

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2015

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1324 of 2015 &

M.P.No.1 of 2015

B.Sundar

... Petitioner

v.

Shanmugam

... Respondent

Civil Revision Petition filed under under section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 to set aside the fair and decreetal order in R.C.A.No.407 of 2013, dated 04.02.2015 on the file of VII Court of Small Causes at Chennai reversing the fair and decreetal order in R.C.O.P.No.219 of 2010, dated 02.07.2012 on the file of XIII Court of Small causes at Chennai.

For Petitioner : Mr.K.M.Vijayan

For Respondent : Mr.S.R.Raghunathan
for M/s.Rohini Ram kumar &
S.Mahesh Kumar

O R D E R

Heard Mr.K.M.Vijayan, learned counsel appearing for the petitioner and Mr.S.R.Raghunathan, learned counsel appearing for the respondent.

2. The above Civil Revision Petition arises against the judgment and decree passed in R.C.A.No.407 of 2013 on the file of VII Judge, Court of Small Causes, Chennai reversing the order in R.C.O.P.No.219 of 2010 on the file of XIII Judge, Court of Small Causes, Chennai.

3. The tenant is the revision petitioner and the respondent is the landlord.

4. The respondent-landlord filed R.C.O.P.No.219 of 2010 for eviction on the ground of willful default.

5. According to the respondent, the revision petitioner is a tenant under him in respect of the petition mentioned premises on a monthly rent of Rs.5,000/-. According to the respondent, the petitioner paid a sum of Rs.50,000/- as advance. Further, according to the respondent, the petitioner agreed to pay a further sum of Rs.3,00,000/- as advance and issued a cheque dated 2.4.2009 for the sum of Rs.3,00,000/-, which was dishonoured by his banker. The petitioner-tenant filed a civil suit in O.S.No.2530 of 2009

for permanent injunction restraining the respondent from interfering with his possession except under due process of law. The said suit was contested by the respondent and the Trial Court while decreeing the suit gave a finding that the petitioner is a tenant under the respondent in respect of the petition property and the tenancy is protected by the Tamil Nadu Buildings (Lease and Rent Control) Act 1960. Further, the Trial Court gave a liberty to the respondent to evict the petitioner through appropriate legal proceedings. The finding of the Trial Court was not challenged by the revision petitioner before the Rent Controller.

6. The petitioner contended that he paid a sum of Rs.3,50,000/- and the period of lease was for 24 months and instead of paying the monthly rent, he was alleged to be in possession of the property. Though the petitioner-tenant contended that the document was executed in respect of the petition mentioned property, the said document was not produced before the Rent Controller. Further, according to the petitioner, the document executed by the parties is only a lease agreement and not a rental agreement. Further, the petitioner contended that there is no landlord and tenant relationship between the petitioner and the respondent.

7. Before the Rent Controller, on the side of the respondent-landlord, he was examined as P.W.1 and 4 documents Exs. A1 to A4 were marked and on the side of the petitioner-tenant, he was examined as R.W.1 and 2

documents Ex.B.1 and Ex.R.2 were marked.

8. Though the decree passed in O.S.No.2530 of 2009 was marked as Ex.A3, the Rent Controller, without taking into consideration the said document, erroneously came to the conclusion that there is no landlord and tenant relationship between the petitioner and the respondent and that the relationship of mortgagor and mortgagee can be decided only before a Civil Court. When the Civil Court has given a specific finding that the petitioner is a tenant under the respondent and the petitioner can be evicted under the Tamil Nadu Buildings (Lease and Rent Control) Act, without taking into consideration the said finding, the Rent Controller dismissed the Original Petition finding that there is no landlord and tenant relationship.

9. Aggrieved over the same, the landlord preferred an appeal in R.C.A.No.407 of 2013 on the file of VII Judge, Court of Small Causes, Chennai and the Rent Control Appellate Authority rightly came to the conclusion that the petitioner is a tenant under the respondent and that he has committed willful default in paying the monthly rent of Rs.5,000/-. In order to establish his case that there was no landlord and tenant relationship between them and that there was only a mortgagor and mortgagee relationship, the petitioner-tenant should have produced the mortgage deed on his side. But the said document was not produced before the Rent Controller by the tenant. Mere averment in the counter is not sufficient to

accept the case of the petitioner-tenant. When the Civil Court has given a specific finding that the petitioner is a tenant under the respondent and that he can be evicted under the Tamil Nadu Buildings (Lease and Rent Control) Act, the contention put-forth before the Rent Controller cannot stand and is liable to be rejected. The Rent Control Appellate Authority rightly reversed the order of Rent Controller and ordered eviction on the ground of willful default.

10. In the absence of any evidence to establish that the petitioner-tenant has paid the monthly rent regularly to the respondent-landlord, the order of evicting granted by the Rent Control Appellate Authority is just and proper.

11. In these circumstances, I do not find any reason to interfere with the judgment and decree passed by the Appellate Authority. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.11.2015

Index : Yes/No

Rj

M. DURAISWAMY,J.,

Rj

To

1. VII Judge,
Court of Small causes,
Chennai
2. XIII Judge,
Court of Small causes
Chennai.

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