

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(NPD) NO.3109 OF 2017
AND CMP NO.14549 OF 2017

1.Anwar Sheriff
 2.Akber Sheriff
 3.Rahmath Sheriff

... Petitioners

Vs.

1.S.E.Mohammed Rizwanullah
 2.Kahkashan Anjum
 3.Mohamed Faizullah
 4.Munvar Sheriff
 5.Abitha Bi

... Respondents

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the judgment and decree passed in RCA No.483 of 2015 dated 23.06.2017 on the file of VII Small Causes Judge, Chennai, confirming the order passed in RCOP No.1856 of 2013 dated 24.07.2015 on the file of X Small Causes Judge, Chennai.

For Petitioners : Mr.G.Veerapathiran
 For Respondents : Mr.Lakshmi Narayanan
 for Mr.L.Damodaran

ORDER

The unsuccessful tenants are the revision petitioners. Eviction was ordered on the grounds of willful default, denial of title and

demolition and reconstruction. Appeal against the order was also confirmed. Challenging the orders of the Rent Control Appellate Authority on the grounds that (i) there is no jural relationship between the petitioners and the respondents 1 to 3; (ii) the schedule mentioned in the petition is different from the lease agreement and therefore, the Rent Control Original Petition is not at all maintainable; and (iii) it is bad for misjoinder of parties, the present Civil Revision Petition has been filed.

2. The contention of the petitioners is that their father entered into the property as a trespasser and he has obtained electricity connection from another trespasser and they have not entered into any agreement with the respondents 1 to 3 and therefore, there is no jural relationship between them. Even assuming that there is jural relationship on the basis of the agreement produced before this Court, the agreement mentions only small portion of the shed. Whereas, eviction is sought for the vacant site also. Moreover, in the sale deed entered into between the respondents 1 to 3 and their vendors clearly shows that the vendors of the respondents have delivered vacant possession of the land and building. In that event, the portion occupied by the petitioners will not fall under the property conveyed to the respondents 1 to 3. Therefore, the petitioners

are not necessary parties and the petition is liable to be dismissed for mis-joinder of parties. If it is construed that the open space conveyed to the respondents 1 to 3 is under the occupation of the petitioners, the avenue open to the respondents 1 to 3 is only to file a civil suit and not a rent control original petition.

3. The learned counsel for the petitioners would submit that the entire evidence would go to show that the petitioners' possession of the entire extent of land is under their occupation. It was also admitted by the respondents that the possession of the petition premises was with the petitioners' father even before their purchase and the further admission that they do not have any knowledge about the factum of possession with the petitioners' father. Without knowing any of the details, the petitioners have filed the eviction petition, which by itself, would show that they are not the owners of the property mentioned in the eviction petition and it is also clearly admitted that the respondents are not in possession of the parent document to prove their title. Therefore, the learned counsel for the petitioners would vehemently contend that there is no jural relationship between the petitioners and the respondents

1 to 3. In the absence of any document to show the jural relationship, the eviction petition should have been dismissed by the Court below.

4. Per contra, learned counsel appearing for the respondents 1 to 3 would submit that the contention of the petitioners that they were trespassers and are in independent possession of the petition premises is factually incorrect. The averment that the petitioners' father was a trespasser and obtained electricity connection from one Mr.Ghouse is false, as the said Mr.Ghouse himself was the title holder and landlord of the property. The property was conveyed to the respondents 1 to 3 through his legal representatives. Thus, the respondents 1 to 3 have derived title from the original landlord of the petitioners. The petitioners' mother entered into a lease agreement with the vendors of the respondents 1 to 3. The schedule mentioned property in the original lease deed between the vendors of the respondents 1 to 3 and the mother of the petitioners / respondent no.5 in the Civil Revision Petition and the property mentioned in the eviction petition are one and the same. It is clearly mentioned that the property leased out is all that piece and parcel of the land and premises in New No.259 and Old No.135-A, Avvai Shanmugam Salai (Lloyds Road), Gopalapuram, Chennai - 600 086, ad-

measuring an extent of 969 Sq.ft and the vacant land thereon ad-measuring an extent of 2788 Sq.ft.

5. Further, it is contended that the petitioners herein have filed a suit in O.S.No.4634 of 2013 for the relief of permanent injunction restraining the respondents 1 to 3 herein from interfering with the exclusive possession and enjoyment of the petitioners, except by due process of law. A written statement was filed setting out all the details regarding derivation of title and institution of eviction petition before the Rent Controller under Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act. In the said suit, the petitioners have clearly admitted that the petitioners' mother / respondent no.5 was paying monthly rentals to the respondents 1 to 3 and she has not prayed for adverse possession. Considering the categorical admissions, the Trial Court has held that the eviction proceedings taken by the respondents 1 to 3 is in accordance with law and dismissed the suit holding that the petitioners are not entitled to any relief. The judgment in O.S.No.4634 of 2013 has become final as the petitioners have not filed any appeal against the same. Therefore, now, at this distance point of time, the petitioners cannot deny the jural relationship.

6. Further, the signature of the mother of the petitioners' / fifth respondent, in the lease deed and in the acknowledgment card and in the vakalat filed before the Court are same. The petitioners have taken a stand that their mother puts only thumb impression and does not affix signature. In that event, the burden of proving the same is shifted to the petitioners. Whereas, the petitioners in their cross examination have categorically admitted that the address and residence of the fifth respondent is the same and she was not aware of the extent of the property and even the contents of proof affidavit was not on her instructions. Apart from this, the first petitioner (RW1) would further depose that his brother, the fourth respondent herein, alone knows all the details. Therefore, an opportunity was given to the fourth respondent, who is a resident of United Kingdom, to let in evidence when he comes back to India. Whereas, the fourth respondent came to India and left again to United Kingdom, but has not chosen to let in evidence before the Trial Court and further, the first petitioner - R.W.1 has categorically admitted that no title deed is available to prove their title and it was also admitted that they have not paid water tax, property tax or sewerage tax for the petition premises. Therefore, the Rent Controller and the Rent

Control Appellate Authority has clearly arrived at a finding that the case of the respondents 1 to 3 is clearly proved and hence, ordered eviction.

7. The learned counsel for the respondents relied on a judgment of this Court in **ELUMALAI VS. KOTTEESWARAN @ KOTTI NAICKER [2010 (2) MLJ 159]** wherein in paragraph no.29, it has been observed as follows:

"29. From the above, it emerges that when a landlord transfers his right to another person, the purchaser automatically denies the rights in tenancy as regards the property and it is immaterial that the tenant should attorn tenancy in favour of the subsequent purchaser. No where in the statute it is specifically mentioned that the tenant shall attorn the tenancy in favour of the subsequent purchaser of the tenanted premises so as to enable him to proceed under the provisions of such statute. The transferee acquires all the rights possessed by the transferor in the property inclusive of the right to proceed against the tenant as per law. Hence, it cannot be urged that in the absence of attornment of tenancy, the respondent has no right to get on with eviction proceedings. Even in the absence of allotment of tenancy in

favour this respondent, he can get along with eviction proceedings. "

The very same principle is affirmed by the Hon'ble Supreme Court in **DR.AMBICA PRASAD VS. MD. ALAM AND ANOTHER [2016 (3) CTC 216]**

wherein, it has been observed as follows:

"18. From perusal of the aforesaid Section, it is manifest that after the transfer of lessor's right in favour of the transferee, the latter gets all rights and liabilities of the lessor in respect of subsisting tenancy. The Section does not insist that transfer will take effect only when the tenant attorns. It is well settled that a transferee of the landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. The section does not require that the transfer of the right of the landlord can take effect only if the tenant attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of the landlord's rights. Since attornment by the tenant is not required, a notice under [Section 106](#) in terms of the old terms of lease by the transferor landlord would be proper and so also the suit for ejectment."

8. Further, this Court in **HINDUSTAN PETROLEUM CORPORATION LTD., AND ANOTHER VS. V.BALASUBRAMANIAM (DIED) AND OTHERS [CDJ 2013 MHC 5298]** following the judgment the Hon'ble Supreme Court in **B.KANDASWAMY REDDIAR AND OTHERS VS. O.GOMATHI AMMAL [2001 (2) MLJ 106 (SC)]** has observed that under sub-section 2 of Section 2 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, " building" is defined as building, or hut or part of a building or hut and includes, gardens, grounds and outhouses etc. Therefore, the contention that schedule is different is not sustainable.

9. On consideration of the pleadings and the submissions made by the rival parties, it is very clear that the existence of jural relationship between the landlord and tenants is clearly proved. There is no discrepancy in the schedule described in the petition and the petitioners, who claimed possession through their father, have not also proved the independent title to the property. In fact, the mother of the petitioners namely, the fifth respondent herein, has entered into a lease agreement which is amply proved by the respondents 1 to 3. The signature in the lease deed and Exs.P9, P10 and P16, would clearly show that the fourth respondent has in fact entered into a lease agreement with the

vendors of respondents 1 to 3. This Court in **N.SABAPATHY AND OTHERS VS. PATTAMMAL AND OTHERS [1992 (1) MLJ 187]** has held that it is well settled that a party, who is in possession of best evidence and a party who is the best person to give evidence on certain matters should enter the witness box and place the facts before the Court and in the event of his failure to do so, the Court is bound to draw an adverse inference against him. In the instant case, the fourth respondent who had entered into lease agreement has not let in any evidence. In the absence of any evidence, adverse inference shall be drawn. As held by the Hon'ble Supreme Court, the transferee/ purchaser is automatically entitled to proceed with eviction and the attornment of tenancy is not required for the same. Furthermore, jural relationship is categorically admitted by the petitioners before the Court of law in O.S.No.4634 of 2013. Further, filing of C.S.No.949 of 2015 challenging the settlement made by the original owner and the sale made in favour of the respondents 1 to 3 shows that the conduct of the petitioners is not *bonafide*. Therefore also, the findings of the Courts below are correct and the order of eviction is hereby confirmed.

10. At this juncture, the learned counsel appearing for the

petitioners would submit that three months' time may be granted to the petitioners for vacating the premises and handing over possession to the respondents / landlords. He has also filed an affidavit of undertaking dated 28.08.2017 to that effect and the same is taken on file. Accordingly, three months time is granted to the petitioners, from the date of receipt of a copy of this order, for vacating and handing over possession to the respondents 1 to 3.

11. The Civil Revision Petition is dismissed with the above observation and direction. No costs. Consequently, connected civil miscellaneous petition is closed.

28.08.2017

Index : Yes/No
Internet : Yes/No
TK
To

1. The VII Small Causes Judge
Chennai.
2. The X Small Causes Judge
Chennai.

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M.GOVINDARAJ, J.

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