

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2016

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THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) Nos.1931 & 1932 of 2016
and
C.M.P.Nos.10032 & 10033 of 2016

M.Sundar
S/o.V.K.Murthy

... Petitioner in both petitions

vs

Ramesh Surianarayanan
S/o.Ramachandran

... Respondent in both petitions

Civil Revision Petitions filed under Article 227 of the Constitution of India against the orders of learned XII Judge, Small Causes Court, Chennai, passed in M.P.No.669 of 2015 in R.C.O.P.No.2259 of 2013 and M.P.No.668 of 2015 in R.C.O.P.No.2258 of 2013 on 24.03.2015.

For Petitioner : Mr.P.Chandrasekar

COMMON ORDER

These revisions arise against the orders of learned XII Judge, Small Causes Court, Chennai, passed in M.P.No.669 of 2015 in R.C.O.P.No.2259 of 2013 and M.P.No.668 of 2015 in R.C.O.P.No.2258 of 2013 on 24.03.2015.

2. Respondent/landlord moved R.C.O.P.No.2258 of 2013 on the file of learned XII Judge, Small Causes Court, Chennai, towards fixing fair rent and R.C.O.P.No.2259 of 2013 seeking eviction. In such petitions, petitioner/tenant moved M.P.Nos.668 and M.P.No.669 of 2015 seeking rejection of the petitions on the ground that he was not a tenant but was a permissive occupant of the premises, who had incurred much expenses thereon. The Court below, under the impugned orders, dismissed such petitions. Hence, these revisions.

3. Heard learned counsel for petitioner.

4. Since the order of the Court below speaks of Ex.R1, rental agreement, dated 01.01.2009 as pertaining to K.K.Nagar property, for purposes of clarity, this Court would inform that the property in question is at Saligramam. As reason for imposing heavy costs, this Court need do no more than merely incorporate the order of the Court below. The order of the Court below reads thus:

“This petition is filed u/s 29 of the Tamilnadu Buildings Lease and Rent Control Act of 1960.

Heard and perused the material on records. The petitioner states that respondent is petitioner's relation. On assurance given by respondent who is residing in Bangalore, the petitioner at his own cost had renovated the petition premise. The

respondent came over to petition premise is March 2013. On 24.04.2013 wrote a letter to handover petition premise. According to petitioner, petitioner is only a permissive occupant paying usage cost of Rs.4,500/- p.m.

The permissive occupation is based on memorandum of undertaking between petitioner and respondent. The petitioner states that there was no landlord tenant relationship between the litigant, therefore prays to reject the RCOP.

The respondent filed common counter and alleged that above petition is not maintainable. The petitioner filed suit in OS 5508/13 before XIII Assistant City Civil Court, petition in RCOP 2155/13 before XV Small Causes Court u/s 8(5) of Tamilnadu Buildings Lease and Control Act, Counter in RCOP 2258/13 and RCOP 2259/13, Wherein petitioner had categorically admitted himself to be the tenant of respondent. The RCOP 2258/13 is in the stage of PW1 cross. The RCOP 2259/13 is in stage of RW1 cross. At this stage only to drag on eviction proceeding came forward with above petition. The petitioner is not a permissive occupant. The petitioner had approached this court with unclean hands. Therefore prays to dismiss the petition.

The petitioner to prove his case marked Exhibit P1. The respondent to prove his case marked Exhibit R1 to R5.

Exhibit P1 is the details of expenditure statement given by Chartered Accountant. Chartered Accountant could not have any personal knowledge about expenditure incurred by petitioner if any. Exhibit P1 could have been issued only on information given by petitioner. Hence Exhibit P1 could not be considered. Exhibit

R1 rental agreement dated 01.01.2009 reveals as though the same pertain to K.K.Nagar property Exhibit R1 exhibits as though respondent was residing in Chennai in 2009. Therefore the petitioner plea that is 2008 respondent residing is Bangalore sought help of petitioner to evict the ex-tenant and permitted the petitioner to renovate the petition premise at his own cost is not substantiated. Exhibit R2 is the plaint copy is OS 5508/13 filed by petitioner against respondent for injunction except due process of law. Where in petitioner had categorically admitted himself as statutory tenant. Exhibit R3 is the copy of petition is RCOP 2155/13 filed by petitioner against the respondent seeking permission to depositing rent into court. Wherein also petitioner had described himself as statutory tenant. Exhibit R4 in the copy of order is RCOP 2155/13. Exhibit R5 is the judgment is OS 5508/13. In all the above exhibits petitioner had described himself only as tenant not as permissive occupant. Even in counter filed in RCOP 2258/13 and RCOP 2259/13 the petitioner in para 5 had stated that petitioner is a tenant with respondent to petition premise. The petitioner who filed Civil Suit and RCOP till date had not filed any Civil Suit to prove himself to be a permissive occupant. The petitioner who all along the entire litigations admitted himself to be a tenant cannot now change his own stand and allege differently. No material or corroborative evidence before this court to determine the petitioner as permissive occupant. The entire materials available on records exhibits the petitioner as tenant only. The petitioner in his reply affidavit had alleged that only because of earlier

counsel the petitioner was described as tenant is earlier litigations. The petitioner cannot cast entire responsibility upon earlier counsel. Counsel is only a representative to assist in legal and court proceeding. The actual fact of case cannot be changed by counsel without knowledge of litigant. Therefore plea of petitioner that for mistake of counsel party need not be suffered could not be considered. Under these circumstances this court conclude that the petitioner is a tenant with respondent. There exist landlord tenant relationship between petitioner and respondent. Therefore RCOP is maintenance. In the interest of justice petition is dismissed.”

The Civil Revision Petitions shall stand dismissed. Though inclined to impose heavy costs, this Court, taking into consideration the submission that the petitioner recently has lost his wife, refrains from doing so. No costs. Consequently, connected miscellaneous petitions are closed.

15.07.2016

Note to office:
Issue order copy by 22.07.2016

Index:yes/no
Internet:yes
gm

To
The XII Judge,
Small Causes Court,
Chennai.

C.T.SELVAM, J

gm

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