

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.2749 of 2016andC.M.P.No.14101 of 2016

Date of Reserving the Judgment	Date of Pronouncing the Judgment
20.12.2016	22.12.2016

P.Natarajan
S/o.Palanisamy

.. Respondent/Appellant/Petitioner/Tenant

-Vs.-

K.Krishnan
S/o.Kandasamy Mudhaliar

.. Petitioner/Respondent/Respondent/Landlord

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India as against the fair and decreetal order dated 04.06.2016 made in R.C.A.No.2 of 2015 on the file of the Subordinate Judge, Dharmapuri by confirming the fair and decreetal order dated 13.02.2014 made in R.C.O.P.No.12 of 2008 on the file of the District Munsif, Dharmapuri.

For Petitioner : Mr.C.Munusamy

For Respondent : Mr.C.Prabakaran

ORDER

The present Civil Revision Petition has been filed challenging the fair and decreetal order dated 04.06.2016 made in R.C.A.No.2 of 2015 on the file of the Subordinate Judge, Dharmapuri confirming the fair and decreetal order dated 13.02.2014 made in R.C.O.P.No.12 of 2008 on the file of the District Munsif, Dharmapuri.

2.The respondent herein as landlord has filed the petition in R.C.O.P.No.12 of 2008 for eviction on the ground of demolition and reconstruction. In the said proceeding, though the revision petitioner/tenant had admitted the landlord tenant relationship, he had disputed that the building is in dilapidated condition and hence, he contended that there is no necessity for demolition and reconstruction. The revision petitioner/tenant had further contended that since the landlord had refused to received the rent amount, he filed a petition in R.C.O.P.No.3 of 2008, in which the Court had directed the tenant to deposit the amount and accordingly, he had deposited the amount. To substantiate the same, the revision petitioner/tenant had filed documents Exs.R1 to R8. He had further submitted that he had also made improvement in the premises and prayed for dismissal of the RCOP proceedings.

The learned Rent Controller, after considering the oral and documentary evidences viz., P.W.1, R.W.1, R.W.2, Exs.P.1 to P.6, Exs. R1 to R13, Ex.X1, Ex.X2, Ex.C1 and Ex.C.2 had ordered eviction on the ground of demolition and reconstruction, against which the revision petitioner preferred an appeal in R.C.A.No.2 of 2015 before the Rent Control Appellate Authority - learned Subordinate Judge, Dharmapuri, wherein the fair and decreetal order passed by the learned Rent Controller was confirmed stating that the ground raised by the landlord for eviction viz., demolition and reconstruction is a bonafide one. Against the said order of the Rent Control Appellate Authority, the present Civil Revision Petition has been preferred.

3.The learned counsel appearing for the revision petitioner would submit that both the Courts below had not considered that there is no need to demolish the building as it was not in a dilapidated condition as claimed by the landlord. He would further submit that the respondent's father is the owner of the property with whom he entered into a rental agreement and he has died intestate leaving behind his wife and two sons viz., the respondent herein and his brother Ramalingam. Hence, the RCOP filed by the respondent without impleading his mother and brother is not maintainable. Further, there is no document to show that he had obtained permission for demolition and reconstruction. Hence, the learned counsel for the revision petitioner prayed

for allowing the Civil Revision Petition.

4. Resisting the same, the learned counsel appearing for the respondent would submit that the building is more than 100 years old. Further, an Advocate Commissioner was also appointed and he had filed his report which shows that the building is more than 60 years old and it needs demolition and reconstruction. Apart from that, the building is presently not in occupation and it has been abandoned and the petitioner is presently residing in his own house, which was admitted by him in this cross-examination. The same was also confirmed by the evidence of R.W.2/Tamil Selvan, who was working as foreman in the Tamil Nadu Electricity Board wherein he had stated that there is no electricity consumption in the said premises which shows that the premises in question is not in occupation by the petitioner. The learned counsel would further submit that the respondent/landlord has given an undertaking that he would demolish the building within one month and reconstruction will be made within three months, as prescribed under Section 14(2)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 [hereinafter called as the 'Act']. Further, the respondent had also filed documents such as Ex.P.4/Building license fee receipts to show his bonafide. Hence, the learned counsel would submit that both the Courts below had rightly considered the facts and passed a well reasoned order. Thus, he prayed for dismissal of the civil revision petition.

5.Considered the rival submissions made by both sides and perused the typed set of papers.

6.Now this Court has to consider the following points:-

1. Whether the building is in dilapidated condition?
2. Whether the building requires demolition and reconstruction?
3. Whether the order passed by the Courts below is sustainable?

Points 1 to 3:

7.It is an admitted fact that the revision petitioner/tenant had entered into a rental agreement with the father of the respondent. Further, though in the proof affidavit, the revision petitioner/tenant had stated that he is residing in the demised premises, during the course of his cross-examination, he has fairly conceded that he is residing in the property which was purchased in the name of his wife. The said factum was also fortified by the evidence of R.W.2/Tamil Selvan, who was working as foreman in the Tamil Nadu Electricity Board, wherein he had stated that there was no electricity consumption in the demised building which would prove that no one is in occupation of the premises. Furthermore, the report of the Advocate Commissioner would show that the building is 60 years old and the respondent/landlord had also filed

Ex.P4/Building license fee receipts . The respondent/landlord had also given an undertaking as prescribed under Section 14(2)(b) of the Act. Further, on behalf of the landlord, one of the co-owner has filed the petition for eviction to get the possession of the premises. It is evident from the deposition of R.W.1/Natarajan, the petitioner himself that even though he had sent the rent amount through money order to one Ramalingam, the brother of the respondent herein, he had directed the revision petitioner to pay the rent to his brother Krishnan, who is the petitioner in the RCOP proceedings. It would clearly indicate that the respondent/landlord had preferred the RCOP proceeding on behalf of his family. Hence, the argument put forth by the learned counsel for the revision petitioner that the RCOP itself is not maintainable for not impleading the necessary parties viz., the mother and brother of the respondent herein does not merit acceptance.

8.Considering all the above aspects, I am of the view that both the Courts below had rightly considered the oral and documentary evidences and had come to the correct conclusion that the prayer of the landlord for eviction on the ground of demolition and reconstruction is a bonafide one. Hence, the fair and decreetal order passed by both the Courts below does not warrant interference by this Court.

9. Accordingly, the Civil Revision Petition is dismissed. Consequently, the fair and decreetal order dated 04.06.2016 made in R.C.A.No.2 of 2015 on the file of the Subordinate Judge, Dharmapuri confirming the fair and decreetal order dated 13.02.2014 made in R.C.O.P.No.12 of 2008 on the file of the District Munsif, Dharmapuri is hereby confirmed. The revision petitioner/tenant is granted two months time to vacate the premises and hand over the vacant possession to the respondent/landlord. Connected miscellaneous petition is closed. No costs.

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Index:Yes/No

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Pre-Delivery order made in

C.R.P.(NPD),No.2749 of 2016

Dated : 22.12.2016

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