

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2015

CORAM :

THE HONOURABLE Ms.Justice K.B.K.VASUKI

C.R.P.No.1682 of 2006

1.S.M.Subramaniam

2.S.M.Narayanan

... Petitioners

Vs.

1.Periasamy

2.Sikkanthar

... Respondents

Prayer: Petition filed under Section 25 of the Tamil Nadu Buildings (lease and rent control) Act 1960 as amended by Act 23/1973 and Act 1 of 1980 against the fair and decretal order dated 28.04.2006 made in RCA.No.4 of 2005 on the file of the Rent Control Appellate Authority (Subordinate Judge) at Namakkal confirming the order dated 27.12.2004 made in RCOP.No.2 of 2003 on the file of the Rent Controller (District Munsif cum Judicial Magistrate Court) at Paramathi.

For Petitioners : Mr.P.Valliappan

For Respondents : Mr.R.Murugan

ORDER

The respondents 2 and 3 in RCOP.No.2 of 2003 and the appellants in RCA.No.4 of 2005 are the petitioners herein. The present civil revision is filed against the order of eviction passed by the learned Rent Controller as confirmed by the learned Rent Control Appellate Authority on the ground of owners occupation and sub letting.

2.For the sake of convenience, the parties are referred to herein as per their rank in RCOP.

3.The petitioners/landlords filed the eviction petition against the respondents 1 to 3 on the ground that the first respondent is the tenant under the original owner by name Radhakrishnan and after the purchase of the property by the petitioner and after the death of the original owner, the property devolved on his wife Vijayalakshmi and the petitioner agreed to purchase the property from Vijayalakshmi and even much before the purchase, the said Vijayalakshmi along with the petitioner approached the first respondent on 01.05.2000 and requested to vacate the premises and he agreed to do so within three months however he did not do so. When Vijayalakshmi contacted the first respondent on 05.08.2000, the first respondent not only failed to do so, but also refused to do so, at the instance of the third respondent and the first respondent unauthorisedly sub let the property to the respondents 2 and 3. According to the petitioner, the first respondent was the original tenant, whereas the respondents 2 and 3 are unauthorised sub tenants in the petition mentioned property.

4.The first respondent remained exparte and did not choose to contest the RCOP and the RCOP was contested by the so called sub tenants/respondents 2 and 3. According to the respondents 2 and 3 they entered into lease agreement with the original owner Radhakrishnan on 13.03.1987 and have been since then in the occupation of the property for business purpose.

5.The learned Rent Controller accepted the petitioners theory that the first respondent is the original tenant and the respondents 2 and 3 are the subtenants and passed the order of eviction on the ground of owner's occupation and also sub letting. Aggrieved against the same, the respondents 2 and 3 filed RCA.No.4 of 2005 which was dismissed by the Appellate Authority, thereby confirming the order of eviction. Hence, this revision by the respondent 2 and 3 before this Court.

6.The learned counsel for the respondents 2 and 3 has in the course of his argument in this revision, drawn the attention of this Court to the oral evidence of petitioner/Periyasamy as PW1 in the witness box about the nature of possession of the respondents 2 and 3 in the petition mentioned property, wherein he has stated that the

respondents 2 and 3 are not tenants, but only encroachers. PW1 has also further stated that the respondents 2 and 3 have been in the occupation of the property on the date of purchase i.e, on 13.11.2000 and the first respondent has nothing to do with the property on the date of filing of the RCOP. The petitioner as PW1 has also referred to in his evidence about the suit in OS.No.168 of 2000 filed by the respondents 2 and 3 against the vendor Vijayalakshmi, one Srinivasan and the petitioner herein arraying them as the defendants 1 to 3. The plaint and the written statement filed by the first respondent and the decree made in OS.No.168/2000 were also produced before the learned Rent Controller and marked as Exs.P9 to P11. The vendor Vijayalakshmi in Ex.P10 written statement filed therein raised a plea that the first respondent Sikkandar was inducted into possession of the property in lieu of interest for Rs.5000/- borrowed by Radhakrishnan from him and Sikkandar thereafter handed over the possession unauthorisedly to the respondents 2 and 3, who are the plaintiffs therein.

7.As far as the petitioner is concerned, he has come into the picture as the purchaser of the property only at later point of time. That being so, the competent person to speak about the nature of

possession of the first respondent is his vendor/Vijayalakshmi, whereas, the petitioner for the reasons best known to him omitted to bring her into the witness box. The petitioner has also not produced any other oral and documentary evidence to prove the tenancy relationship between original owner Radhakrishnan and the first respondent Sikkandhar and the payment of any rent by the said Sikkandar either to Radhakrishnan, Vijayalakshmi or to the petitioner herein.

8.As far as the respondents 2 and 3 are concerned they have also not produced any evidence before the Court to prove the alleged tenancy relationship between the petitioner and the first respondent. Though the respondents 2 and 3 as the plaintiffs in OS.No.168/2000 filed along with the plaint one document purported to be the tenancy agreement between Radhakrishnan and plaintiffs therein, the same document was not produced in the RCOP. Except the oral evidence of RW1 and RW2, there is no other satisfactory evidence to prove the tenancy relationship as alleged by the respondents 2 and 3. In the absence of one such evidence, the findings of the courts below that they are the unauthorised subtenants under the first respondent is based on no evidence and not supported by proper reasoning.

9. Both the courts below have without property going into this aspect found the petitioner theory to be true and passed an order of eviction on the ground of sub letting. The finding so rendered by the courts below regarding the nature of occupation of the respondents 2 and 3 is nothing but perverse. Both the courts below failed to see that the occupation of the respondents 2 and 3 being unauthorised, amounts to trespass or encroachment and the remedy available to evict them is only by way of civil suit and not by way of resorting to Rent Control proceedings, as such the rent control petition is not maintainable and the same is liable to be dismissed and the orders of the courts below hence call for interference by this Court.

10. The factum remains undisputed is that the respondents 2 and 3 are in the occupation of the premises and their occupation is neither permissive, authorised nor based on any other arrangement. That is why, they are treated as encroachers even by the petitioner. In that event, the remedy available to the petitioner is to institute independent civil suit for evicting them from the petition mentioned premises.

11.In the result, the eviction petition is dismissed, with liberty given to the petitioner to approach appropriate civil forum for recovery of possession and the civil revision petition is accordingly ordered.
No costs.

15.04.2015

Internet : Yes/No
Index : Yes/No
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To

- 1.The Rent Control Appellate Authority (Subordinate Judge),
Namakkal.
- 2.The Rent Controller (District Munsif cum Judicial Magistrate Court),
Paramathi.

K.B.K.VASUKI, J.

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CRP.No.1682 of 2006

15.04.2015.

CRP.No.1682 of 2006**K.B.K.VASUKI, J.,**

The civil revision petition is listed today under the caption "for being mentioned" at the instance of the learned counsel for the petitioners.

2.Both the learned counsel on record are present.

3.After hearing both sides, this Court deems it fit to revise para 11 which is the operative portion of the order dated 15.04.2015 made in CRP.1682 of 2006 as follows :-

"11. In the result, the civil revision petition is allowed by setting aside the orders of the rent control authorities below and the eviction petition is dismissed with liberty given to the owners/RCOP petitioner to approach the appropriate civil forum for recovery of possession. No costs."

4.Office is directed to issue fresh order copy on payment of cost.

15.07.2015.

NOTE : Office is directed to mark the appearance of
Mr.S.Parthasarathy, Senior Counsel
for Mr.R.Murugan on behalf of the respondents.

15.07.2015.

K.B.K.VASUKI, J.,

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