

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD) No.1059 of 2015
and M.P.No.1 of 2014

Jayanthilal

...

Petitioner

Vs.

1.V.M.Muthu Kumar

2.Heerachand

...

Respondents

PRAYER: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the Fair and decreetal order of the Rent Control Appellate Judge, VIII Small Causes Court at Chennai dated 10.12.2014 passed in M.P.No.141 of 2014 in R.C.A.No.1043 of 2006.

For Petitioner : Mr.V.Raghavachari
for Mr.Vikram U Jain

For Respondents : Mr.Bijai Sundar

ORDER

This civil revision petition is directed against the order dated 10.12.2014 passed by the Rent Control Appellate Judge, VIII Small Causes Court at Chennai, in M.P.No.141 of 2014 in R.C.A.No.1043 of 2006.

2. The petitioner is the third Respondent in R.C.O.P.No.249 of 2006, which was filed by the first respondent/landlord seeking eviction under Section 10 (2) (ii)(a) of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960, as amended by Act 23 of 1973 & 1 of 1980.

3. The case of the first respondent/landlord is that the second respondent Heerachand was inducted as a tenant on a monthly rent of Rs.8,625/- per month and without consent, the second respondent herein has sub-let the premises to the petitioner herein and one Ramesh. The landlord has stated that there is privity of contract between the landlord and the subtenants and they are in possession of the petition premises. The landlord has further stated that the respondents 2 and 3 in the eviction petition are unauthorised occupants and they have no right to continue to carry on the business in the petition premises.

4. The eviction petition was resisted by the sub-tenants stating that they were inducted as per the lease agreement entered into between the chief tenant and the landlord and therefore, there is no sub-letting in this case.

5. The Rent Controller has ordered eviction observing that the tenants have not established the written consent of the landlord for subletting the

tenanted premises. Aggrieved by the order, the tenant and the subtenants have preferred an appeal in R.C.A.No.1043 of 2006. However, it was allowed to be dismissed for non-prosecution on 20.10.2010.

6. In the appeal, the subtenant filed M.P.No.141 of 2014 seeking permission of the Court to argue the appeal. The subtenant has alleged that the chief tenant had represented that he will defend the R.C.O.P and requested him to sign the vakalat and other documents. Accordingly, he signed the documents in R.C.O.P and R.C.A. While so, R.C.A was dismissed for default on 20.10.2010 for non-prosecution and later, he came to know it and filed the application to restore the appeal. It is further alleged that the subtenant has apprehension of collusion between the landlord and the chief tenant. So, he has been contesting the R.C.A separately. The application was allowed on 18.03.2014.

7. Subsequently, the landlord filed M.P.No.181 of 2014 to recall the order dated 18.03.2014 passed in M.P.No.141 of 2014. The landlord has averred that in M.P.No.141 of 2014, the Court has ordered notice for the hearing on 18.03.2014; his counsel requested time for filing counter and the counsel for the chief tenant made an endorsement stating that he has no objection for allowing the application. Later, the counsel for the chief tenant found that on the basis of the endorsement of the counsel for subtenant, the petition was allowed without

granting time to the chief tenant to file his counter. The petition was dismissed by the Appellate Authority on 12.08.2014.

8. Thereupon, the subtenant filed a memo dated 12.09.2014 to post the appeal for arguments. The Appellate Authority by order dated 10.12.2014 dismissed the M.P.No.141 of 2014 observing that the sub-tenant has no separate legal status either to contest the proceedings or to file any appeal on his own in view of Section 26 of the Act. Challenging the order, the present civil revision petition is filed.

9. Mr.V.Raghavachari, learned counsel for the petitioner submitted that the sub-tenants were inducted with the knowledge of the landlord and therefore, they have independent right to defend their case. The learned counsel further submitted that the petition filed by the sub-tenants seeking permission to argue the case was already allowed and thereafter, the appellate authority has no power to review the order. The learned counsel has relied on the following judgments -

(1) 1987 (1) SCC 712 [Tirath Ram Gupta v. Gurubachan Singh & Another]

(2) AIR 1964 SC 1305 [Karam Singh Sobti and Anr. v. Shri Pratap Chand and Anr.]

10. Per contra, Mr.K.Bijai Sundar, learned counsel for the respondents submitted that Section 26 of the Act bars the sub-tenant to contest the eviction proceedings and the sub-tenant has no right to file an appeal and this revision filed by the sub-tenant is also not maintainable in law. The learned counsel has relied upon the judgments reported in **1999 - 1 - L.W.650 (M.P.M.Hameed Ibrahim and another Vs. V.S.Bagirathan and three others), 2012 (4) LW 489 2012 4 LW 489** and **1994 L.W.102 (S.Balasubramaniam Vs.Gulab Jan).**

11. The questions to be decided in this revision are that whether the sub-tenant can maintain an appeal and whether he has independent right to argue in the appeal preferred alongwith the chief tenant.

12. Section 26 of the Tamil Nadu Buildings (Lease & Rent Control) Act reads as follows -

26. Order under the Act to be binding on sub-tenants. - Any order for the eviction of a tenant passed under his Act shall be binding on all sub-tenants who were made parties in the application for eviction but any person who became a sub-tenant after the date of the application for eviction shall be bound by the order of eviction and be evicted as if he were a party to the proceedings, provided that such order was not obtained by fraud or collusion.

13. In the judgments relied on by the learned counsel for the petitioner in **1987 (1) SCC 712 [Tirath Ram Gupta v. Gurubachan Singh & Another]** in that case, the tenant was inducted in the year 1963 and subsequently in the year 1967, he leased out the tenanted premises to the sub-tenant . The landlord filed eviction petition on the ground of sub-lease, as per the provisions of the Rent Control Act which came into force on 4th November, 1972. In the above facts, the Hon'ble Apex Court, referring to the provisions of the Transfer of Property Act, held that the appeal filed by the sub-tenant is maintainable. In **AIR 1964 SC 1305 [Karam Singh Sobti and Anr. v. Shri Pratap Chand and Anr.]**, the Hon'ble Apex Court has held as follows -

26. *The next question is as to the rights of the appellant in the absence of an appeal by the Association from the decision of the trial court. This question does not present any real difficulty. The suit had been filed both against the tenant and the subtenant, being respectively the Association and the appellant. One decree had been passed by the trial Judge against both. The appellant had his own right to appeal from that decree. That right could not be affected by the Association's decision not to file an appeal. There was one decree and, therefore, the appellant was entitled to have it set aside even though thereby the Association would also be freed from the decree. He could say that that*

decree was wrong and should be set aside as it was passed on the erroneous finding that the respondent had not acquiesced in the sub-letting by the Association to him. He could challenge that decree on any ground available. The lower appellate court was, therefore, quite competent in the appeal by the appellant from the joint decree in ejectment against him and the Association, to give him whatever relief he was found entitled to, even though the Association had filed no appeal.

14. In the judgment relied upon by the learned counsel for the respondent, the Division Bench of this Court, in **1984 MLJ 50 [Natarajan v. Nachimuthu Chettiar and another]** it has held as follows -

13. Mr. Ganapathy concedes the position and in fact he has no other alternative that the term 'tenant' has as defined in the Act, would not include a 'sub-tenant' and that the second proviso to Section 10(1). contemplates a denial of title by the tenant alone and not by a sub-tenant. Even so, he would say that since Section 26 of the Act gives a right to a sub-tenant inducted into possession after a petition for eviction had been filed, to assail the order of eviction on the ground that it suffers from the vice of fraud or collusion, a sub-tenant who is made a party to the petition for eviction, will also be entitled to question the maintainability of a petition for eviction, on the ground that the landlord does not have the locus standi to file the petition. He would further submit that since Sub-rule (2) of Rule 12 of the Rules framed under the Act enjoins the Controller to give an opportunity to all the parties including a sub-tenant to put

forth his case, the sub tenant is statutorily entitled to raise a defence of lack of title in the landlord in order to retain his possession of the property. We are afraid that the contention of Mr. Ganapathy is not only devoid of merit, but it is being made without reference to the specific provisions of that Act. The scheme of the Act is such that a sub-tenant has no Status or right of his own against the landlord except to the limited extent that is provided under the Act. The exception to the Rule has been provided only in those cases, where the sub-tenancy has been created with the knowledge and written consent of the landlord. In all other cases, the sub tenant has no status of his own as against the landlord except to stand in the shadow of the tenant. Therefore, it follows that if a tenant does not choose to put forth a defence against the landlord, the sub-tenant has to be bound by the stand taken by the tenant and he cannot independently put forth any contention of his own. In the case of denial of title of the landlord, the tenant himself is conferred a limited right, provided the denial of title is of a bona fide nature. In such circumstances, instead of the landlord seeking an order of possession in his favour under the summary proceedings contemplated under the Act he has to file a suit for recovery of possession against the tenant and seek a decree for eviction. When such is the limited right of the tenant himself, it will be preposterous for a sub-tenant to say that he has an independent right to deny the title of the landlord and that such a right will be available to him even in those cases where the tenant himself does not choose to deny the title of the landlord. Therefore, it follows that the contention put forth by Mr. Ganapathy is completely in violation of the terms of

the Act. The interpretation to be given to Section 26 is that where a sub-tenant is made a party to the proceedings, he can only raise a defence, which is available to him under law or in other words permissible under the Act. When he does not dispute his status as a sub tenant under the tenant, the only defence available to him is to show that the sub tenancy was not an unauthorised one, but had been created with the knowledge and written consent of the landlord. No other defence can be raised by a sub-tenant.

14. In so far as the second limb of Section 26 is concerned, it confers a right on a sub tenant to attack an order of eviction on the ground that it is vitiated by fraud or collusion, because he was not a party to the proceedings. This would however not mean that a sub-tenant who is made a party to the proceedings, can also raise a plea of fraud and collusion, because he is bound by the stand taken by the tenant, who was as much a party to the proceedings, as the sub-tenant himself.

15. In **94 L.W. 102 [S.Balasubramaniam v. Gulab Jan]**, this Court, following the judgments reported in **1952 (2) MLJ 179 [Devaraja Bhatt v. V.S.Raja]** and also considering Section 26 of the Tamil Nadu Buildings (Lease & Rent Control) Act has held as follows -

9. In the instant case, no material is placed before the Court to indicate that the main lease was for any particular term. On the other hand, the plea is that the main lease itself is

only oral and is from month to month. In such a contingency, the main tenant is only entitled to the protection under the Act namely, the statutory right to continue in possession subject to the provisions of the statute. If the landlord makes out a case for eviction under the Act against the main tenant, the sub-tenant cannot have any voice in such a contingency and has to abide by the decision in the action taken by the landlord against the main tenant. The sub-tenant cannot put forth any grievance since the Act confers upon him no protection whatsoever and his right to be in possession is, in the very nature of things, very nebulous and is a defeasible right. In the present case, the sub-tenant has not put forth and substantiated any plea of collusion between the landlord and the main tenants respondents 1 to 4 before the Rent Controller. Section 26 of the Act is only an enabling provision and it does not affect the well established principle that a sub-tenant has no independent right of his own to be protected under the Act and in the absence of contest by the main tenant for valid reasons and in the absence of collusion or fraud between the landlord and the main tenant, it is not permissible for the sub-tenant to stultify the proceedings for eviction by the landlord by putting forth any independent contest of his own. If the position is understood in the above light, I am unable to countenance the stand of the sub-tenant, the respondent herein, against the proceedings for eviction by the landlord. As observed earlier, there is no proof of collusion or fraud by the landlord and the main tenants. Hence, it must be presumed that the main tenants found no justifiable and valid excuse or ground to contest

the petition for eviction by the landlord and in the said circumstances, it is not within the competency of the sub-tenant, the respondent herein, to put forth a contest and nullify the proceedings for eviction by the landlord.

16. The same view was followed by this Court in **1999 (1) L.W. 650**

[M.P.M. Hameed Ibrahim and another v. V.S.Bagirathan and 3 others]

wherein it has been held as follows -

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.....Therefore, it is clear from a reading of the Act vis-a-vis the status of the tenant, to my mind it is only the 'tenant', who can agitate his rights under the Act before the forum created under the Act and it is impermissible in law for any person other than a 'tenant' to question the correctness or otherwise of the order of eviction passed against the 'tenant'. The Act is not meant to protect the rights of a person who has no privity of contract with the landlord in respect of a tenanted premises and who does not fit into the description of the term 'tenant' as defined under the Act. Therefore I have no hesitation to hold that the objection of Mr. K. Alagirisamy, learned senior counsel for the first respondent on the point of maintainability of the revision has to be sustained and accordingly it is sustained. Consequently it is held that the revision at the instance of the petitioners is not maintainable.

17. In the instant case, the landlord filed the eviction petition contending that the tenant has inducted the sub-tenants without his consent and the respondents 2 and 3 in the eviction petition are unauthorised occupants. This Court has consistently taken the view that while interpreting Section 26 of the Act that the only defence available to the sub-tenant is that the sub-tenancy is not an unauthorised one, but it was created with the knowledge and consent of the landlord and a right is conferred on a sub-tenant to attack an order of eviction on the ground that it is vitiated by fraud or collusion as it was obtained behind his back.

18. It is to be noted that the sub-tenants have not established their induction to the tenanted premises with written consent and knowledge of the landlord and it is not the case of the sub-tenants that the order was obtained by fraud or collusion. In my considered opinion, the decisions of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner have no bearing on the facts of this case and the decision of the Division Bench of this Court referred supra is squarely applicable to this case.

19. Since the petitioner has no independent right to contest the eviction petition except on the ground of fraud or collusion, which was not pleaded and established by the petitioner, this Court is of the view that the petitioner

cannot maintain the appeal. If the appeal of sub-tenants itself is held to be not maintainable, they have no independent right to argue the appeal. In view of my finding, the order impugned in this revision does not warrant interference of this Court.

20. In fine, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.04.2015

Index : Yes
Internet : Yes
sms/rgr

To

The VIII Judge,
Small Causes Court,
Chennai

K.KALYANASUNDARAM, J.

sms/rgr

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