



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (NPD) (MD).No.214 of 2016 and CMP(MD).No.948 of 2016

D. Stephenson : Petitioner/Appellant/  
Respondent/Respondent/Tenant  
Vs.

1. D. Dhanaraj  
2. D. Ganamuthur Singaraj  
3. D. Jesu Doss Kennedy  
4. D. Rajan Jeyakaran : Respondents/Respondent/  
Petitioners/Petitioners/Landlord

Prayer: This Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the fair and decreetal order passed in RCA.No.1 of 2011, on the file of the Rent Control Appellate Authority (Sub Court), Valliyoor, dated 05.12.2015 confirming the fair and decreetal order passed in I.A.No.2 of 2010 in RCOP.No.7 of 2009, on the file of the learned Rent Control Authority (District Munsif Court), Valliyoor, dated 08.11.2010.

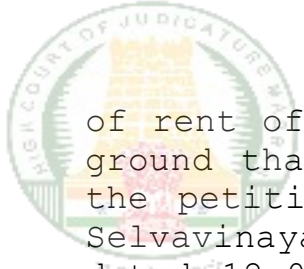
For Petitioner : Ms. H. Arumugam  
For Respondents : Mr. G. Prabhu Rajadurai

### ORDER

This Civil Revision has been filed against the fair and decreetal order passed in RCA.No.1 of 2011, on the file of the Rent Control Appellate Authority (Sub Court), Valliyoor, dated 05.12.2015 confirming the fair and decreetal order passed in I.A.No.2 of 2010 in RCOP.No.7 of 2009, on the file of the learned Rent Control Authority (District Munsif Court), Valliyoor, dated 08.11.2010.

2. The revision petitioner is the tenant. The respondents are landlords.

3. The respondents filed RCOP.No.7 of 2009, on the file of the learned Rent Controller / District Munsif, Valliyoor, for eviction of the petitioner on the ground of wilful default Act and re-construction. They also filed I.A.No.2 of 2010 under Section 11 of Tamil Nadu Buildings (Lease and Rent Control) Act, for a direction to the petitioner to deposit entire arrears



of rent of Rs.70,750/-. The petitioner resisted the same, on the ground that there is no tenant and landlord relationship between the petitioner and respondents and the property belongs to one Selvavinayagar Temple as the same was endowed by Endowment deed, dated 12.07.1945. The petitioner's father took the vacant land from the temple and put up the construction and carrying on timber business.

4. Before the learned Judge, the respondent marked 24 documents as Exs.A1 to A24 and the petitioner marked 10 documents as Exs.B1 to B10. Both the parties did not let in oral evidence. The learned Rent Controller considering all the materials on records held that the respondents are the landlords of the petition premises and the petitioner is a tenant. Considering the documents filed by the respondents, the learned Rent Controller held that the petitioner is liable to pay a sum of Rs.30,500/- as arrears of rent and directed the petitioner to deposit the same within one month from 08.11.2010. The petitioner did not deposit the said amount within the time limit and filed RCA.No.1 of 2011. Pending RCA, the petitioner deposited a sum of Rs.30,500/- on 03.12.2011 and another sum of Rs.30,000/- on 06.04.2015. After contest, the said RCA was dismissed on 05.12.2015. Against that, the present revision is filed.

5. The learned counsel for the petitioner contended that the Courts below failed to see that the respondents are not the landlords of petition premises and only Selvavinayagar Temple is owner of the petition premises, as per the endowment dated 12.07.1945. The petitioner is disputing ownership of petition premises and has filed O.S.No.415 of 2011 which is pending. He further contended that, the Courts below failed to consider all the materials and allowed the application filed by the respondents and dismissed RCA. In support of his contention he has relied on the following Judgments:-

(i) In the Judgment reported in **2013(3) MWN Civil 593 (Saroja Ammal and another Vs. Ganesa Mudaliar (deceased) and others)**, wherein in paragraph nos. 12 and 13 it has been held as follows:-

12. According to the respondents herein, who filed the eviction petition before the Rent Controller, the petitioners herein are their tenants. However, such claim is disputed by the petitioners by stating that they are not tenants and on the other hand, they are in possession and enjoyment of the property in pursuance to an agreement of sale. Such pleadings taken by the respective parties would certainly lead the Court to go into the question to find out as to whether there exists landlord and tenant relationship between the parties. The said question goes to the root of the matter. In the absence of any finding to that effect against the petitioners and in favour of the respondents, certainly,



an order of eviction could not be passed. Therefore, it is for the parties to contest the said issue before the Rent Controller and establish their respective case. Therefore, in my considered view, the matters have to be agitated on merits and for such purpose, I find that the order of eviction passed by the Rent Controller has to be set aside and the matters need to be remitted back for fresh disposal. At the same time, insofar as the application under Section 11 (4) of the Act is concerned, it is to be seen that the very section itself starts by saying that 'no tenant' against whom, an application for eviction has been made shall be entitled to contest the application. If a person, who is arrayed as respondent/ tenant in the eviction proceedings, comes and disputes before the Court that he is not a tenant and he is residing in the property in different capacity, then, in my considered view, strict application of Section 11 does not arise in those cases especially, under the circumstances that the relationship between the parties as landlord and tenant is disputed. Here is the case of such nature. Therefore, the learned Rent Controller was not justified in ordering eviction without going into that issue. At any event, the RCOP is of the year 2001 and the matter is kept pending for all these years by way of filing appeal as well as by filing revision before this Court. In the event of the RCOP being allowed on merits, the interest of the respondents/ landlords has to be necessarily protected at this stage and therefore, without prejudice to the contentions of the either parties, the petitioners should be directed to deposit the entire arrears of rent before the Rent Controller.

13. Considering all the above facts and circumstances of the Case, these two civil revisions petitions are allowed by way of remand subject to the conditions that the petitioners shall deposit the entire arrears of rent as on today, to the credit of RCOP No. 28 of 2001 on the file of the Rent Controller, Kancheepuram, within a period of four weeks from the date of receipt of a copy of this order. If no such deposit is made by the petitioners, within the time stipulated herein, both these civil revision petitions would stand dismissed automatically without reference to this Court. The learned Rent Controller is directed to take up the RCOP No. 28 of 2001 for fresh consideration and dispose of the same on merits and in accordance with law, within a period of two months from the date of receipt of a copy of this order. Consequently, connected

<https://hcservices.mca.gov.in/services> petitions are closed. No costs.



6. Per contra, the learned counsel for the respondents contended that suit property was surrendered to owner Manomaniammal by Agthar of the temple / Ramalingam, as per the compromise decree dated 28.06.1965 in O.S.No.436 of 1964. The said property was purchased by the father of the respondents from Manomaniammal. The father of the petitioner became tenant under the father of the respondent and was paying rent of Rs.300/- per month and subsequently the petitioner's father agreed to pay a sum of Rs.700/- and gave a consent letter. Again he agreed to pay a sum of Rs.1,000/- per month. Afterwards, the petitioner became tenant after death of his father and was paying the rent. The dispute with regard to ownership is not a bonafide dispute and the petitioner has wilfully defaulted in payment of rent. In support of his contention, the learned counsel has relied on the following Judgments:-

(i) In the Judgment reported in **1980 (2) MLJ 254 (Kesava Naicker Vs. Sivaganga Mudaliar)**, relevant relevant portion reads as follows:-

The aforesaid provisions indicate that certain safeguards have been provided in order to secure the arrears of rent as well as the future rents during the pendency of the proceedings before the Rent Controller as well as the Appellate Authority, It is at once apparent that the object of this provision is only to effectively prevent defaulters from continuing to remain in possession of the property taking umbrage under the pending proceedings without performing the obligations in the matter of payment of rents. If this is conceived to be the object of the provisions, then its very purpose can easily be defeated by merely raising a plea to the effect that the relationship of landlord and tenant does not subsist between the parties. Even in a case where the true relationship between the parties is that of a landlord and tenant and an application is filed under Section 11 of the Act, the tenant can circumvent the provisions of the Act by merely raising a plea that he is not a tenant.

(ii) In the Judgment reported in **1999 (7) SCC 474 (S. Thangappan Vs. P. Padmavathy)**, wherein in paragraph nos. 10, 11 and 16 it has been held as follows:-

10. What has to be considered in a case of denial of title by a tenant is, whether there still exists any relationship of landlord and tenant inter se, as in the present case between the respondent No.1 and the



appellant. In other words by such denial of title does liability to pay this rent to such landlord ceases? Does mere denial of title is sufficient not to tender rent to such landlord or at what stage such liability ceases. These are all considerations in the context of testing the defence of a tenant in not tendering the rent to such landlord. So the question is to whom rent is payable? In this regard definition of landlord under Section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is relevant, which is quoted hereunder:

Sec.2(6) landlord includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent to be entitled to receive the rent, if the building were let to a tenant :

Explanation : A tenant who sub-let shall be deemed to be a landlord within the meaning of this Act in relation to the sub-tenant.

11. The definition of landlord is very wide to include any person who is receiving or is entitled to receive the rent. The explanation includes even a tenant to be landlord under this Act. In the present case it is not in dispute that the appellant was inducted into tenancy by the predecessor of the respondent. After such induction he had been paying rent first to the predecessor of the respondent No.1 from 1962 and then to the respondent No.1 since 1980. The appellant in his cross examination has admitted this by stating that he came as a tenant under one Shivlingam who is the elder brother of Respondent No.1 and from 1980 onwards he had been paying rent to respondent No.1. It is in this background we have to test the submission for the appellant with respect to the default and denial of title. It is clear as is also finding recorded that the appellant himself approached the Devasthanam subsequently to execute the tenancy of the disputed premises in question to him. In order to appreciate the conduct of the appellant in denial of title of the Respondent No.1 we herewith record the finding of the trial court in this regard;

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The petitioner strongly and curiously would contend that since he came to know all of a sudden



that Arulmigu Audikesava Perumal Peyalwar Devasthanam is the true owner of the petition premises, he stopped the payment of rent to the petitioner. In fact, the said Devasthanam never demanded the rent from the respondent at any point of time, at their own accord. Further, the said Devasthanam never intimated to the respondent that they are the owners of the petition premises. The above said Devasthanam had not informed the petitioner that the said Devasthanam is the true owner of the petition premises. For the first in the history, the 1st respondent writes a letter Ex.R.1 dt. 28.3.83 stating that he may be recognised as a tenant under the said Devasthanam in respect of the petition premises, as he considered that the said Devasthanam is the true owner of the petition premises. Thus the respondent himself gives right and title to the said Devasthanam.

The said Arulmighu Audikesavaperumal Peyalwar Devasthanam sent a reply to the 1st respondent on 4.5.83, which is marked as Ex. R.3 in this petition. Even in Ex.R.3, the said Devasthanam had not examined any right and title over the petition premises and the said devasthanam had not even admitted their ownership over the petition premises. Therefore, I hold that the contention of the respondent that the petitioner has no right or title over the petition premises, is not true even for a moment.

16. Now reverting to the facts of the present case, we find, admittedly the appellant were inducted into tenancy by the predecessor of Respondent No.1 in 1962 and he continued to pay rent to Respondent No. 1 since 1980. There is no case or any evidence that since thereafter Respondent No. 1 lost his title to the disputed premises. On the contrary denial of title in the present case is based on some information that Devasthanam is the owner of the property since inception. No case, Devasthanam became owner of this property after 1962. In other words, the denial of title by the appellant against his landlord is from the very inception. This is forbidden under [Section 116](#) Section 116 of the Evidence Act. So both on law and facts we do not find the submissions for the appellant is sustainable. All the courts below rightly concluded that denial of title by the appellant was not bona fide and hence non payment of rent to him amounts to wilful default.



(iii) In the unreported Judgment of this Court, dated 12.07.2013, made in CRP.Nos.2036 of 2009 and 4518 of 2012, wherein in paragraph no.10 it has been held as follows:-

10. No doubt, while granting interim stay in one of this civil revision petition in CRP.No.2036 of 2009 dated 24.07.2009, this court has directed the petitioner to deposit a sum of Rs.63,000/- towards the rental arrears to the credit of RCOP and it is also stated that the petitioner had deposited the said sum. In my considered view, such order being an interim in nature cannot be taken to mean that this court cannot go into the correctness or otherwise of the order passed by the court below. Equally, it cannot be said that consequential payment or deposit of such amount would have to be construed as compliance of an order made under Section 11(4), especially under the circumstances that failure to comply with the said order, had already resulted in passing an order of eviction.

7. I have heard the learned counsels appearing on either side and perused the materials available on record.

8. From the materials available on record the contention of the petitioner is that the petitioner's father became tenant under the Trustees of the Temple and the respondents are not owner of the property. The petitioner has not produced any documents to show that the rent was paid to the Trustees of the temple. On the other hand the respondents have produced documents to show that Ramalingam, Agthar of Temple, surrendered the possession to Manonmaniammal, as per the compromise decree dated 28.06.1965, passed in O.S.No.436 of 1964 and their father purchased the property from Manomaniammal. They also produced the documents to show that the respondents' father obtained approval from concerned Panchayat for construction of building and also to show that the petitioners father gave a consent letter for enhancement of Rs.750/- per month. The respondents also produced a documents to show that the rent was paid till 1999, by the petitioner and signed in the receipt.

9. Considering all these aspects, the learned Rent Controller directed the petitioner to pay a sum of Rs.30,500/- within one month from 08.11.2010. The order of the learned Rent Controller was confirmed by the Appellate Authority.

10. Both the learned Rent Controller and Appellate Authority considered all the materials on record in proper perspective and passed order by giving valid reason. The learned Rent Controller held that respondents are Landlords and petitioner is tenant. This finding was confirmed by the appellate authority.



Therefore, the judgment relied on by the learned counsel for petitioner is not applicable to the facts of the present case. The Judgements relied on by the learned counsel for the respondents are squarely applicable to the facts of the present case.

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11. In the result, the Civil revision petition is dismissed confirming the order passed in RCA.No.1 of 2011, on the file of the Rent Control Appellate Authority (Sub Court), Valliyoor, dated 05.12.2015 confirming the fair and decreetal order passed in I.A.No.2 of 2010 in RCOP.No.7 of 2009, on the file of the learned Rent Control Authority (District Munsif Court), Valliyoor, dated 08.11.2010. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Co-Dept)

/True copy/

Sub Assistant Registrar

To

1. The Rent Control Appellate Authority (Sub Court), Valliyoor,
2. The learned Rent Control Authority (District Munsif Court), Valliyoor.

+one cc to Mr.H.Arumugam, Advocate in SR.No.13473

+one cc to Mr.G.Prabhu Rajadurai, Advocate in SR.No.13450

CSL/SKS-RR/AR-I/31.03.2016:8P/5C

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