

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRP.No.4630 of 2012

K.Anandkumar

... Petitioner/landlord

Vs

N.Natarajan

... Respondent/Tenant

Civil Revision Petition is filed under section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act) to set aside the Judgment and decree dated 21.10.2011 and made in R.C.A.No.37 of 2010, on the file of the learned Rent Control Appellate Authority (Principal Sub Judge), Coimbatore reversing the order of the eviction dated 20.07.2010 and made in R.C.O.P.No.180 of 2003. On the file of the learned Rent Controller (Additional District Munsif), Coimbatore.

For Petitioner : Mr.Gandhi, Senior Counsel
for M/s.U.Sriram

For Respondent : Mr.V.Sivakumar

ORDER

This Memorandum of Civil Revision Petition has been directed under the provisions of Section 25 of Tamil Nadu Buildings (Lease and Rent Control), Act as against the Judgment and decree dated 21.10.2011 and made in the Rent Control Appeal in R.C.A.No.37 of 2010 on the file of learned Rent Control Appellate Authority (Principal Sub Judge, Coimbatore), reversing the order of eviction dated 20.07.2010 and made in R.C.O.P.No.180 of 2003 on the file of learned Rent Controller (First Additional District Munsif), Coimbatore.

2. The revision petitioner is the landlord whereas respondent is the tenant.

3. The revision petitioner may herein after be referred to as the petitioner whereas the respondent be referred to as the respondent wherever the context so require. The petitioner had filed a petition under sections 10 (2)(i), 10(3)(a)(iii) and 10 (2)(vii) of the Tamil Nadu Buildings (Lease and Rent Control), Act, 1960 seeking the relief of eviction of the respondent from

the tenanted premises on the grounds of willful default in payment of rent, owners occupation and denial of title.

4. That petition was resisted by the respondent by filing his counter statement. The learned Rent Controller, on appreciation of the evidences, both oral and documentary, had proceeded to allow the petition on the grounds of denial of title with a finding that the denial of title by the respondent is not bonafide. In respect of other two grounds viz willful default in payment of rent and owners occupation, the petition was dismissed. Two months time was granted to the respondent for surrendering the vacant possession of the tenanted premises to the landlord.

5. Having been aggrieved by the impugned order dated 20.07.2010, the respondent had preferred an appeal before the learned Rent Control Appellate Authority (Principal Sub Judge), in R.C.A.No.37 of 2010.

6. After hearing both sides, the learned Rent Control Appellate Authority, had allowed the appeal revising the eviction order passed by the Rent Controller dated 20.07.2010.

7. Challenging the correctness of the Judgment of the Rent Control Appellate Authority dated 21.10.2011, present revision is filed by the landlord.

8. On perusal of the Judgment of the Rent Control Appellate Authority, this Court finds that the learned Rent Control Appellate Authority might have had wavering or oscillating mind in understanding or in appreciating the facts and the evidences available on record.

9. From the perusal of the pleadings of the parties to the revision, it can easily be understood that the petitioner herein claims to be the owner of the property based on the compromise final decree and made in I.A.No.323 of 1974 in O.S.No.65 of 1971. The responden /tenant has contended that challenging the final decree passed in O.S.No.65 of 1971, an SLP is pending before the Supreme Court of India.

10. It is also the case of the respondent that he has filed a suit in O.S.No.4070 of 2004, on the file of the District Munsif, Coimbatore, to declare the final decree passed in the petition in I.A.No.323 of 1974 and made in Suit O.S.No. 65 of 1971, as invalid and not binding on him.

11. Admittedly, this suit in O.S.No.4070 of 2004, is still pending before the District Munsif, Coimbatore. It is the specific contention of the respondent /tenant that though the

petitioner /landlord has claimed ownership over the tenanted premises based on the compromise final decree obtained in O.S.No. 65 of 1971, since the suit in O.S.No.4070 of 2004, is still pending and the claim of the petitioner/landlord that he is the owner of the tenanted premises, is yet to be decided in the above said suit, the learned Rent Controller has got no jurisdiction to determine this issue as it is pre-matured.

12. Further, it is to be seen that when the suit in O.S.No.4070 of 2004, is still pending on the file of the District Munsif, Coimbatore, and the question of ownership has not yet been determined, the learned Rent Controller has got no jurisdiction to decide or to conclude that the denial of title by the respondent/tenant is not bonafide.

13. Section 10 enacts that a tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with provisions of this section or Sections 14 to 16: The second proviso to sub-section (1) of section 10 reads as under:

"Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bonafide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claims is unfounded."

14. From the languages employed in the second proviso to sub-section (1) of section 10, it is understood that since the question of ownership is to be adjudicated and answered in the suit in O.S.No.4070 of 2004, which is now pending on the file of the District Munsif, Coimbatore, the learned Rent Controller cannot decide in the Rent Control Original Petition that the claim of the respondent/tenant is not bonafide. Secondly, it is brought to the notice of this Court that an SLP is also pending before the Apex Court as against the final decree passed in O.S.No.65 of 1971. Since the prime issue, with reference to ownership in respect of tenanted premises is to be determined in the suit in O.S.No.4070 of 2004 by the District Munsif, Coimbatore, the issue of ownership cannot be decided either in the Rent Control Original Petition or in the Rent Control Appeal.

Keeping in view of the above facts, this revision petition is dismissed as devoid any merits. However, there shall be an order as to costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

pam

To

1. The Principal Sub-Judge,
Rent Control Appellate Authority,
Coimbatore.
2. The Additional District Munsif,
Rent Controller,
Coimbatore.
3. The Section Officer.
V.R.Section,
High Court, Madras.

+1cc to Mr.V.Sivakumar, Advocate sr. 74551

+1cc to Mr.U.Sriram, Advocate Sr. 73741

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KJI (CO)
VR(08/09/2017)

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