

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.01.2015

Decided on : 20.02.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

**C.R.P(NPD)No.4177 & 4178 of 2008 and
M.P.No.1/2008 in CRP NPD No.4177/2008 &
& M.P.Nos.1 & 2 of 2008 in CRP NPD No.4178/2008**

M.Jayakumari
Mrs.G.Porkodi
(2nd petitioner impleaded
vide order of court dt.09.07.2014
made in MP Nos.1 & 1 of 2013
in CPR Nos.4177 & 4178 of 2008)

... Petitioners in CRPs

Vs

U.Chelliah (deceased)

1.C.Kannan

C.Subramanian (deceased)

2.C.Natarajan

3.S.Vijayalakshmi

4.S.Premkumar

5.S.Devi

6.S.Selvan

.. Respondents in both CRPs

Common Prayer: Civil Revision Petitions are filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the judgment and decree passed in RCA No.941 & 882 of 2002 dated 29.10.2008 on the file of VIII Court of Small Causes (Appellate Authority) at Chennai reversing the order passed in RCOP No.2777 & 2776 of 1995 dated 19.08.2002 on the file of XII Court of Small Causes, Chennai.

For Petitioners : Mr.ARL.Sundaresan
in both CRPs Senior Counsel for
M/s.P.Satheesh Kumar

For Respondents : Mr.T.N.Sugesh for R1, R2
in both CRPs and R4 to R6.

R3 – Died

COMMON ORDER

These revisions arise out of the orders passed by the Rent Control Appellate Authority in RCA Nos. 882 & 941 of 2002.

2. The landlady is the petitioner in both these revisions. The petitioner filed RCOP No.2776 of 1995 against the tenants under Sections 10 (2) (i), 10 (2)(ii)(a) and 10(2)(vii) and RCOP No.2777 of 1995 under Section 4 of the Tamil Nadu Buildings Lease & Rent Control Act.

3. The case of the landlady is that during of month of September 1982, when the landlady wanted to purchase a property, one Arunachalam, land broker, approached her and informed that the owner of the premises Andalammal and others entered into an agreement of sale with one with the first respondent but the first respondent was not able to proceed further. Immediately, the landlady's husband visited the petition property and asked the first respondent whether he had any objection for the petitioner purchasing the property. At that time, the first respondent had stated that he could not purchase the property in question and if the advance amount is paid back to him, he had no objection for landlady to proceed further.

4. It is the further case of the landlady that at the time of inspection, the first respondent had stated that he wanted to reside in the petition property temporarily agreeing to pay a monthly rent of Rs.150/-. The tenant has also given undertaking that he would vacate the premises within a short time. The landlady has further averred in the eviction petition that she discharged the mortgage debt of Rs.9000/- on 05.10.1982 and paid Rs.8,000/- on 06.10.1982 in full and final settlement of all his claims and thereafter, she purchased the

property by a registered sale dated 11.10.1982. Since the first respondent's wife was suffering from ailments, he had asked further time to vacate the premises.

5. One Mr.V.C.Rangadurai, Advocate, helped the petitioner to complete the sale transaction and so she requested him to take steps evict the tenant and also handed over the original documents including the receipts given by the first respondent acknowledging the refund of the money paid by him under the earlier agreement of sale, retaining a xerox copy of the agreement. It is further stated that her counsel V.C.Rangadurai, on two occasions paid Rs.3,000/- each towards the rental arrears realised from the first respondent. On 24.11.1994, the said Rangadurai wrote a letter to the petitioner stating that the keys are available and that the petitioner shall contact him on 09.12.1994 for collecting the keys of the premises. He also further sent another letter dt.21.12.1994 but the keys were not handed over to the petitioner. Hence, the petitioner changed her counsel and sent a notice through Mr.R.Subramanyan on 01.02.1995 for which the respondent sent a reply containing false allegations.

6. It is the further case of the petitioner that the first respondent had moved to the address at No.58, Gujjunaicker Street,

Anna Nagar (East) and had sub-let the petition premises to the second respondent and also denied the title of the landlady. Hence, the petition.

7. The petitioner filed RCOP No.2777 of 1995 under Section 4 of the Tamil Nadu Buildings Lease & Rent Control Act claiming fair rent to be fixed at Rs.1,491/- per month.

8. The first respondent resisted the eviction petition contending that on 26.09.1979 he entered into an agreement with one Andalammal and others to purchase the property for a sum of Rs.11,500/- and also paid an advance of Rs.7500/- on the date of agreement. He was put in possession in pursuant to the agreement and therefore there is no landlord – tenant relationship between the petitioner and the respondent. He also denied the allegation that he agreed to pay monthly rent of Rs.150/-. The first respondent has further stated that he filed a suit in O.S.No.5551/1995 against the petitioner and her agents from interfering with the peaceful possession of the property and prayed for dismissal of the eviction petition.

9. Before the Rent Controller, the landlady examined PWs1 to 3 and marked Exs.P1 to P21. The first respondent was examined as

RW1 and he marked Exs.R1 to R10. The Advocate Commissioner's report and plan were marked as Exs.C1 to C3. The Rent Controller, by a common order dated 19.08.2002, order eviction on the ground of wilful default and subletting, while rejecting the other grounds and fixed fair rent at Rs.810/- per month. Aggrieved by the order, the tenant preferred appeal in RCA No.882 of 2002 against the order passed in RCOP No.2776 of 1995 and RCA No.941 of 2002 against the order passed in RCOP No.2777 of 1995. The Appellate Authority, by a common order dated 29.10.2008 allowed both the appeals holding that there was no landlord – tenant relationship between the petitioner and the respondent. Aggrieved by the order, the present revisions are filed.

10. Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner submitted that the Rent Controller, on proper appreciation of evidence held that the landlady has proved the jural relationship of the parties but the Appellate Authority allowed the appeals mainly holding that there was no written agreement between the parties. The first respondent is said to be put in possession of the petition premises as per the agreement dated 26.09.1978 but admittedly the first respondent did not file a suit for specific performance. It is further submitted that the first respondent/the chief tenant has received the

advance amount paid under agreement dated 26.07.1978 and also agreed to be in possession of the petition premises on a monthly rent of Rs.150/-.

11. The learned Senior Counsel would further submit that on 06.10.1982, the landlady returned the advance amount of Rs.8000/- to the tenant under Ex.P6, acknowledgement. Exs.P9, 10 and 11, letters written by Advocate V.C.Rangadurai would reveal that the tenant agreed to surrender possession of the premises to the petitioner but the Appellate Authority, without considering the oral and documentary evidence held that there was no landlord – tenant relationship which is perverse and the same is liable to be set aside by this Court.

12. Per contra, Mr.T.N.Sugesh, learned counsel for the respondents would submit that the landlady has not produced any material to show that the respondent was a tenant at any point of time, that the denial of title by the tenant is a bonafide one and that it is the duty of the landlady to prove the jural relationship, but the landlady has not discharged the burden of proof.

13. The specific case of the petitioner is that originally the tenant had entered into an agreement with the erstwhile owner Andalammal on 26.09.1978 and at the time of purchasing the property, the husband of the landlady approached the tenant to ascertain his objection for purchasing the property. The evidence of the petitioner would show that the tenant had given consent for the landlady to purchase the property provided the advance amount is refunded to him. Ex.P6 is the proof for refund of the advance amount of Rs.8000/- to the tenant paid under agreement dated 26.09.1978. Ex.P5, receipt is the proof for discharge of the mortgage debt with one Kamalakrishna Iyer and under Ex.P2, registered sale deed dated 11.10.1982 through which the petitioner purchased the property.

14. Ex.P7, patta would reveal mutation in the revenue record was effected in pursuance of the sale deed in favour of the landlady. Ex.P8 reveals that the property tax has been remitted by the petitioner. Exs.P9, P10 and P11 are the correspondences between the petitioner and her advocate Rangadurai. . Exs.P18 to P21 would show that the original tenant Chelliah has vacated the petition premises and residing in some other place.

15. The tenant resisted the eviction petition mainly

contending that he was put in possession of the property in pursuance of the agreement dated 26.09.1978 – Ex.R5 and he had also paid an advance of Rs.7500/-. Indisputably, the agreement holder did not take any steps to get the sale deed in his favour. PW1 has given evidence that her advocate Rangadurai, on two occasions paid the rental arrears of Rs.3000/- each and the tenant has defaulted to pay the rent from 01.10.1993. The Rent Controller, relying on Exs.P2, P3 and P7, held that the petitioner is the owner of the petition premises. The Rent Controller, referring on Ex.P6, held that the agreement of sale under Ex.R5 comes to an end.

16. Ex.P19, voters list shows that the chief tenant Chelliah vacated the petition premiss and presently resides at 58, Gujjunaicker Street, Anna Nagar (East), Chennai Exs.P20 & P21 – voters list would show that the second respondent is residing in the tenanted premises alongwith his wife Kamala and the name of the chief tenant does not find place in it. The Rent Controller, placing reliance on Exs.P19, P20 and P21 observed that the original tenant Chelliah had parted with possession of the petition premises to the second respondent Kannan. The Rent Controller, based on the oral and documentary evidence, held that the tenant has committed wilful default and also sublet the premises to the second respondent Kannan.

17. An Engineer has given evidence as CW1 and Exs.C1 to C3 are reports and plan of the Advocate Commissioner. The Rent Controller, referring to the evidence of CW1 and Exs.C1 to C3, fixed the fair rent at Rs.810/- per month. The Rent Controller, has followed procedures in fixing the fair rent.

18. However, the Appellate Authority allowed the appeals observing that the landlady purchased the premises on 11.10.1982 but filed the eviction petition only in the year 1995 and there is no document to show that the respondent was a tenant under her. It is further observed that there is no correspondence between the landlady and the tenant from the year 1982 to 1994. The Rent Control Appellate Authority, overloading the material evidence of PWs1 to 3 and Exs.P4 to P18, held that the landlady has not proved the jural relationship of the parties.

19. In my considered opinion, the finding of the Appellate Authority is perverse, arbitrary and the same is liable to be set aside. The Rent Controller has followed the procedures to ascertain the fair rent under Section 4 of the Rent Control Act and rightly fixed the fair rent at Rs.810/- per month. The Appellate Authority had set aside the order of the Rent Controller only on the ground that the landlady has

not proved the jural relationship and in view of the finding referred supra, the order passed in RCA No.941 & 882 of 2002 dated 29.10.2008 is set aside.

20. In the result, both the Civil Revision Petitions are allowed . No costs. Consequently, connected Miscellaneous Petitions are closed.

20.02.2015

Index:Yes
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To

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

2 The XII Judge,
Court of Small Causes,
Court.

K.KALYANASUNDARAM,J

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Pre-delivery order in
C.R.P(NPD)No.4177 & 4178 of 2008

20.02.2015