

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reservation : 02.12.2014

Date of Pronouncement : 12.01.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P (NPD) No.1585 of 2006

P.S.A.N.Jeya Ganesh

..Petitioner / Tenant

Vs

1.Mr.Lawrence Joseph (deceased)

2.Jeevaraj, rep. by his
Power agent Michael Raj

3.Michael Raj

4.Fatima Satya

5.Dhanraj

[RR2 to 5 substituted as LRs of
deceased sole respondent vide order
of court dated 18.01.2011 made in
MP No.1/2010 in CRP 1585/2006]

6.Mrs.S.Kanakavalli

7.Mr.L.Joseph Brito

[RR6 & 7 are brought on record as LRs of
deceased sole respondent vide order
of court dated 18.01.2011 made in
MP No.1/2010 in CRP 1585/2006]

...Respondents / Landlords

Prayer: Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control Act, 1960) against the order and decreetal order dated 17.08.2006 in RCA No.9 of 2005 on the file of Rent Control Appellate Authority (Subordinate Judge), Chingleput, confirming the order and decreetal order dated 26.12.2002 in RCOP No.127 of 1996 on the file of Rent Controller (District Munsif Court), Tambaram.

For Petitioner : Mr.M.L.Ramesh

For Respondents : Mr.M.K.Kabir,
Senior counsel for
M/s.A.Dhiraviyanathan
for R2 to R7.

O R D E R

This revision arises out of the order dated 17.08.2006 passed by the Appellate Authority in RCA No.9 of 2005 on the file of Rent Control Appellate Authority (Subordinate Judge), Chingleput, confirming the order of the Rent Controller (District Munsif Court), Tambaram dated 26.12.2002 in RCOP No.127 of 1996.

2. The tenant who suffered an order of eviction in RCOP No.127 of 1996 is the petitioner in this revision.

3. The brief facts of the case is as follows -

The respondent/landlord filed an eviction petition in RCOP No.127 of 1996 before the District Munsif Court, Tambaram seeking eviction on the ground of wilful default. The landlord has averred in the petition that the tenant was inducted on a monthly rent of Rs.1500/-, but he has not paid the rent from March 1996 till the eviction petition was filed, i.e. 26.09.1996. The landlord issued notice to the tenant dated 14.08.1996 through his Advocate demanding arrears of rent. Though the tenant received the notice, he failed to pay the amount.

4. The eviction petition was opposed by the tenant stating that his father Tr.Nataraja Nadar became a tenant in respect of the vacant site, subsequently he put up the superstructure and that there is no landlord - tenant relationship, therefore the eviction petition is not maintainable.

5. Before the Rent Controller, the parties adduced oral and documentary evidence. The Rent Controller, on appreciation of evidence, held 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.9 of 2005. Challenging the concurrent finding, the tenant has filed the present revision.

6. Mr.M.L.Ramesh, learned counsel for the petitioner submitted that the concurrent finding of the authorities are erroneous, perverse and unsustainable in law; that there is no landlord - tenant relationship between the parties and therefore the eviction itself is not maintainable; that the lease deed entered into between the father of the tenant and the landlord would reflect that only vacant site was leased out and there was no superstructure and

the superstructure was put up by the tenant; that even assuming that there was default in payment of rent, the eviction cannot be ordered under the Rent Control Act.

7. The learned counsel for the petitioner further submitted that the order passed by the Rent Controller in the application filed under Section 11 (4) of the Act cannot be a basis to decide the issue of jural relationship of the parties. Even though the tenant had not challenged the order passed under 11 (4) of the Act, he is not barred to agitate the issue in the original petition. The learned counsel placed reliance upon the following judgments -

[i] 2004 (3) MLJ 267 [Koppaiyan v. Ramaraj]

[ii] CDJ 1994 MHC 541 [E.Venkata Naicker Trust v. Muthusamy Chettiar] and

[iii] AIR 1960 SC 941 [Satyadhyam Ghosal v. Deorajin Debi]

8. Per contra, Mr.M.K.Kabir, learned Senior Counsel for the respondents submitted that the father of the tenant was originally inducted under Exs.A5 & A6, lease deeds dated 16.04.1962 and 14.02.1972 respectively and after expiry of the lease period, the landlord put up the superstructure and leased out the land and building to the tenant under lease deeds dated 15.12.1979 and 04.01.1995, Exs.A7 & A4, respectively. In the lease deeds, Exs.A4 & A7, it is specifically stated that the lease is for land and building. So, the tenant cannot take advantage of the lease deed Exs.A5 & A6 to contend that the eviction petition is not maintainable.

9. The learned Senior Counsel further submitted that the landlord filed an application under Section 11 (4) of the Tamil Nadu Buildings (Lease and Rent Control Act), 1960 for direction to the tenant to pay the arrears of rent. The application filed in M.P.No.179 of 1979 was allowed after deciding the jural relationship of the parties. Admittedly, the order has attained finality as the tenant has not filed any appeal against the order. It is further submitted that the tenant has paid the property tax under Ex.B2 for the superstructure constructed in his property and so the document Exs.B2 & B3 are in no way helpful to the tenant. The learned Senior Counsel has relied up the judgments in S.Rathinammal v. Ayyaur reported in 93 LW 236, Kesava Naicker v. Sivagnana Mudaliar reported in 93 LW 484 and Jagadeesh Prasad v. K.Kuppusamy reported in 2007 (4) LW 449.

10. In the judgment reported in CDJ 1994 MHC 541, this Court has held that the denial of title by the tenant is bonafide and directed the landlord to approach the Civil Court for recovery of

possession. In 2004 (3) MLJ 267, this Court has held that when the tenancy is in respect of the site alone and not in respect of the building thereon, the Rent Controller has no jurisdiction to order eviction. In that case, the court found that there was no material evidence to prove that the lease is in respect of the building also. The Hon'ble Supreme Court in AIR 1960 SC 941 held that the order of remand was a interlocutory judgment which did not terminate the proceedings and so the correctness thereof can be challenged in an appeal from the final order.

11. It is seen from the records that under Ex.A5, lease deed dated 16.04.1962, the father of the tenant was inducted as a tenant for the vacant land to an extent of $3\frac{3}{4}$ ground for running business for a period of ten years. Under Ex.R6, lease deed dated 14.02.1972, the earlier lease was renewed for another period of five years which expired in the year 1977. Thereafter, a fresh lease deed was entered into between the landlord and the father of the tenant on 05.12.1979 under Ex.A7 for the land and building situated at No.9, Rajaji Road, West Tambaram, Chennai - 45. Ex.A4, subsequent lease agreement dated 04.01.1995 is also for the land and building.

12. The Rent Controller and the Appellate Authority, after considering the lease deeds, Exs.A5 & A6 held that the originally the vacant site was leased out, but subsequently under lease deeds dated 05.12.1979 and 04.01.1995, the land and building was leased out to the tenant. Based on Ex.A4, Ex.A7 and P.W.1, the Rent Controller held that the landlord proved the jural relationship of landlord - tenant. It is further seen that the Rent Control Authorities have assigned valid reasons to reject the evidence of the tenant.

13. It is further noted that the specific case of the landlord is that the tenant has failed to pay rent from the month of March 1996 till August 1996, for a period of six months. The landlord filed M.P.No.179 of 1997 under Section 11 (4) of the Act for direction to the tenant to pay the arrears of rent. The Rent Controller, after conducting proper enquiry under Section 11 (3) of the Act, held that the landlord proved the relationship and directed the tenant to pay the arrears of rent.

14. A question arose before this Court whether the Rent Controller has jurisdiction to direct the tenant to deposit rent in the petition filed under Section 11 (4) of the Tamil Nadu Buildings (Lease and Rent Control Act) 1960 when the tenant disputed the relationship of landlord and tenant. This Court, in S.Rathinammal's case, cited supra, placing reliance upon a judgment of the Hon'ble Supreme Court reported in 1963 (2) SC 475 [Om Prakash Gupta v. Dr.Rattan Singh] held that the Rent Controller has jurisdiction to direct the tenant to deposit the rent. The relevant paragraph is extracted as follows -

16. On a proper construction of Section 11 of the Act, and in the face of what has been held by the Supreme Court in similar circumstances under a different enactment, the jurisdiction of the Statutory Authorities, to exercise powers under Section 11 of the Act cannot be off-set on the simple denial of the relationship of landlord and tenant made by the other side.

17. Before passing an order under Section 11 of the Act, the Statutory Authority has been authorised to decide the rent summarily, even in cases where there is a dispute, Subsection (5) of Section 11 of the Act envisages that the Statutory Authority can impose condition regarding the amounts deposited under Sub-section (1) of Section 11, and of payment to the landlord or for deposit of the rents with the statutory authorities. All these go to show that in cases where the actual rent payable to the landlord is disputed or where a dispute is raised about the existence of relationship of landlord and tenant, during the pendency of the proceedings, deposit of rent summarily decided by it has to be effected in the interests of both the parties.

15. The same view was followed in the judgment of this Court in *Kesava Naicker v. Sivagnana Mudaliar* reported in 93 LW 484 wherein it is held as follows -

8. In view of the above decision of the Supreme Court, the contention of the petitioner based upon the decision in *Abdul Azeez Khan v. Appachi Gounder*, (1957) 2 Mad LJ 513, cannot be accepted as correct. Therefore, in dealing with an application under Section 11 of the Act, where the relationship of landlord and tenant is admitted, no difficulty arises. But even in cases where such relationship is disputed, the Rent Controller has to adjudicate upon the relationship and pass appropriate orders but cannot throw out the application on the ground that there is a disputed relationship. Apart from the jurisdictional objection referred to and dealt with already, the learned counsel for the petitioner has not assailed the order of the Rent Controller, under Section 11(4) of the Act in any other manner. Neither the Rent Controller nor the appellant Authority did act in an erroneous manner when they proceeded to determine the true relationship of the

petitioner and the respondent in the course Of M. P. No. 47 of 1978 under Section 11 of the Act, Indeed, as stated earlier, it is the duty of the Rent Controller to decide this, question before dealing With an application under Section 11 of the Act, and precisely this had been done in the instant case and it has been held that originally, the wife of the respondent was the landlord of the petitioner and thus on her death, the respondent had succeeded to her interest and had become the landlord of the property. The relationship having been thus found, the order for deposit of the rents by the tenant was correctly passed and the correctness of that order, as seen earlier, cannot be assailed merely on the ground that the relationship between the Petitioner and the respondent is not that of tenant and Landlords.

16. The judgments relied upon by the learned Senior Counsel would show that even in the case of denial of relationship of landlord and tenant, the Rent Controller has jurisdiction to decide whether the denial is bonafide in a petition filed under Section 11 (4) of the Act. In the case on hand, the Rent Controller has found that the denial is not bonafide and directed the tenant to pay the arrears of rent.

17. Further, the Rent Controller and the Appellate Authority in the original petition also, on proper appreciation of evidence, held that the land and building has been leased out in this case and the tenant has committed wilful default in payment of rent. In my considered opinion, the judgments relied on by the petitioner have no bearing to the facts of this case. Therefore, the finding reached by the authorities based on evidence cannot be over turned by this Court while exercising jurisdiction under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act) 1960. I do not find any merit in the revision.

18. In the result, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rgr

To

1.The Subordinate Judge,
Chengalpet. (Rent Control Appellate Authority)

2.The District Munsif,
Tambaram. (Rent Controller)

Copy to

The Section Officer,
Section Officer,
High Court, Madras.

1 CC to M/s.A.Dhiraviyanathan, Advocate SR.No. 1712

1 CC to Mr.M.L.Ramesh, Advocate SR.No. 1680

UG (CO)
PSI (09.02.2015)

C.R.P(NPD)No.1585 of 2006



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