a separate suit by the proposed party is unsustainable. It would lead to unnecessary litigation. The first respondent's predecessor in title failed to prove the execution of Will, under which, he claims title to the suit property and the suit filed in this regard was also dismissed. Further, the learned counsel would submit that in the partition deed, dated 10.10.2005 the first respondent has admitted the execution of Will dated 18.06.2005 in favour of the proposed party's predecessor in title. Therefore, the order of the Rent Controller, Dindigul, is liable to be set aside.

4. Further the learned counsel would submit that Order 1 Rule 10 of C.P.C., is applicable to any proceeding initiated under Tamil Nadu Buildings (Lease and Rent Control) Act. Therefore, the findings given by the Court below that Order 1 Rule 10 of C.P.C., is not applicable to any proceedings instituted under Tamil Nadu Buildings (Lease and Rent Control) Act, is totally erroneous. To support his contention, he has relied upon the decision in the case of *M.Thangamani-Vs-P.Dharmaraj and Others* reported in



(2008) 1 MLJ 732.

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5. On the other hand, the learned counsel appearing for the respondents would contend that it has been time and again held by this Court as well as by the Hon'ble Apex Court that since the procedure before the Rent Controller is summary in nature, the indirect proceedings contemplated in the Code of Civil Procedure is not applicable to the Rent Controller proceedings. The decision rendered in ***Aruppukottai Dravida Munnetra Kazhagam-Vs-M.Periaswami and another***, in ***C.R.P.No.1728 of 1973, dated 09.01.1974***, wherein it is held as follows:

“The Madras Buildings (Lease and Rent Control) Act and the Rules framed thereunder themselves make provision for certain matters, such as service of summons, setting aside of ex-parte orders, proceedings by or against legal representatives etc., no part of the Civil Procedure Code has been made applicable to the various proceedings that have to be taken in actions under the Madras Buildings (Lease and Rent Control) Act, such as impleading of parties, service of summons, setting aside the ex-parte orders, continuance of proceedings by the legal representatives of a deceased petitioner or respondent etc. It is, therefore, obvious that O. 1. r. 10(2) of the Civil Procedure Code cannot also apply to any proceedings under the Act. As such, the third party, who wanted to get himself impleaded as the second petitioner in the main petition, is not entitled to invoke the provisions of the Civil Procedure Code and obtain recognition from the Rent Controller to step into the shoes of



The first petitioner and continue the proceedings against the tenant.”

He would further argue that the Rent Controller has no power to decide who is the owner of the property and it can only decide as to whether the denial of title of landlord is bonafide or not.

6.The learned counsel further contended that when the relationship between the landlord and tenant is exhausted, the eviction petition is maintainable. The learned counsel relied upon the principles laid down in the case of ***Paul Raj-Vs-Paramasivam and Another***, reported in (2009) 6 ***MLJ 985***, in which it is held as follows:

“In view of the fact that the ingredients of Order 1 Rule 10(2) of the Code of Civil Procedure are not applicable to any proceedings initiated under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, this Court without going into the merits of the matter in issue between the parties, opines that the application in I.A.No.10 of 2008 filed by the revision petitioner under Order 1 Rule 10(2) of the Code of Civil Procedure is not per se maintainable in law and resultantly, the present civil revision petition fails.”

7.He had also relied upon the decision in the case of ***K.Rajagopalan-Vs-Gnannapandithan***, reported in 2014(4) ***CTC 315***, in which, it is held that Section 11(3) petition itself being summary in nature, provisions of



CPC also is not applicable. The learned counsel also referred to the observations made in C.R.P.No.2324 of 2009, in which, it is held as follows:

“9. The point for consideration in the Civil Revision Petition is whether provisions of Civil Procedure Code are applicable to the Rent Control Proceedings. This issue is no longer res-integra. In the judgments relied on by the learned counsel appearing for the petitioner, it has been specifically stated that the Rent Control Proceedings are summary in nature and Rent Controller is not a Civil Court and Order : Rule 10 C.P.C is not applicable to the Rent Control proceedings. It is also held that the Rent Control Act is a self contained code and provisions of the Civil Procedure Code is not applicable to the Rent Control proceedings, which is summary la nature. The ratio in the said decisions are squarely applicable to the facts of the present case. The judgment of the Hon'ble Apex Court reported in (2017) 4 LW 78 in the case of Richard Lee V. Girlish Soni and another, relled on by the learned counsel appearing for the respondents is not applicable to the facts of the present case as the Iton'ble Apex Court has not held that provision of Civil Procedure Code, especially Order 1 Rule 10 C.P.Cia applicable to the Rent Control proceedings. The Hon'ble Apex Court exercising suo motu power under Order 1 Rule 10 C.P.C, impleaded the partnership firm, on the ground that he is a necessary party, In the present case, admittedly, the partnership firm is a tenant and respondent, subsequent to filing of the RC.O.P, is not entitled to file application under Order 1 Rule 10 C.P.C to Implead partnership firm and present partner, since the Order 1 Rule to C.P.C is not applicable to the Rent Control



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Proceedings. The Courts low have committed an irregularity in allowing the application for impleading. In view of the salt regularity, the order of the learned Rent Controller and judgment of the Appellate Authority are liable to be set aside and hereby set aside.”

8.The learned counsel also made reference to the observation made by this Court in C.R.P.Nos542, 610 to 615 of 2018, dated 21.01.2022, in which, this Court has held that:

“6.It is needless to state that under the Rent Control Act, a landlord is defined as a person who receives or is entitled to receive the rent of the building. In fact, the explanation to the definition would further expand that where a landlord sublets the building, he will be the landlord of the sublessee. Therefore, the ownership of the property is immaterial for initiating proceedings under the Rent Control Act. That apart, the petitioners herein have not stated as to why the 1" respondent cannot initiate the eviction proceedings or how they claim the exclusive right to initiate proceedings.

7.This Court, in an unreported judgment in the case of S.Meganathan vs. Sankaran @ Sankaramoorthy and Others IC.R.P(NPD) No.2324 of 2009, dated 18.09.2017], had discussed the issue at length. The learned Single Judge has also referred to the judgment of the Hon'ble Supreme Court in Richard Lee vs. Girish Soni and another reported in 2017 4 LW 78 and distinguished the same by stating that the Hon'ble Supreme Court by itself had suo motu exercised the rights under



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Order 1 Rule 10 to implead a party and the judgment has not laid down a ratio that the provisions of Order 1 Rule 10 would be applicable in the case of rent control proceedings.”

9. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

10. This revision is filed challenging the order passed in I.A.No.23 of 2022 in R.C.O.P.No.14 of 2017 by the petitioner/third party, to implead herself as necessary party in the above proceedings, which was dismissed by the Rent Controller. The question involved in this civil revision petition is whether the revision petitioner is entitled to file an application under Order 1 Rule 10 C.P.C., before the Rent Controller?

11. The facts of the case is that, the first respondent has initiated rent control proceedings in R.C.O.P.No.14 of 2017 before the Rent Controller (Principal District Munsif Court) Dindigul. During the pendency of the said proceedings, the revision petitioner/third party filed an application in I.A.No.23 of 2022 to implead herself as necessary party stating that the first respondent/landlord has no *locus standi* to file the above RCOP against the tenant, when its title was not decided by any Court of law or any other



means. The said application was dismissed by the Rent Controller stating that the provisions under the Civil Procedure Code is not applicable to the Rent Control proceedings. In the petition filed by the petitioner/third party, it is averred that the petitioner/third party purchased the petition mentioned property from one Balasubramanian and from his brother's wife Dr.Poongothai on 14.11.2005 under a registered sale deed.

12.The contention of the petitioner/third party in the petition is that the petition property originally belonged to one Palaniyappa Nadar, who executed a Will dated 28.06.2000 in favour of Balasubramanian and Kalirajan and subsequently executed another Will on 18.06.2001 in favour of his sons Karthikeyan and Meenakshi Sundaram. Thereafter, the said A.P.Balasubramanian allotted his share to one Ashokkinraj Kumar, who has executed a settlement deed, dated 05.10.2005 in favour of his mother Dr.Poongothai, in which, the said Balasubramanian stood as witness. Pursuant to which, the said Poongothai executed two sale deeds dated 14.11.2005 in her favour. Thereafter, the said Balasubramanian, who is the predecessor in title of the first respondent, who has filed the suit in O.S.No. 33 of 016 before the Principal Sub-Court Dindigul, for the relief of declaration and injunction and to declare the Will dated 18.06.2001 as null and void. During the pendency of the said suit, the RCOP petitioner purchased the suit property from the said Balasubramanian. Thereafter, the



said suit was withdrawn by the said Balasubramanian and therefore, the first respondent has no *locus standi* to file the present petition for eviction.

Hence, it has become necessary for the petitioner/third party to implead herself in the above RCOP proceedings to establish the fact that the first respondent has no title.

13.The learned counsel for the first respondent would contend that the revision petitioner is not at all a necessary party in the rent control proceedings and the petition is not legally maintainable. Therefore, the Court below has dismissed the petition mainly on the ground that an application under Order 1 Rule 10(2) of C.P.C is not maintainable. The learned counsel for the petitioner has relied upon the decision reported in *2008(1)MLJ 732*(cited supra), in which, it is held that, Order 1 Rule 10 of C.P.C., is not applicable to any proceedings instituted under Tamil Nadu Building (Lease and Rent Control) Act.

14.In the case of *Aruppukottai Dravida Munnetra Kazhagam*, the main contention of the revision petitioner in that case is that the demised premises originally belonged to the second respondent in that proceedings, who sold the same in favour of the revision petitioner, who became the absolute owner of the sale. Since the revision petitioner in that case became the absolute owner of the demised premises, it was observed the revision



petitioner is a proper and necessary party in the rent control proceedings.

Under the said circumstances, the revision petition was allowed. But, in the present case, the facts are different. There is title dispute between the parties which cannot be decided in a rent control proceedings.

15. In the judgments relied on by the learned counsel for the respondent, it has been specifically stated that the rent control proceedings are summary in nature and the rent controller is not a civil Court and Order 1 Rule 10 of C.P.C is not applicable to the rent control proceedings. The ratio in the said decisions are squarely applicable to the facts of the present case. The remedy is only to file a separate suit. Therefore, there is no infirmity found in the order passed by the Rent Controller and I do not find any reason to interfere with the order passed by the learned Rent Controller (Principal District Munsif Court, Dindigul). Hence, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2023

NCC: Yes/No

Index: Yes/No

Internet: Yes/No



K.GOVINDARAJAN THILAKAVADI, J.

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To

1.The Principal District Munsif Court,
Dindigul.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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