

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 23.03.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P (NPD) No.866 of 2002

&

CMP No.238 of 2014

1.Gurunathan (Deceased)

2.G.Lalitha

[2nd Appellant brought on record

as legal representative of the deceased

1st respondent vide order of court

dt.03.02.2011 made in

CMPs.775 to 777 of 2008

...Petitioner/Landlord

Vs

1.Smt.Megammal (Deceased)

2.Mohan Raj

3.Balan

4.Punnitharaj

5.Sundararaj

6.Deekaram

...Respondents/Tenants

[RR2 to 6 brought on record as legal representatives of the deceased sole respondent vide order of the court dt.13.6.2011 made in CMPs 359 to 361/2011]

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C against judgment and decree dated 01.02.2002 made in RCA No.4 of 2001 on the file of Rent Control Appellate Authority (Principal Sub court), Chengalpattu against the order dated 29.10.1999 in RCOP No.6 of 1997 on the file of Rent Controller cum District Munsif cum Judicial Magistrate, Alandur.

For Petitioner : Mr.Doraisami,
Senior Counsel for
M/s.Muthumani Doraisami

For Respondents : Mr.M.Baskar

O R D E R

This revision arises out of the order passed Rent Control Appellate Authority (Principal Sub Court, Chengalpat) passed in RCA No.4 of 2001 reversing the order of the Rent Controller cum District Munsif cum Judicial Magistrate, Alandur passed in RCOP No.6 of 1997.

2. The landlord who succeeded before the Rent Controller in seeking eviction and lost before the Appellate Authority is the revision petitioner. The landlord filed RCOP No.137 of 1989 before the Rent Controller cum District Munsif, Poonamallee seeking eviction of the respondent/tenant under Section 10(2), 10(3) (a)(i) and 10(2) (iii) of Tamil Nadu Buildings (Lease & Rent Control) Act. The eviction petition was subsequently transferred to the Rent Controller, Alandur and re-numbered as RCOP No.6 of 1997.

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

The landlord filed eviction petition stating that the respondent was inducted as tenant under him in respect of house bearing Door No.31A, Survey No.1247/2, Luscar Street, Alandur, St.Thomas Mount, Chennai on a monthly rent of Rs.30/-. The tenancy was oral and the tenant is a chronic defaulter in payment of rent and she failed and neglected to pay the rents willfully from 7th September 1982; that the landlord requires the premises for his own use and occupation and the tenant is also liable to be evicted on the ground of denial of title.

4. The eviction petition was resisted by the tenant stating that there is no landlord - tenant relationship between the petitioner and the respondent and that the petitioner is attempting to grab the property of the respondent by illegal means; that when the landlord tried to dispossess the tenant, she filed a suit in O.S.No.1345 of 1983 for injunction; that the land belongs to military estate and the authorities, considering the fact that the husband of the respondent was an ex-servicemen, allowed her to occupy the suit property and she had put up superstructure and continued in

possession and occupation of the property for more than 50 years. On those grounds, the tenant prayed for dismissal of the eviction petition.

5. Before the Rent Controller, the petitioner has examined two witnesses and marked Exs.P1 to P43 and the tenant has examined two witnesses and marked Exs.R1 to R6. Court documents were marked as Exs.X1 to X4. The Rent controller, on the basis of evidence available on record held that the respondent is a tenant under the petitioner and ordered eviction on the ground of wilful default and own use & occupation. However, in the appeal preferred by the tenant, the Rent Control Appellate Authority in RCA No.4 of 2001 reversed the findings of the Rent Controller and dismissed the eviction petition. Aggrieved by the order, the landlord has preferred the present revision.

6. Shri K.Duraisamy, learned Senior Counsel for the petitioner submitted that the Appellate Court has misconstrued the scope of the proceedings and consequently erred in dismissing the eviction petition; that the Appellate Court has based its conclusions on extraneous matters which are not relevant for the proper consideration of the matter in issue and consequently committed material irregularity; that the Appellate Court has committed material irregularity in reversing the well considered order of eviction passed by the Rent Controller without rendering a finding in respect thereof; that the Appellate Authority without assigning any valid reasons rejected Ex.P9 to P13, P25 to P31, P33 to P35. The learned Senior Counsel submitted that the conclusion of the Appellate Authority is arbitrary and perverse for overlooking the material evidence available on record.

7. On the other hand, Mr.Baskaran, learned counsel for the respondent submitted that the petitioner has not even pleaded that he is the owner of the property and he has not produced any evidence to prove his title over the property in dispute and on the other hand, the tenant has established that the land belongs to the military estate and superstructure was put up by the tenant and therefore the eviction itself is not maintainable in law. It is further submitted that the Appellate Court has rightly rejected the case of the petitioner which does not require interference by this Court.

8. The specific case of the petitioner is that the respondent was inducted as a tenant in respect of the property bearing Door No.31A, Survey No.1247/2, Luscar Street, Alandur, St.Thomas Mount, Chennai on a monthly rent of Rs.30/-. Exs.P9 to P13, P14 to P17, P25 to P27, P29 to P31 produced by the landlord

would reveal that from 1972 to 1996, the landlord has paid property tax for the tenanted premises to the local body; that Ex.P35 series shows that the respondent had paid rent from 08.12.1970 to 07.08.1982. The further case of the landlord / petitioner is that in Door No.31A, one Elias was inducted as a tenant and in the eviction order passed in RCOP No.70 of 1964, he vacated the premises on 23.10.1983. The respondent who has deposed as RW1 has admitted that the petitioner is the owner of the premises bearing Door No.31A. RW1 has also categorically admitted in her evidence that she does not know the survey number of the land and she has not produced any evidence to prove her possession of the petition premises for more than 50 years. RW1 has further admitted in her cross examination that she has not paid property tax to the local body. The Rent Controller, after considering the entire evidence in threat bare has held that the respondent is a tenant under the petitioner and she has committed wilful default in paying the rents.

9. The landlord has given evidence stating that his grandchildren are studying medicine and he requires the tenanted premises for their own use and occupation. The Rent Controller, found the requirement of the landlord as bonafide and ordered eviction on the ground of wilful default and own use & occupation.

10. The Rent Control Appellate Authority found that the land belongs to the military estate and the respondent has been in continuous possession for more than 50 years and rejected Ex.P35 series, rental receipts, simply accepting the case of the tenant that she has not paid rent to the landlord. The Appellate Authority has not given any reason for disbelieving Ex.P35 series, rental receipts. Exs.X1 to X4 are the communications from defence estate office addressed to the respondent. The Appellate Court, referring to Exs.X1 to X4, held that the land belongs to military estate and that therefore denial of title by the tenant is bonafide and proper. The Appellate Authority rejected Exs.P9 to P13, P25 to 31, 33 & 34 stating that the demand notice and payment of tax are not relevant to decide the issues involved in this case.

11. It is relevant to refer Section 116 of Indian Evidence Act, 1872 which reads as follows -

116. Estoppel of tenant; and of license of person in possession

No tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when license was given.

12. It is settled law that the plain reading of section would show that during continuation of the tenancy, the tenant cannot dispute the title of the landlord. The Rent Controller, on proper appreciation of the evidence and applying the correct preposition of law has held that the respondent is a tenant and ordered eviction on the grounds of wilful default and own use & occupation. As rightly contended by the learned Senior Counsel for the petitioner that the Appellate Authority, on misconception of law and facts, set aside the order of the eviction and allowed the appeal. In my considered view, the order of the Appellate Authority is perverse and arbitrary and therefore it is liable to be set aside and it is accordingly set aside.

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

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

rgr

To

1.The Principal Subordinate Judge,
Rent Control Appellate Authority,
Chengalpattu.

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2. The Rent Controller,
The District Munsif cum
Judicial Magistrate,
Alandur.

1 CC to M/s.Muthumani Doraisami, Advocate SR.No. 16179

C.R.P (NPD) No.866 of 2002

PUR (CO)
PSI (02.06.2015)



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