

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.No.166 of 2015

&

M.P.No.1 of 2015

Vijayakumar

...Petitioner/
Appellant/Tenant

Vs

T.D.Eswarlal (Deceased)

1.Geetha Rani

2.Kavitha

3.Savitha

...Respondents/
Petitioners/Landlords

Prayer:- This Civil Revision Petition filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control Act,) 1960 Praying to set aside the fair order and decreetal order dated 01.11.2014 made in RCA.No.498 of 2011 on the file of the Rent Control Appellate Authority/VIII Judge, Small Causes Court, Chennai and confirming the fair and decreetal order dated 18.07.2011 made in RCOP.No.2572 of 2009 on the file of the Rent Controller/X Judge, Small Causes Court, Chennai.

For Petitioner : Mr.K.P.Ashok

For Respondents : Mr.G.Ashokapathy for
M/s.Pass Associates

O R D E R

The tenant in RCOP.No.498 of 2011 is the petitioner in the present revision. The first respondent along with her husband T.D.Eswarlal (deceased) filed an eviction petition against the petitioner under Section 10(3) (a) (i) of Tamil Nadu Lease and Rent Control Act. The landlords have averred in the eviction petition that they are residing in a house which does not belong to them absolutely and the building was owned by the father of the first petitioner, who died leaving behind three sons and five daughters as his legal heirs. Now the petitioners are residing in a small portion of the premises. They are suffering from Arthritis and they are diabetic patients. At their old age, they are finding it difficult to climb to the second floor. Though the petition premises is situated in the second floor, it is provided with lift. The landlords contended that the requirement of the petition premises for own use and occupation is a bonafide one.

2. The tenant resisted the eviction petition stating that requirement is not a bonafide one. The tenant further stated that the petitioners are residing in their own building and therefore, the eviction petition is not maintainable in law.

3. The parties have adduced both oral and documentary evidence. The Rent Controller held that the requirement of the landlord is bonafide and ordered eviction. The Rent Control Appellate Authority concurring with the findings dismissed the appeal filed by the tenant. Challenging the concurrent finding, the present revision is filed.

4. Mr.Ashok, learned counsel for the petitioner submitted that admittedly the landlords have share in the property, where they are residing and therefore, in view of Section 10(3)(a)(i) of the Rent Control Act, the eviction petition cannot be maintained. He further submitted that five months prior to the filing of the eviction petition, the landlord has enhanced the rent and therefore, the requirement is not bonafide one. It is further submitted that the contention of the landlord that they were residing in the second floor and that building was not convenient or suitable, have not been established through acceptable evidence and that the first respondent had already died and the widow lady / second respondent may not be interested to reside in the tenant premises, since her two daughters were already married and they are residing in different places.

5. Per contra, Mr.Ashokapathy learned counsel for the respondent submitted that in the eviction petition itself, the landlords have stated that they have no other premises and the

present premises does not belong to them absolutely and the first respondent was having a meager share in the premises; that if the landlady is residing in her property, Section 10(3)(c) bars landlords from filing eviction petition, therefore, the eviction petition is maintainable in law. It is further submitted that the landlords with their hard earned money purchased the property only for their own use and occupation and even after the death of the first respondent, the second respondent is very much interested to reside in the tenanted premises and she finds it difficult to get along with the joint family property along with siblings of her husband.

6. The second respondent herein was examined as P.W.1 and in her evidence, she has categorically stated that she is residing in the second floor at Door No.18, Bishop Lane, Vepery, Chennai-7. Ex.P4 reveals that the second respondent is a senior citizen of 65 years, sustained fracture on her left leg in the year 2006 and she is also suffering from diabetic and hyper tension. Ex.R1 is a notice issued by the landlord dated 31.07.2006. According to the tenant, after issuance of notice- Ex.R1, the landlords have enhanced the rent and subsequently they did not take any steps.

7. Sec 10 (3) (a) (i) would run thus.

In case it is residential building, if the landlord requires it for his own occupation or for the occupation of (any member of his family) and if he or (any member of his family) is not occupying a residential building of his own in the city, town or village concerned.

A Plain reading of the provision would show, a landlord, who is occupying a residential building of his own in the city, town or village cannot seek eviction of the tenant for his own occupation or for the occupation of any member of his family. Ex.P.6 Sale Deed, Ex.P.7 Legal heirship certificate and the evidence of P.W.1 would reveal that the landlords are not the absolute owner of the premises in their occupation. Therefore, I am of the view that the eviction petition is maintainable.

8. The Trial court after considering the evidence of P.W.1, Exs.P5 to 7 found that the requirement of the landlords is bonafide. The Appellate Authority after independently considering the entire evidence confirmed the finding of the rent controller. Both the authorities on proper appreciation of evidence recorded a finding of fact that the requirement of the landlord is bonafide, which does not warrant interference by this Court.

9. In the result, the revision petition is dismissed. The petitioner shall vacate and handover possession to the respondent/landlord on or before 31.08.2015, the tenant shall pay the future rent regularly. Consequently, connected Miscellaneous Petition is closed. No cost.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Rent Control Appellate Authority/VIII Judge,
Small Causes Court, Chennai

2. The Rent Controller/X Judge,
Small Causes Court, Chennai.

CRP.NPD.No.166 of 2015
and M.P.No.1 of 2015

GJ (CO)
PSI (15.04.2015)



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