

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 21.06.2017	Date of Pronouncing Order 06.10.2017
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CORAM:

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

CRP.NPD.Nos.19 & 20 of 2014 and
MP.No.1 of 2014 in CRP.NPD.No.19 of 2014

Pachai Ammal @ Paychaiammal

..Petitioner/Tenant
in both CRP's

Vs.

K.Padmanabhan

..Respondent/Landlord
in both CRP's

PRAYER in CRP.NPD.No.19 of 2014 :

The Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the Decree and Judgment made in R.C.A.No.94 of 2012 dated 28.10.2013 on the file of the Learned VIII Judge, Small Causes Court, Chennai confirming the Decree and Judgment made in RCOP.No.132 of 2008 dated 11.10.2011 on the file of the Learned XI Judge, Small Causes Court, Chennai

PRAYER in CRP.NPD.No.20 of 2014 :

The Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the order and decretal order made in MP.No.275 of 2012 in R.C.A.No.94 of 2012 dated 28.10.2013 on the file of the Learned VIII Judge, Small Causes Court, Chennai in RCOP.No.132 of 2008 dated 11.10.2011 on the file of the Learned XI Judge, Small Causes Court, Chennai

For Petitioner : Mr.Haja Nazirudeen,
in both CRP's Senior Advocate
For Respondent : M/s.Ram
in both CRP's

COMMON ORDER:

The brief facts of the case is as follows.

The respondent herein has filed a petition in RCOP No.132 of 2008 before the Small Cause Court, Chennai for eviction of the petitioner / tenant from the petition mentioned premises. By virtue of the sale deed dated 12.07.2007 vide document No.6489 of 2007, the subject matter of the petition premises was purchased by the respondent. The respondent had given a lawyer's notice to the petitioner on 11.09.2007 to pay the arrears of rent. Another lawyer's notice was sent to the petitioner on 22.11.2007.

The said notice was acknowledged by the petitioner. Despite the receipt of the legal notice, the petitioner has not chosen to pay arrears of rent from May 2007. Therefore, the respondent herein has filed RCOP to evict the petitioner / tenant from the petition premises. Counter statement was filed by the petitioner herein by stating that originally the plot was allotted to one Josephine. The said Josephine died on 27.07.1985 leaving her son J.Vincent and a daughter. Vincent executed a sale deed in favour of the revision petitioner's husband for a sum of Rs.8,600/- and also issued 'No objection certificate' to the husband of the petitioner. The petitioner herein and her husband were living in the same house for 35 years. At this stage, without knowledge of the petitioner herein, the present sale deed dated 12.07.2007 was executed in favour of the respondent herein. Therefore, the petitioner herein denied the title of the respondent herein and requested dismissal of the RCOP. On the side of the respondent herein / petitioner in RCOP, PW1 was examined, Exs.P1 and P15 were marked. On the side of the revision petitioner / respondent in RCOP, two witnesses were examined and three exhibits were marked. The Rent Control Authority held that the revision petitioner / respondent in RCOP is a tenant under the respondent herein / petitioner in RCOP and rejected the title of the revision petitioner / respondent and allowed the RCOP. Challenging the said order, the petitioner herein / respondent in RCOP preferred an appeal

in RCA.No.94 of 2012 along with an application in MP.No.275 of 2012 to permit the petitioner to produce additional documentary evidence in the appeal. The said application was dismissed. Another application in MP.No.750 of 2013 has been filed by the petitioner herein and the same was allowed for framing the additional issues. The Appellate court has considered the issues raised by the revision petitioner herein and rejected the contention of the revision petitioner that the denial of the title is bonafide. Further, it was held that the revision petitioner had not replied to the lawyer's notice issued by the respondent / landlord. Therefore, the Appellate court has come to the conclusion that the petitioner had not paid the rent either to the respondent or the previous owner. Therefore, the appeal filed by the revision petitioner was dismissed by the Appellate court.

2. The learned counsel for the petitioner would submit that the petitioner disputed the title and filed a suit in O.S.No.3966 of 2013 claiming ownership of the petition premises by virtue of the unregistered sale deed. Both the courts have not appreciated the case of the revision petitioner that the revision petitioner is not a tenant under the respondent herein / petitioner. No documentary evidence has been produced before the courts below to show that the revision petitioner is a tenant under the respondent herein / petitioner or the vendor of the respondent herein. Both the courts

had relied upon the ground that no reply was sent by the revision petitioner to the respondent / landlord. Hence, the courts below have erroneously come to the conclusion that the petitioner has not paid rent to the respondent / landlord. Therefore, the burden is on the respondent herein to prove the existence of tenant-landlord relationship between the petitioner herein / respondent herein. Further it is the contention of the petitioner that an application to receive additional documents was filed in MP.No.275 of 2012 before the Appellate court, to prove that sale transaction took place between the petitioner herein and the predecessor in title. Pursuant to the sale transaction, the petitioner's husband entered into possession and enjoying the petition mentioned premises. Without considering the same, the said application was rejected, thereby denying opportunity to the petitioner to prove that the revision petitioner is not a tenant under the respondent herein. The Appellate court accepted the fact that the petitioner is the landlord, based on the unregistered sale deed, but rejected the contention of the petitioner, without appreciating the case of the revision petitioner. The counsel for the petitioner also filed a copy of the plaint in O.S.No.3966 of 2013, in the additional typed set of papers. The said suit is still pending between the petitioner, respondent and the vendor of the respondent for adjudicating the dispute of ownership of the property. Therefore, the Appellate court has erroneously come to the

conclusion that in the absence of any reply to the legal notice of the respondent, the contention of the revision petitioner is liable to be rejected. Therefore, the orders of the courts below are liable to be set aside.

3. The learned counsel for the respondent would submit that both the courts have concurrently held that the petitioner is a tenant under the respondent / landlord. Both the courts have held that the revision petitioner has not replied to the legal notice issued by the respondent. Therefore, the revision petitioner has not disputed that he is a tenant under the respondent / landlord. Once, the revision petitioner has accepted the legal notice, now in the written statement cannot dispute the relationship between revision petitioner and the respondent. The said contention is an after thought, therefore both the courts have rightly rejected the contention of the revision petitioner and held that the revision petitioner has committed wilful default in payment of the rent to the respondent. Further, the learned counsel for the respondent would submit that I.A.No.275 of 2012 filed by the revision petitioner to receive the additional document was rightly dismissed by the appellate court. Since, there is no bonafide reason stated in the said application. Therefore the learned counsel for the respondent submitted that in the light of the decision

reported in **2007 LW P 130** in the case of **D.Venkatraman Vs. Hemraj Sethia**, wherein this court has held that the Judge has to decide as to whether the documents are necessary to decide the appeal and also find out the reason for non filing the same before the Rent Controller. By considering the aforesaid Judgment, the Appellate court had rejected the additional documents filed by the respondent. Therefore, there is no bonafide for considering the application filed to receive the additional documents in the appellate stage. Hence, there is no necessity to interfere with the order passed by the Appellate court and the same is liable to be dismissed.

4. Heard the learned counsel for the petitioner and the respondent and perused the materials available on record.

5. Points for consideration are as follows.

i) Whether the Appellate court is right in dismissing the application in I.A.No.275 of 2012, to receive the RCOP?

ii) Whether the court below is right, when there is a dispute of title pending in the Civil Court between the revision petitioner and the respondent, vendor of the respondent?

6. The petitioner has filed an application in M.P.No.275 of 2012 to receive the additional documents. According to the learned counsel for the petitioner, the petitioner has filed the suit in O.S.No.3966 of 2013 for declaration of sale deed dated 26.03.2007 registered as document No.3061 of 2007 on the file of the Sub Registrar, Sembium executed by the first defendant in favour of the second defendant therein as illegal, void and not binding on the plaintiff and declaration that the sale deed dated 12.07.2007 registered as document No.6489 of 2007 on the file of the Sub Registrar, Sembium executed by the second defendant therein in favour of the third defendant therein as illegal, void and not binding on the plaintiff. The said suit is also pending for adjudication of title of the suit property, wherein the revision petitioner, vendor of the petition premises and also the respondent are the parties. The petitioner filed several additional documents before the Appellate court to determine the issues involved in the RCOP. The contention of the petitioner is that all these documents are relevant to the present petition as well as to prove that the allotment dues were paid by the petitioner in favour of the allottee. In the light of the decision rendered by this Court in the case of ***Venkatasubramanya Chettiar (died) and others Vs. Perumal Chettier (decd) rep. by Lrs of 1st appellant and others***, reported in ***2012 3 CTC p 160***, it was held that, *"Application for receipt of additional documents filed at the stage of*

*appeal - Parties cannot be allowed to fill up their lacuna or fill up their omissions - Provisions are not intended to allow litigants to patch up weak points - Additional documents are relevant for determination of issues arising between parties - Parties have not grasped significance of producing documents before trial court - Hence, additional evidence cannot be refused to be received and in the case of **Sagayam Engineering works Vs. M/s.Srivasta Tube Corporation**, reported in **AIR 1989 Madras 237**, it was held that, "Party should not be penalised for mistake of his counsel - Delay in application should be condoned".* In the light of the aforesaid Judgment, if the said application is allowed, no prejudice would be caused to the respondent. On contrary, the revision petitioner has to establish that the revision petitioner is not a tenant to the respondent / landlord. Further, there is a dispute between the parties, with regard to the title of the petition mentioned property. The petitioner has not chosen to examine the vendor of the property. Hence, the Appellate court, without appreciating the facts, the application filed by the petitioner to receive additional documents was simply rejected by holding that the application to receive the additional documents has no legal sanction and unsustainable in law. Therefore, the order passed in MP.275 of 2015 is liable to be set aside. The reasons stated by the Appellate court is perverse and hence, this Court is inclined to interfere and to set aside the order passed in MP.No.275 of 2012.

In the light of the aforesaid findings of this Court, the other points for determination to be decided by the Appellate court at the time of hearing of the appeal.

7. Therefore, this Court has no hesitation to set aside the order passed in MP.275 of 2012 and the application is allowed. In the result, in view of the said application having been allowed, the order passed in RCA.No.94 of 2012 is set aside and the same is remanded to the Appellate court to decide the appeal on merits and in accordance with law as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this Order.

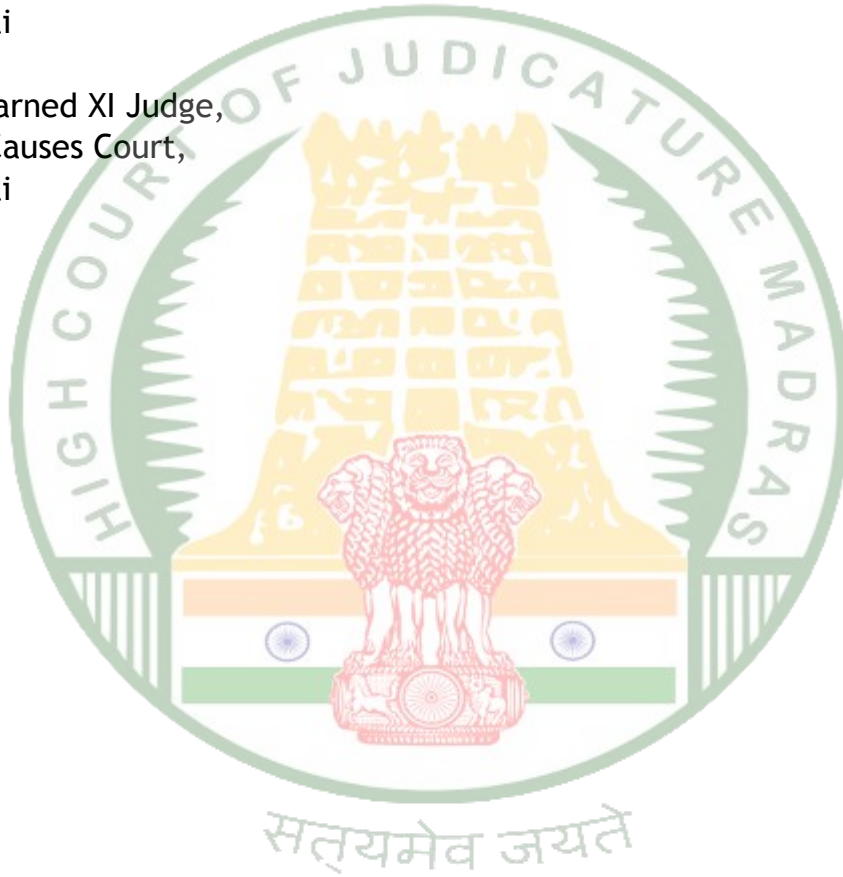
06.10.2017

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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To

1. The Learned VIII Judge,
Small Causes Court,
Chennai
2. The Learned XI Judge,
Small Causes Court,
Chennai



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D.KRISHNAKUMAR. J,

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Pre-delivery Order
in CRP.NPD.Nos.19 & 20
of 2014 and MP.No.1 of 2014 in
CRP.NPD.No.19 of 2014

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