

Reserved on : 01.12.2015

Delivered on : 09.12.2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

**C.R.P.(NPD).No.3428 of 2009
and M.P.No.1 of 2014**

1.C.S.Raghavan

2.C.S.Sivakumar

... Petitioners

Vs.

A.Babulal Jain

... Respondent

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the order and decree dated 03.08.2009 passed in R.C.A.No.617 of 2008 on the file of the VIII Court of Small Causes, Chennai reversing the order and decree dated 17.07.2008 made in R.C.O.P.No.2177 of 2007 on the file of the XII Court of Small Causes, Chennai.

For Petitioners : Mr.V.G.Suresh Kumar

For Respondent : Mr.P.Gopalan

ORDER

The above Civil Revision Petition arises against the judgment and

decree passed in R.C.A.No.617 of 2008 on the file of the VIII Court of Small Causes, Chennai, reversing the order passed in R.C.O.P.No.2177 of 2007 on the file of the XII Court of Small Causes, Chennai.

2.The landlords are the petitioners and the respondent is the tenant. The petitioners filed R.C.O.P.No.2177 of 2007 for eviction on the ground of own use and occupation and additional accommodation. According to the petitioners, their father is the owner of the petition premises measuring an extent of 80 sq.ft. and that the respondent is the tenant in respect of the said premises for non-residential purpose of a monthly rent of Rs.1,500/-. Further, according to the petitioners, their father is using the vacant first floor in the premises for his business and they intend to use the extent of the respondent as showroom for their business. The petitioners' father is carrying on business in iron and steel and agricultural implements, besides wire and wire products in the premises bearing Door No.74, Rasappa Chetty Street, Chennai - 3 and according to them, it is insufficient to meet the expanding business of their father and their father needs the petition premises for additional accommodation. According to the petitioners, the relative hardship caused to them would outweigh the hardship caused to the respondent if an order of eviction is not passed.

3. According to the respondent/tenant, he has been regularly paying the monthly rent in respect of the petition premises. Further, he has stated that the petitioners' father is not using the first and second floor as his office and in fact, he is not at all doing any business and leading a retired life. According to the respondent, the relative hardship would be more to him than to the petitioners.

4. Before the Rent Controller, on the side of the petitioners/landlords, P.W.1 was examined and 4 documents, Exs.P1 to P4 were marked and on the side of the respondent/tenant, R.W.1 was examined and 3 documents, Exs.R1 to R3 were marked.

5. The Rent Controller, after taking into consideration the oral and documentary evidences let in by both sides, ordered eviction on the ground of additional accommodation and dismissed the petition for eviction on the ground of own use and occupation. Aggrieved over the order passed by the Rent Controller, the tenant preferred an appeal in R.C.A.No.617 of 2008 in respect of the eviction ordered by the Rent Controller on the ground of additional accommodation. However, the landlords have not challenged the order passed by the Rent Controller dismissing the petition on the ground of

own use and occupation. The Rent Control Appellate Authority, taking into consideration the case of both parties, set aside the order passed by the Rent Controller and allowed the appeal. Aggrieved over the judgment and decree passed by the Rent Control Appellate Authority, the landlords have filed the above Civil Revision Petition.

6. Heard Mr.V.G.Suresh Kumar, learned counsel appearing for the petitioners and Mr.P.Gopalan, learned counsel appearing for the respondent.

7. Mr.V.G.Suresh Kumar, learned counsel for the petitioners submitted that the petitioners, being the sons of the owner of the premises, are entitled to file the petition for eviction on the ground of additional accommodation and that the Rent Control Appellate Authority should not have set aside the order of eviction granted by the Rent Controller.

8. In support of his contention, the learned counsel for the petitioners relied upon the following judgments:

(i) 2008 (4) CTC 46 [Varadharajan & Co., 49, Chetty Street, Panruti Taluk and others Vs. Kasthuri Krishnan] wherein this Court held that the legal heirs are entitled to continue the eviction proceedings on the

death of the landlord.

(ii)2009 (1) CTC 65 [S.Ekanathan Vs. D.Balwant Singh (Deceased), rep by its Legal Representatives R1 to R9 and others] wherein this Court held that when a landlord, who sought for eviction for hotel business, dies after order of eviction and if the property settled in favour of one of his sons, the son, who got the property settled in his favour not legally prevented from seeking relief that was available to his father.

(iii)2011 (3) CTC 711 [Govindarajalu Naidu Vs. Vaduganathan (Deceased) Ramesh (Died) and others] wherein this Court held that when the Rent Control Appellate Authority confirmed the order of eviction passed by the Rent Controller and during the pendency of the revision, if the landlord had died, the legal representatives of the deceased landlord are entitled to prosecute the matter and on account of death of landlord, the requirement of owner's occupation does not cease to survive.

9.Countering the submissions made by the learned counsel for the petitioners, Mr.P.Gopalan, learned counsel appearing for the respondent submitted that when the Rent Controller had ordered eviction on the ground of additional accommodation, the said ground is available only to the owner of the premises and not to his legal representatives.

10. In support of his contention, the learned counsel for the respondent relied upon the following judgments:

(i) 2004-4-L.W. 751 [S.G.S. Soundarapandian Vs. 1.P.M.R. Muthukaruppan Servai (Deceased) and others] wherein this Court held that subsequent event to the death of the landlord itself has to be taken note of to hold that the claim of the landlord ceased to exist and the eviction originally ordered and affirmed on appeal, cannot be sustained.

(ii) 2014 (4) CTC 315 [K. Rajagopalan Vs. Gnanapandithan] wherein this Court held that the Rent Control Act is self contained code, therefore, the provisions of the Civil Procedure Code are not applicable.

(iii) (2009) 4 MLJ 26 [M. Velu Vs. Jayalakshmi Ammal] wherein this Court held that once an application is filed under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent) Control Act, it is not open for the landlord to maintain the application under Section 10(3)(c) also.

(iv) 1995-1-L.W. 82 [Voora Mahalakshamma Vs. C. Veera Reddy] wherein this Court held that no additional evidence can be let in at the

stage of revision. Even though the wording of Section 25 of Act is wider than Section 115 of the Civil Procedure Code, no additional evidence can be let in at Revision stage.

11. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the petitioners, who are the sons of the owner of the premises viz., C.M. Shanmugasundaram, filed the Original Petition in R.C.O.P.No.2177 of 2007 for eviction on the ground of additional accommodation (Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent) Control Act) and own use and occupation (Section 10(3)(c) of the Act). The main contention now raised before this Court is that the Original Petition filed by the petitioners is not maintainable for the reason that they cannot file the petition on behalf of the owner of the premises on the ground of additional accommodation and own use and occupation. On a perusal of the judgments relied upon by the learned counsel for the petitioners, it could be seen that in all these cases, the legal representatives were brought on record in the pending proceedings after the death of the landlord. In other words, the original proceedings were initiated by the owner of the premises and after his death, during the pendency of the proceedings, his legal representatives were brought on record to continue the matter further. In the case on

hand, the Original Petition itself was filed by the sons of the owner. It is

not in dispute that the owner of the premises, though available, has not chosen to file the petition for eviction on the ground of additional accommodation and own use and occupation. In these circumstances, the judgments relied upon by the learned counsel for the petitioners are not applicable to the present case.

12. On the contrary, in the judgment reported in **2004-4-L.W. 751** relied upon by the learned counsel for the respondent, this Court held that after the death of the landlord, the claim of the legal representatives of the deceased landlord ceased to exist and the eviction originally ordered and affirmed on appeal, cannot be sustained. In the judgment reported in **(2009) 4 MLJ 26**, this Court held that once an application is filed under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent) Control Act, it is not open for the landlord to maintain the application under Section 10(3)(c) also. In the case on hand, the landlord has filed the petition, both under Section 10(3)(a)(iii) and Section 10(3)(c) of the Act. In these circumstances, as held in the said judgment, the petition filed by the petitioners is liable to be rejected. Since it is settled position that the

petitioners, who are the sons of the owner of the premises, cannot seek for eviction on the ground of additional accommodation and own use and occupation of their father, the dismissal of the Original Petition by the Rent Control Appellate Authority is perfectly correct.

13.The petitioners filed an application in M.P.No.1 of 2014 under Order 41 Rule 27 of the Civil Procedure Code to permit them to file two additional documents. So far as the application filed under Order 41 Rule 27 of the Civil Procedure Code is concerned, the said provision is applicable only for appeals and not for revisions. The judgment relied upon by the learned counsel for the respondent in **1995-1-L.W. 82** squarely applies to the facts and circumstances of the present case. In these circumstances, the petition filed by the petitioners under Order 41 Rule 27 of the Civil Procedure Code is liable to be rejected.

14.In these circumstances, I do not find any ground to interfere with the judgment and decree passed by the Rent Control Appellate Authority in R.C.A.No.617 of 2008. The Civil Revision Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs. M.P.No.1 of 2014 is dismissed.

Index : No
Internet : Yes
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09.12.2015

M.DURAI SWAMY, J.
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To

- 1.The VIII Court of Small Causes,
Chennai.
- 2.The XII Court of Small Causes,
Chennai.

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