

Reserved on : 06.09.2016

Delivered on : 16.09.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.40 of 2016 and
C.M.P.Nos.242 & 11122 of 2016

Thirumaran @ Saravanan

... Petitioner

Vs.

Vasanthakumari

... Respondent

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the fair and decreetal order dated 26.10.2015 passed in R.C.A.No.3 of 2013 on the file of the Rent Control Appellate Authority (Principal Subordinate Court), Cuddalore confirming the fair and decreetal order dated 08.04.2013 passed in R.C.O.P.No.9 of 2008 on the file of the Rent Controller (Principal District Munsif Court), Cuddalore.

For Petitioner : Mr.K.Srinivasan, Senior Counsel
for Mr.J.Antony Jesus

For Respondent : Mrs.Hemasampath, Senior Counsel
for Mrs.R.Meenal

ORDER

The above Civil Revision Petition arises against the judgment and decree passed in R.C.A.No.3 of 2013 on the file of the Rent Control Appellate Authority (Principal Subordinate Court), Cuddalore, confirming the order of eviction passed in R.C.O.P.No.9 of 2008 on the file of the Rent Controller (Principal District Munsif Court), Cuddalore.

2.The tenant is the petitioner and the respondent is the landlady.

3.The respondent/landlady filed R.C.O.P.No.9 of 2008 for eviction on the ground of willful default, act of nuisance and sub-letting.

4.The brief case of the landlady/respondent is as follows:

According to the respondent, the petition property was rented out to the petitioner on a monthly rent of Rs.4,070/-. An advance of Rs.1,80,000/- was paid by the tenant. The tenant was restrained from sub-letting the property. The rental premises has two floors viz., ground and first floor. The tenant has not been paying the rent regularly. The tenant, without the consent of the landlady, sub-let the first floor of the property to Tata Indicom Agency, which is an Agency, selling regular phones and mobile

phones. The Agency was taken by somebody else to whom the respondent had sub-let the property. The landlady sent a notice on 07.07.2008 pointing out the sub-tenancy. The tenant made the sub-tenant vacate and has brought the first floor under lock and key. By parking the vehicles in front of the petition premises, the tenant prevented the landlady ingress and egress of the petition premises, causing nuisance. The tenancy was terminated from 31.07.2008. In these circumstances, the landlady has filed the Rent Control Original Petition for eviction.

5.The brief case of the tenant/petitioner is as follows:

The tenant admitted that the rent was Rs.4,070/- per month and after 06.07.2005, the rent was fixed at Rs.4,477/- per month. The landlady demanded exorbitant rent of Rs.15,000/- per month and refused the rent sent by the tenant. The tenant filed a suit in O.S.No.233 of 2008 on the file of the Principal District Court against the landlady for injunction. The tenant filed R.C.O.P.No.6 of 2008 for deposit of rent and also deposited a sum of Rs.8,954/- towards rents for the months of April and May, 2008. The tenant denied that the property was sub-let to Tata Indicom Agency. The tenant got the Tata Indicom products dealership and he was running the Agency in the first floor, therefore, it will not amount to sub-letting. The tenant has been paying monthly rents and also deposited the rent into the

Court. Therefore, there is no willful default as contended by the landlady. There is no act of nuisance committed by the tenant. The vehicles were never parked in front of the premises causing inconvenience or nuisance to the landlady. In these circumstances, the tenant prayed for dismissal of the petition.

6.Before the Rent Controller, the landlady was examined as P.W.1 and 2 documents, Exs.P1 & P2 were marked and on the side of the tenant, he was examined as R.W.1 and 9 documents, Exs.R1 to R9 were marked. The Commissioner's report and plans were marked as Exs.C1 to C3.

7.The Rent Controller, taking into consideration the oral and documentary evidences of both parties, ordered eviction on the ground of sub-letting and rejected the grounds of willful default and act of nuisance. Aggrieved over the order of eviction on the ground of sub-letting, the tenant has filed an appeal in R.C.A.No.3 of 2013 and the Rent Control Appellate Authority also confirmed the order of eviction on the ground of sub-letting. Aggrieved over the concurrent findings of the Courts below, the tenant has filed the above Civil Revision Petition.

8. Heard Mr.K.Srinivasan, learned Senior Counsel for the petitioner and Mrs.Hemasampath, learned Senior Counsel for the respondent.

9.Mr.K.Srinivasan, learned senior counsel appearing for the petitioner/tenant submitted that the tenant has taken the Agency of Tata Indicom Services and that he was running the Agency in the first floor of the demised premises, therefore, it will not amount to sub-letting the premises. The learned senior counsel further submitted that the Courts below have erroneously ordered eviction on the ground of sub-letting when the said contention was not proved by the landlady by any evidence. The learned senior counsel for the petitioner further submitted that the dismissal of the application filed for production of additional evidence is erroneous for the reason that the application was dismissed by the Rent Control Appellate Authority by a separate order on 26.10.2015 and further submitted that the Rent Control Appellate Authority should have disposed of the application along with the appeal.

10.In support of his contentions, the learned senior counsel for the petitioner relied upon the following judgments:

(i)2010 (6) CTC 319 [Vinaykishore Punamchand Mundhada and another Vs. Bhumi Kalpataru and others] wherein the Hon'ble Supreme

Court held as follows:

“18.It is well settled that sub-tenancy or sub-letting comes into existence when the Tenant voluntarily surrenders possession of the tenanted premises wholly or in part and puts another person in exclusive possession thereof without the knowledge of the Landlord. In all such cases, invariably the landlord is kept out of scene rather, such arrangement whereby and whereunder the possession is parted away by the Tenant is always clandestine and such arrangements take place behind the back of the Landlord. It is the actual physical and exclusive possession of the newly inducted person, instead of the tenant, which is material and it is that factor which reveals to the Landlord that the Tenant has put some other person into possession of the tenanted property.

19.It would be impossible for the Landlord to prove, by direct evidence, the arrangement between the Tenant and sub-Tenant. It would not be possible to establish by direct evidence as to whether the person inducted into possession by the Tenant had paid monetary consideration to the Tenant. Such arrangement which may have been made secretly, cannot be proved by affirmative evidence and in such circumstances, the Court is required to draw its own inference upon the facts of the case proved at the enquiry. Delivery of exclusive possession by the Tenant to a stranger to the Landlord and without the prior permission of the Landlord is one dominant factor based on which the Court could infer as to whether the premises was sub-let.”

(ii)(1982) 1 M.L.J. 340 [Mohammed Saleha Vs. Syed Nooruddin]

wherein this Court held as follows:

“Under Section 26 of Act (XVIII of 1960), the landlord is expected to implead the subtenant also as a party in order to avoid any collusion between the landlord and the main tenant. If there was a sub-tenant with the written consent of the landlord and a collusive eviction petition was filed by the landlord and an eviction order is passed in the absence of the sub-tenant, it will cause undue hardship and injustice. In order to obviate such collusive proceedings only, such safeguard has been added in the amended Act. Because Syed Ahmed is the brother of the respondent herein to the knowledge of the landlord, the latter has not impleaded Syed Ahmed also as a party as it will throw much light on the knowledge of the landlord that Syed Ahmed is also the son of Syed Hussain, the father of the tenant. The omission to implead Syed Ahmed shows the mala fides of the landlord. Therefore, also the eviction petition stands to be dismissed.”

(iii)(2003) 1 M.L.J. 225 [Kannika Vs. Krishnasamy] wherein this

Court held as follows:

“In this case, the premises let out to the revision petitioner by the respondent herein has been in the possession of the revision petitioner and only the municipal platform upon which a shed was put up by the revision petitioner and let out

to third parties by the revision petitioner according to the respondent herein himself. If the decisions referred to above are applied to the facts and circumstances of the case, it will certainly mean that there was no subletting of any portion of

the rented premises by the revision petitioner to the third parties.”

(iv)2006 (2) CTC 785 [R.Nagarathinam Ammal Vs. M.Raja @

Govindaraj and another] wherein this Court held as follows:

“13. A perusal of the above judgments would indicate the following principles and guidelines, with reference to the appreciation, regarding the ground of subletting :

(1) In order to prove the tenancy or sub-tenancy, the main ingredient that has to be established is that the alleged sub-tenant is in exclusive possession of or part of the premises and the tenant retains no control over that part of the premises.

(2) A tenant can be said to sublet the demised premises to a third party only when the tenant had permitted the third party to occupy the premises and divested himself completely of the possession of the premises or part thereof. If a tenant had permitted a third party to use the premises along with him while the tenant retains legal possession, it will not amount to subletting.

(3) It is only when a person other than the tenant sits in the shop in exercise of his own right, the presumption of

subletting can arise. As long as control over the premises is kept by the tenant and the business run in the premises is of the tenant, subletting flowing from the presence of a person other than the tenant in the shop cannot be assumed.

(4) If exclusive possession is established, it may not be impermissible for the Court to draw an inference that the transaction was entered into with monetary consideration in mind. It is open to the respondent to rebut this. Such transactions of subletting in the guise of licences are, in their very nature, clandestine arrangements between the tenant and the sub-tenant and there cannot be direct evidence. It is not, unoften, a matter for legitimate inference. Though the burden of proof, as a matter of law, remains constant throughout a trial, the evidential burden, which rests initially upon a party bearing the legal burden, shifts according to the weight of the evidence adduced by the party during the trial.

(5) It is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property has been sublet has paid monetary consideration to the tenant. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be

proved by affirmative evidence and the Court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises was sublet.

(6) As regards the question whether there is a sub-lease in favour of the sub-tenant, it is always a matter for inference from the evidence. The landlord cannot be expected to prove that there is a transaction of lease between the tenant and the alleged sub-tenant. The Court has to draw the necessary inference only from the evidence placed before it.”

(v)2010 (2) MWN (Civil) 506 [Rajeswari and 5 others Vs.

Ramalingam] wherein this Court held as follows:

“...

43.In view of the above, this Court comes to an inescapable conclusion that the Respondent/Landlord has not proved to the subjecting satisfaction of this Court that the First Revision Petitioner has parted with the legal possession of the petition mentioned premises and the sixth Revision Petitioner is an exclusive possession of the petition mentioned property and since the evidence in regard to “parting with possession” is conspicuously absent, the finding on sub-letting or sub-lease rendered by the both the authorities below is not a valid and legal one and in that view of the matter, this Court reverses the finding on sub-lease or sub-letting rendered by both the authorities and hold that the Respondent/Landlord has not proved that the First Revision Petitioner/Tenant has

sub-lease or sub-let the petition mentioned property to the Sixth Revision Petitioner and the point is answered against the Respondent/Landlord.”

(vi)2011 (2) MWN (Civil) 769 [1.Rajendra Kumar Jain 2. Anand Kumar Jain 3.Gulati Roat Vs. S.Jaikrishnan] wherein this Court held that if the landlord merely alleges that the tenant had sub-let without any concrete evidence, an order of eviction on the ground of sub-letting cannot be ordered.

(vii)CDJ 2014 MHC 3648 [V.Jayakumar Vs. V.Swaminathan & another] wherein this Court held as follows:

“...

There is no proof to show that the subtenant is in exclusive possession and enjoyment of the rented premises. The initial burden of proving subletting is on the landlord to establish that a third party/subtenant is in exclusive possession of the premises and that the tenant has no legal possession of the tenanted premises. Evidence adduced has only proved that the tenant is in possession of the premises and the so-called subtenants are only employees under the tenant.”

11. Countering the submissions made by the learned senior counsel for the petitioner, Mrs. Hemasampath, learned senior counsel appearing for the respondent/landlady submitted that since there is no proof that the petitioner/tenant is an Agent of Tata Indicom, the first floor leased out to Tata Indicom Services can be construed only as sub-letting and the order of eviction passed by the Courts below are perfectly correct. The learned senior counsel further submitted that the Rent Control Appellate Authority had dismissed the application in I.A.No.7 of 2014 in R.C.A.No.3 of 2013 on the same day on which the appeal in R.C.A.No.3 of 2013 was dismissed. Since the Rent Control Appellate Authority had dismissed the application on the same day, it cannot be construed that the Appellate Authority had dismissed the application separately.

12. In support of her contention, the learned senior counsel appearing for the respondent relied upon the judgment reported in **2016 (3) CTC 671 [Abdul Rahim Vs. 1.Jothi, 2.V.Padmapriya, 3.V.Muthu Krishnan]** wherein this Court held as follows:

“ ...

48. As observed by Abdul Hadi, J., former Judge of this Court, in the decision cited first supra, regarding reception of any such additional evidence, Rule 16 of Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 only provides for the

Appellate Authority taking such additional evidence, when the Appeal before it is pending under Section 23 of the Act. While thus the said Rules provide for reception of additional evidence only at the time of the First Appeal before the Appellate Authority, there is no provision either under the main enactment or under the Rules, for reception of any such additional evidence at the time of Revision before this Court under Section 25 of the Act. If really such additional evidence could be entertained in any such Revision, it would have been specifically provided for, particularly when the above said Rules specifically provides for such entertainment of additional evidence before the Appellate Authority. It is clear that the law has not provided for any such entertainment of additional evidence at the time of revision under Section 25 of the Act.”

13. On a careful consideration of the materials available on record, the submissions made by the learned senior counsel on either side and the judgments relied upon by the learned counsel on either side, it could be seen that the respondent/landlady has filed the Rent Control Original Petition for eviction on the ground of willful default, act of nuisance and sub-letting. The Rent Controller had ordered eviction on the ground of sub-letting and dismissed eviction on the grounds of willful default and act of nuisance. The Rent Control Appellate Authority had also confirmed the order of eviction on the ground of sub-letting. Against the concurrent

findings of the Courts below ordering eviction on the ground of sub-letting, the tenant has filed the above Civil Revision Petition. It is the case of the landlady that the first floor of the petition mentioned property was sub-let by the tenant to Tata Indicom Company. However, the tenant contended that he has taken Agency from the said Company and therefore, running the Agency in the first floor will not amount to sub-letting. The tenant had admitted that he was running Tata Indicom products dealership in the first floor of the premises. However, in support of his contention, the tenant has not produced any document issued by the Company evidencing that they have given the Agency to the tenant. Even in the allotment of Service Tax Code Number in favour of M/s.Anandh Kumar Communication Services, it has not been stated that the respondent is the agent of Tata Indicom Company. Even the letter issued by the Central Excise Department dated 23.11.2004 was not produced before the Courts below. The reason for not producing the document also was not explained by the tenant. When it was contended that the Tata Indicom Company had given Agency to the tenant, definitely they would have issued written orders giving Agency to him. Even that order was not produced before the Court to establish that he has taken the Agency from Tata Indicom Company. Except the oral evidence of the tenant that Tata Indicom products were sold in the first floor, there is nothing on record to show that he has taken Agency from the Company. In

the absence of any evidence produced by the tenant to establish his contention that he is an agent of the Tata Indicom Company, the Courts below have rightly ordered eviction on the ground of sub-letting.

14. Though there is no dispute with regard to the ratios laid down in the judgments relied upon by the learned senior counsel for the petitioner/tenant, since the petitioner/tenant had failed to establish his case by adducing oral and documentary evidences to prove that he has taken Agency from the Tata Indicom Company, the principles laid down in the said judgments cannot be applied to the present case.

15. In the absence of any proof produced by the tenant with regard to the Agency, the functioning of the Tata Indicom Company in the first floor of the premises can be construed only as sub-letting of the premises. In these circumstances, the Courts below have rightly ordered eviction on the ground of sub-letting.

16. With regard to the dismissal of the application in I.A.No.7 of 2014, it could be seen that the application was disposed of only on the same date on which the appeal was disposed of. Though the application was not disposed of by a common order, since it was disposed of on the same day,

the contention raised by the petitioner cannot be accepted. That apart, the additional document sought to be marked (i.e.) the letter relating to the allotment of Service Tax Code Number stands in the name of M/s.Anandh Kumar Communication Services. When there is no evidence to show that the said Company viz., M/s.Anandh Kumar Communication Services is an agent of Tata Indicom and that the tenant is the sole proprietor of the said Company, the production of the said letter dated 23.11.2004 as additional document shall not improve the case of the tenant. Therefore, I do not find any reason to receive the said document as an additional document. The Rent Control Appellate Authority has rightly dismissed the application.

17.In these circumstances, I do not find any ground to interfere with the concurrent findings of the Courts below. The Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. The Civil Miscellaneous Petition in C.M.P.No.11122 of 2016 is ordered. Consequently, the Civil Miscellaneous Petition in C.M.P.No.242 of 2016 is closed.

18.After pronouncement of orders, the learned counsel for the revision petitioner/tenant submitted that three months time may be

granted to the petitioner to vacate and handover vacant possession of the petition premises.

19.The learned counsel appearing for the respondent has no objection for granting three months time.

20.Accordingly, the petitioner/tenant is granted three months time to vacate and handover vacant possession of the petition premises, without driving the respondent/landlady to initiate execution proceedings. The petitioner shall file an affidavit of undertaking to that effect on or before 23.09.2016 before the Registry and the same shall form part of the record.

Index : No
Internet : Yes
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16.09.2016
(1/2)

To

1.The Rent Control Appellate Authority
(Principal Subordinate Court),
Cuddalore.

2.The Rent Controller
(Principal District Munsif Court),
Cuddalore.

M.DURAIWAMY,J.
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**Pre-Delivery Order made in
C.R.P.(NPD).No.40 of 2016 and
C.M.P.Nos.242 & 11122 of 2016
(1/2)**

16.09.2016