

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.3858 of 2015 &  
M.P.Nos.1 & 2 of 2015

R.Manickam

... Petitioner

v.

T.Premkumar

... Respondent

Civil Revision Petition filed under section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act against the order dated 23.07.2015 passed in R.C.A.No.5 of 2015 on the file of the Appellate Authority-Subordinate Judge, Udthagamandalam confirming the order dated 18.12.2014 in R.C.O.P.No.7 of 2008 on the file of Rent Controller, Udthagamandalam.

For Petitioner : Mr.V.R.Rajasekaran

For Respondents : Ms.A.B.Rehana Begum

O R D E R

Challenging the judgment and decree passed in R.C.A.No.5 of 2015 on the file of Rent Control Appellate Authority-Subordinate Court, Udhagamandalam, confirming the fair and decreetal order passed in R.C.O.P.No.7 of 2008 on the file of Rent Controller, Udhagamandalam, the tenant has filed the above Civil Revision Petition.

2. The respondent-landlord has filed the Original Petition in R.C.O.P.No.7 of 2008 for eviction on the ground of own use and occupation and denial of title.

3. The tenant filed his counter stating that only a vacant land was leased out to him and that the requirement of the premises for the landlord's own use and occupation is not *bona fide*.

4. Before the Rent Controller, on the side of the landlord, P.W.1 was examined and 24 documents Exs. P1 to P24 were marked and on the side of the tenant, he was examined as R.W.1, however, no document was marked.

5. The Rent Controller, after taking into consideration the oral and documentary evidences, ordered eviction.

6. Aggrieved over the same, the tenant preferred an appeal in R.C.A.No.5 of 2015 on the file of Subordinate Court, Udhagamandalam and the Rent Control Appellate Authority also confirmed the order of eviction and dismissed the appeal.

7. Aggrieved over the concurrent findings of the courts below, the tenant has filed the above Civil Revision Petition.

8. Heard Mr.V.R.Rajasekaran, learned counsel appearing for the petitioner and Ms.A.B.Rehana Begum, learned counsel appearing for the respondent.

9. So far as the denial of title is concerned, in order to prove that the superstructure was leased out to the tenant, the respondent-landlord marked Exs.P1 to P4 documents. Under Ex.P1, certified copy of the fair order made in R.C.O.P.No.40 of 2002, it could be seen that the said Rent Control Original Petition was filed for fixation of fair rent by the respondent-landlord, however, the tenant has not raised a plea with regard to ownership of the superstructure in the said Rent Control Original Petition. Therefore, it is clear that the tenant had submitted to the jurisdiction of the Rent Controller.

10. It is pertinent to note that only if a superstructure is leased out to the tenant, the provisions of Tamil Nadu Buildings (Lease and Rent ) Control

Act, shall apply. When the tenant has not raised any plea in the said Rent Control Original Petition, which was filed for fixation of fair rent, he cannot now raise a plea disputing the ownership of the superstructure. The tenant should have raised this plea at the earliest point of time. Therefore, I am of the considered view that the superstructure was also leased out to the tenant.

11. So far as the *bona fide* requirement of the premises is concerned, the landlord has stated in the petition that he is occupying only a rented premises and that he is not occupying any non-residential premises as his own.

12. It is not in dispute that the landlord is only occupying rented premises for running his business. The evidence of P.W.1 also establish that he is not in occupation of any non-residential premises belonging to him. When the landlord is occupying rented premises for running his business, he has filed the Original Petition seeking for eviction on the ground of own use and occupation. The evidence let in by the respondent-landlord would establish the case of the landlord. Taking into consideration the oral and documentary evidences, the courts below have concurrently ordered eviction on both grounds.

13. I do not find any error or irregularity in the orders passed by the courts below. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No

17.06.2016

Rj

To

1. The Rent Control Appellate Authority,  
Subordinate Court,  
Udhagamandalam,
2. The Rent Controller,  
Udhagamandalam,

M. DURAISWAMY,J.,

Rj

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