IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 23.01.2015

CORAM

The Hon'ble Mr.Justice **K.KALYANASUNDARAM**

CRP NPD No.5004 of 2014
and MP No.1 of 2014

Hugraj Hiraji Jain .. Petitioner / Tenant

Vs

Tmt.R.Mahalakshmi .. Respondent / Landlady

Prayer: Civil Revision Petition is filed under Section 25 (1) of the Tamil Nadu Buildings (Lease & Rent Control) Act 1960 as amended by Act 23 of 1973 against the fair and decreetal order of the learned VIII Judge, Court of Small Causes, Chennai dated 03.09.2014 passed in RCA No.168 of 2012 dismissing the Rent Control Appeal confirming the judgment and decreetal order of the XIV Judge, Court of Small Causes, Chennai made in RCOP No.508 of 2010 dated 16.02.2010.

For Petitioner : Mr.M.Mahendra Kumar
For Respondent : Mr.V.Vijayashankar

O R D E R

This revision is directed against the order passed by the Rent Control Appellate Authority in RCA No.168 of 2012 confirming the order of the Rent Controller dated 16.02.2010 passed in RCOP No.508 of 2010.

2. The revision petitioner is the tenant. The respondent landlady filed RCOP No.508 of 2010 seeking eviction of the tenant under Section 10 (2) (i) of the Tamil Nadu Buildings (Lease and Rent) Control Act 1960.

3. The case of the landlady is that she is the absolute owner of undivided $3/4^{th}$ share in the tenanted premises and $1/4^{th}$ share pertains to the tenant. The landlady filed a suit in O.S.No.122 of 1997 for partition and separate possession. A preliminary decree was passed on 27.12.2004 and in I.A.No.56 of 2005, a final decree was passed on 23.08.2007. The execution petition laid by the landlady in E.P.No.943 of 2009 for delivery of possession is pending. It is further stated that the landlady filed RCOP No.2258 of 2003 under Section 4 of the Rent Control Act for fixation of fair rent. The contractual rent of Rs.3750/- was re-fixed by the Rent Controller in a fair rent proceedings at Rs.26,232/- and the same was reduced to Rs.22,556/- by the Appellate Authority in RCA No.1022 of 2005.

4. The landlady has further stated that though the Appellate Authority passed orders on 10.12.2008, the tenant has not preferred any revision against that order and so it has become final. The landlady has further stated that the difference amount of

contractual rent and fair rent at Rs.21,806/- per month, amounting to Rs.16,40,538/- was not paid by the tenant. According to the landlady, the tenant has committed wilful default and hence he is liable to be evicted on the ground of wilful default.

5. The tenant has filed counter stating that he is the co-owner of the tenanted premises and therefore the eviction petition is not maintainable.

6. The parties have adduced oral and documentary evidence to establish their rival contentions. The Rent Controller, after considering the evidence on record, observed that the tenant has committed wilful default and ordered eviction. The finding of the Rent Controller was confirmed by the Appellate Authority in RCA No.168 of 2012. Challenging the concurrent finding, the tenant has preferred this revision.

7. Mr.M.Mahendra Kumar, learned counsel for the petitioner submitted that the tenant is having 1/4th share in the petition premises and therefore the Rent Controller has no jurisdiction to entertain the eviction petition. It is further stated that the finding

rendered in the fair rent proceedings is not binding on the parties and in the eviction proceedings, the Rent Controller has to decide whether the petition is maintainable or not. The learned counsel has relied upon a judgments of the Hon'ble Supreme Court in ***T.Lakshmipathi v. P.Nithyananda Reddy reported in 2003 (5) SCC 150.***

8. Per contra, Mr.V.Vijayashankar, learned counsel for the respondent submitted that the tenant was inducted in the year 1982 with a contractual rent of Rs.3750/- and in the year 1992, the tenant has purchased 1/4th share from the co-owners of the property and therefore the landlady had filed the suit claiming partition of 3/4th share in the petition premises. The Civil Court has held that the landlady is entitled for 3/4th share and the finding of the Civil Court has reached finality and based on the decree, the landlady also filed an execution petition for delivery and possession. The learned counsel further submitted that till 2011, the tenant was paying only contractual rent of Rs.3750/- and from October 2011, the tenant stopped paying the contractual rent, though in law, he is under obligation to pay the fair rent fixed by the Rent Controller. The learned counsel further s0ubmitted that as on date, the tenant is in arrears of Rs.30,51,536/- .

9. The learned counsel for the respondent submitted that in the judgment of the Hon'ble Supreme Court in ***T.Lakshmipathi's case*** relied on by the petitioner, it has been held that the tenant who has purchased a fraction of share in the tenanted premises cannot claim merger and he is also liable to pay the rent. The Hon'ble Supreme Court has also negatived the claim of the tenant and hence the eviction petition is maintainable.

10. It is not in dispute that in RCOP No.2258 of 2003 filed by the landlady against the tenant for fixation of fair rent, the tenant has taken the same stand that the proceedings before the Rent Controller is not maintainable. The case of the tenant that he is a co-sharer and therefore the proceeding under the Rent Control Act was not maintainable was rejected by the Rent Controller and the same was confirmed by the Appellate Authority.

11. In the judgment reported in ***T.Lakshmipathi's case*** *cited supra,* it is held as follows -

> ***18.*** *In the case at hand, it cannot be denied, nor has it been denied, that the appellants herein are not purchasers of the entire ownership interest in the property. What they have purchased is interest of some out of all the co-owners of the property. The interest of Respondent 1,*

whatever be its extent, has not come to vest in the appellants. The appellants have also acquired the tenancy rights in the property. Thus, they have acquired partial ownership and full tenancy rights. It cannot be said that the interests of the lessee and the lessor in the whole of the property have become vested in the appellants at the same time and in the same right. The lease cannot be said to have been determined by merger. So long as the interests of the lessee, the lesser estate and of the owner, the larger estate do not come to coalesce in full, either the water of larger estate is not deep enough to enable annihilation or the body of lesser interest does not sink or drown fully.

25. In the facts and circumstances of the case, no defence or shelter is available to the appellants behind the plea that they have acquired interest of some of the co-owners. The law as to co-owners is well settled. Where any property is held by several co-owners, each co-owner has interest in every inch of the common property, but his interest is qualified and limited by similar interest of the other co-owners. One co-owner cannot take exclusive possession of the property nor commit an act of waste, ouster or illegitimate use, and if he does so, he may be restrained by an injunction. A co-owner may, by an arrangement, express or implied, with his other co-owners, possess and enjoy any property exclusively. Such a co-owner can also protect his possession against the other co-owners and if he is dispossessed by the latter, he can recover exclusive possession. (See Jahuri Sah v. Dwarika Prasad Jhunjhunwala.) It is beyond any controversy that on the death of late P. Narayana Reddy, his rights devolved upon the several heirs including Respondent 1. Respondent 1 is the only male person in the body of the co-owners, all others being women. It may be for this reason, or otherwise, that Respondent 1 was in possession of the property, through tenants, realizing the rent peacefully and with the consent, express or implied, of other co-heirs of late P. Nithyananda Reddy. So far as Respondents 2 and 3 are concerned, by operation of Section 116 of the Evidence Act, they were estopped from challenging or denying the ownership of Respondent 1 and his rights in the tenancy

> *premises. As held in Vashu Deo v. Balkishan[2] the rule of estoppel between landlord and tenant continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord. The estoppel would cease to operate only on the tenant openly restoring possession by surrender to the landlord. Neither Respondents 2 and 3 nor their successors-in-interest or the persons claiming under them could have denied the title of Respondent 1 during the continuance of the tenancy and even thereafter unless they had restored possession over the tenancy premises to Respondent 1. Looking at the status of the appellants whether as co-owners or as persons inducted in possession by the tenants, they have no legs to stand on. If other co-owners could not have dispossessed Respondent 1 or demolished the property without the consent of Respondent 1, it is difficult to conceive how their transferees could have demolished the tenancy premises and raised their own construction over the land on which the tenancy premises stood earlier.*

11. The Hon'ble Apex Court in the decision cited supra confirmed the order of eviction observing that the eviction petition is maintainable. It is not disputed by the learned counsel for the petitioner that the tenant is liable to pay arrears of rent of Rs.30,51,536/-. The Rent Controller and the Appellate Authority, on proper appreciation of evidence, recorded the finding of fact that the tenant has committed wilful default and he is liable to be evicted on the ground of wilful default. The findings reached by the Rent Controller and the Appellate Authority does not warrant any interference by this Court.

12. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.01.2015

Index : Yes
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Note : Issue order copy by 17.03.2015

To

1. The VIII Judge,
Court of Small Causes,
Chennai.

2.The XIV Judge,
Court of Small Causes,
Chennai.

K.KALYANASUNDARAM,J
rgr

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