

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.02.2017

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)Nos.2137 and 2138 of 2011
and
M.P.Nos.1, 2 and 2 of 2011**

R.Senthur Raja

.. Petitioner in both the CRPs

Vs.

Dr.S.Peter

..Respondent in both the CRPs

Prayer in CRP(NPD)No.2137 of 2011: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 1 of 1973, against the fair and decreetal order dated 28.09.2010 passed in RCA.No.1269 of 2004 on the file of VIII Small Causes Court at Chennai (Rent Control Appellate Tribunal), modifying the fair and decreetal order dated 30.06.2004 passed in RCOP.No.2167 of 2002, on the file of XIV Small Causes Court, Chennai.

Prayer in CRP(NPD)No.2138 of 2011: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 1 of 1973, against the fair and decreetal order dated 28.09.2010 passed in RCA.No.1063 of 2004 on the file of VIII Small Causes Court at Chennai, modifying the fair and decreetal order dated 30.06.2004 passed in RCOP.No.2167 of 2002, on the file of XIV Small Causes Court, Chennai.

(In both the CRPs)

For Petitioner : Ms.Chitra Sampath, Senior Counsel
(In both the CRPs) for M/s.T.S.Baskaran

For Respondent : Mr.J.R.K.Bhavanantham
(In both the CRPs) for M/s.P.B.Ramanujam

COMMON ORDER

The civil revision petitioner is the tenant has preferred two revisions in C.R.P.Nos.2137 and 2138 of 2011 against the dismissal of R.C.A.No.1269 of 2004 and allowing R.C.A.No.1063 of 2004, on the file of the VIII Judge, Small Causes Court, Chennai, enhancing the fair rent at Rs.31,927/- p.m. from the fair rent fixed at Rs.16,010/- p.m. by the learned Rent Controller.

2.The case of the Respondent/Landlord is briefed as follows:

The respondent has purchased the petition premises bearing No.1A, Chari Street, T.Nagar, Chennai-600 017 abutting North Usman Road and lying parallel to Bazullah Road, very near to Kodambakkam Railway Station. The respondent has purchased the petition premises for a valuable consideration from one Mr.V.Ramesh by way of Registered Sale Document No.1633 of 2002 dated 13.07.2002 in Ex.R2. As per Registration Endorsement of Collection of deficit stamp duty of Rs.25,000/- on 16.07.2002. During 10 years, it is second successive sale. Being the landlord, the respondent has filed RCOP.No.2167 of 2002 on the file of the XVI Judge, Small Causes Court, Chennai for fixation of Fair Rent at Rs.70,897.46/-.

As per his pleading:

Total Area	1885 Sq. ft.
R.C.C.	1010 Sq. ft.
A.C.C.	875 Sq. ft.
Cost of land	Rs.4284/- per sq. ft.
Cost of land	Rs.63,10,946.82
Cost of construction	Rs.7,78,800/-
Fair Rent	Rs.70,897.46

3.The case of the petitioner/tenant is briefed as follows:-

As per pleading of the petitioner/tenant, it is an admission by the tenant in respect of "A" portion two shops under Mr.P.A.Saleem as per agreement dated 20.07.1987, on a monthly rent of Rs.2,000/- comprising of Rs.1,500/- towards monthly rent and Rs.500/- p.m. towards amenities and denial of monthly rent at Rs.12,000/- it is also contended that the erstwhile landlord Mr.P.A.Saleem had to pay huge amount towards purchase of materials from him and his brother Asokan and denied. Occupation of R.C.C. and A.C.roof area, Type-1 construction and teakwood jointly etc.

4.It is further contended that all wood work and shutters provided by him at his cost and construction of over head tank at his cost. In para 16 of the counter statement, it is further contended.

5.The respondent himself was examined as P.W.1. The petitioner/tenant did not get in to the box. On his behalf, his power agent Mr.Prabaharan was examined as RW1.

6.The Respondent/landlord's Engineer was examined as PW2. The petitioner's Engineer was examined as RW2.

7.The basic difference between two reports in Ex.P1 and Ex.P2 plan drawn as per scale and RW2's report Ex.R2 and Ex.R3 is mentioned hereunder.

8.The PW2 has drawn a plan showing A, B, C portion as per scale in Ex.P2 as mentioned in the pleading of landlord.

9.The RW2 has drawn a plan in Ex.R3 only referring to "A" portion and treating ACC roofed portion as land appurtenant even in the absence of pleading as per instruction of tenant claiming cost of installation of ACC sheet roofing as his own. RW2 measured and noted down the physical features of portion of B and C. His report and sketch is based.

10.The learned Rent Controller fixed the Fair rent as follows:

Land Value at Rs.37 lakhs per ground

For 876.5 sq. ft.	Rs.13,51,270/-
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Cost of Construction	Rs.28,31,691/-
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Amenities	5%
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Depreciation	1%
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Schedule-1 Amenities	1%
Fair Rent	Rs.16,010/- p.m.

11. Aggrieved by the orders of the learned Rent Controller, the respondent/landlord and the petitioner/tenant have preferred two appeals in RCA.No.1063 of 2004 and RCA.No.1269 of 2004 on the file of the learned VIII Judge, Small Causes Court, Chennai, respectively. The Appellate Authority was pleased to allow RCA.No.1063 of 2004 filed by the respondent/landlord enhancing Fair rent at Rs.31,927/- p.,m. and dismissed the RCA.No.1269 of 2004 filed by the tenant/petitioner herein. The petitioner/tenant has preferred two revisions in CRP.No.2137 of 2011 and CRP.No.2138 of 2011, on the file of this Court.

12. The learned senior counsel appearing for the petitioner/tenant contended that as per the age of the building and market value of land per ground and at Rs.37,00,000/- assailed the finding, to the extent of "A", "B" and "C" portion as mentioned in Ex.P1 and Ex.P2 Engineer Report and plan. According to the petitioner only "A" portion was subject matter of tenancy but not "B" and "C" portions. Further it is contended that Ex.R1 Lease Agreement between petitioner/tenant

herein and erstwhile landlord Mr.P.A.Saleem in respect of this petition premises drawing the attention of the Court to the schedule description of the petition premises as follows:

“In ground floor two shops with four iron rolling shutters and office room and store room in 1-A, Chari Street, Off:North Usman Road, T.Nagar, Chennai-600 017” and

Pleading in para-12 of the petition as follows:

“The petition premises has plinth area of 1885 Sq. ft. Out of which 1010 sq. ft. Are in RCC Column framed stucture and 875 sq. ft. ACC roof Area.....”

The cost of land attributed to each type of construction of “A”, “B” and “C” portion plinth area is at Rs.3347.98 which works out for the petition premises of 1885 Sq. ft. $\times$ Rs.3347.98 = Rs.63,10,916.82 and adding up cost of RCC area Rs.4,84,800/- and ACC Area Rs.2,94,000/- totalling cost of premises is Rs.70,89,746.82.

AND

“the schedule description in Ex.R1 dated 01.10.1987 Agreement of Lease between tenant/petitioner and erstwhile landlord – P.A.Salee – two shops in ground floor with four rolling shutters in ground floor in premises No.1, Chari Road, T.Nagar, Madras-600 071 and marked “RED” in the plan attached hereunder”.

13. In argument of the learned Senior Advocate it is strenuously contended that the Ex.R1 is not challenged by the landlord. Therefore, the area of RCC construction is related to portion "A" in Ex.P3. In the argument, the area covering ACC sheet Roof portion and RCC portion marked as "B" and "C" in plan Ex.P3 is not in the occupation of the petitioner/tenant herein.

14. It is specific pleading of the respondent/landlord herein that the petition premises comprises of RCC Roof portion, ACC Roof Portion and RCC Roof portion shown as "A", "B" and "C" portion in the plan in Ex.P3 and the monthly rent for the A, B and C, portion is Rs.12,000/-.

15. It is the case of the petitioner/tenant that the B and C portion is in the occupation of his brother Mr.Asokan. The Ex.R1 is said to have been entered into between the petitioner/tenant herein and Mr.P.A.Saleem the respondent/landlord. The learned Senior Counsel raised a point that the burden of proof was on the respondent/landlord to establish that the size of the tenant comprises of A, B and C portion. The present respondent/landlord herein is not a party to Ex.R1. The said Ex.R1 was said to have been executed on 01.10.1987 between

the petitioner and Mr.P.A.Saleem, the erstwhile landlord. Due to passing of time and transfer of petition premises of two hands namely, Mr.V.Ramesh and successively to this respondent/landlord herein, the lease period also lapsed and expired. The written agreement is admittedly entered into between Mr.V.Ramesh and Mr.Senthur Raja the petitioner to and success respondent/landlord herein. The monthly rent would not remain constant. The Ex.R1 is not without the knowledge of the respondent. The disclosure of Civil Suit and other proceeding between the petitioner herein and erstwhile landlord cannot be presumed as any defect in title to the petition premises. No vendor would disclose the proceedings between the tenant and erstwhile owner. All these proceedings are not connected with title and binding on him. It is for the petitioner/tenant to produce the judgment, decree and orders pertaining to this case of the petition premises between him and the erstwhile owner. No records were produced. The respondent/landlord subsequent purchaser is not expected to have acquaintance with those proceedings which has occurred between the petitioner herein and Mr.P.A.Saleem.

16.Further, mere marking of Ex.R1 would not be a proof of contents of Ex.R1. The petitioner/tenant ought to have got into box

and challenged the evidence of PW1 and his pleading. On the contrary, the petitioner has examined his power agent Mr.Prabaharan as RW1. The party to the proceedings cannot be substituted by his power agent RW1. The counter statement was verified by the petitioner himself, but not by his power Agent. Therefore, the oral testimony is not trust worthy. It was also deposed by him that he was deposing on behalf of the petitioner herein as he had acquainted with the facts of the case. He is not competent to speak on behalf of the petitioner herein. It is not stated by him how he was connected with the business run by the petitioner/tenant herein and that he was either connected with Ex.R1 or attester of the Ex.R1. It is fatal for the petitioner/tenant for non examination of the petitioner namely Mr.Sendur Raja and Mr.Asokan his brother. It cannot be expected any vendor to evince any interest on the property having been sold and oblige the purchasers to depose previous occurrences. Therefore, the burden of proof was on the petitioner/tenant to let contra evidence that B and C portions as not subject matter of tenement. It is the argument of the learned Senior Counsel that the size of the portions A, B and C as tenement in the petition premises is accepted as proved then there is no question of assailing extent of constructed area A, B and C in the petition premises. It is also brought to the notice of this

Court that the respondent/landlord has furnished fair rent calculations separately for A, B and C portions. It was not challenged by the petitioner. Simultaneously PW2 filed his report separately annexing cost of construction, land value and cost of amenities for A, B and C portions. The PWD rates is adopted to annex the value of construction. The Engineer's Report in Ex.R2 dated 25.02.2004 is not worth the piece of paper. The petitioner admitted RCC roof portion. The ACC roof portion goes with land. It is the burden on the petitioner to establish that the ACC sheet roof was put up by him at his cost. No bills and labour charges were produced. In the absence of pleading, treating the said portions as land appurtenant is erroneous and not in accordance with law.

17.The respondent/landlord relies on the following judgments to bring to light the effect of testimony of Power Agent:

I. ***Chellammal v. Krishnaveni Ammal***
reported in ***CDJ Law Journal – CDD 2006 MHC 1321***

"It is very clear that the Power of Attorney Holder cannot speak for the Principal who has personal knowledge and in respect of which Principal is liable to be cross examined. It is the law laid down by Hon'ble

Supreme Court in the above Judgment - is applied to this facts of this case in hand, it will prove that the landlady has not discharged her duty in proving her duty in proving her bonafide requiring the petition premises for her own use and occupation".

II. ***Janaki Varhdeo Bhojwani and another v. Indusind Bank Ltd., and others*** reported in **2005 (2) SCC 217**

"Power of depose in place of Principal held extends to deposition in respect of "acts" done by the Power of Attorney Holder in exercise of powers granted by the instrument. The term "acts" would not include deposing in place of and instead of Principal for acts done by Principal and not by Power of Attorney Holder. Similarly power of Attorney Holder cannot depose to Principal in respect of matters of which the Principal can have personal knowledge and in respect of which Principal is liable to be cross – examined."

III ***Man Kaur (Deceased) and another v. Hartan Singh Sancha*** reported in **2010 (10) SCC 512**

“Where a party to the suit does not appear in witness box and state his own case on oath and does not offer himself to be cross examined by the other side presumption would arise that the case set up by his not correct.”

“The Power of Attorney Holder who has no personal knowledge cannot be examined in place of Plaintiff.”

IV ***The Lakshmi Mills Co., Ltd., rep. By its Managing Director, 1100, Avanashi Road, Pappanaickanpalayam, Coimbatore-641 037 v. R.Ramajaam and 3 others*** reported in **2009 5 L.W. 73**

This Court in the above said judgment clearly held that the Power of attorney has to be produced before the trial Court and a specific order has to be passed by the Judge permitting the power agent to appear on behalf of the party. In the above judgment it is clearly held that:

“Power of attorney has to be produced before the trial court and a specific order has to be passed by the judge permitting the power agent to appear on behalf

of the party – There is no question of permitting the party to represent the interest of another in a civil suit unless such authorization was produced before the court – Affidavit filed does not contain any averment as to whether the fourth respondent was given a power of attorney to file the suit on behalf of respondents 1 to 3 – Application filed for obtaining permission to represent a party in a suit or other proceeding must be accompanied by an affidavit of the power agent, and the affidavit should contain a solemn affirmation that as per the power of attorney executed by the principal, he was authorized to sign the pleadings and to represent such principal.

13. Order 3 Rule 1 provides that any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader (appearing, applying

or acting, as the case may be) on his behalf. Rule 2 of Order 3 indicates as to who are all the recognised agents of parties by whom such appearances as made mentioned in Rule 1 of Order 3 could be made. The said provision would read thus:-

"Recognized Agents:-

The recognized agent of parties by whom such appearances, applications and acts may be made or done are-

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts."

14.The Civil Rules of Practice also contains

provision with respect to the appearance of parties through agents. Rule 16 as contained Part I of Civil Rules of Practice would read thus:-

"16. Party appearing by agent:-

(1) When a party appears by an agent other than a pleader or advocate, the agent shall before making or doing any appearance, application, or act, in or to the court, file in court the power of attorney, or written authority, thereunto authorizing him, or a properly authenticated copy thereof/or, in the case of an agent carrying on a trade or business on behalf of a party, without a written authority, an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject matter of the suit and that no other agent is expressly authorized to make or do such appearance, appellation or act.

(2) The judge may thereupon record in writing that the agent, is permitted to appear and act on behalf of the party, and unless and until the said permission is granted no appearance, application or act, of the agent

shall be recognized by the court."

18.In the case in hand, PW1, who is the power agent of Thiru.R.Senthur Raja has deposed before the trial Court stating that he has giving evidence on behalf of the tenant Thiru.R.Senthur Raja.

19.The evidence of RW1 Thiru.R.N.Prabakar in his evidence dated 01.03.2004 has stated as follows:-

“நான் எதிர்மனுதாரரின் பவர் ஆப் அட்டானி, பவர் ஆப் அட்டானியை நான் இதே நீதிமன்றத்தில் வேறொரு வழக்கில் தாக்கல் செய்துள்ளேன். மனுக்கட்டிடம் சம்பந்தமான விவரம் அனைத்தும் எனக்கு தெரியும் என்பதால் எதிர்மனுதாரர் சார்பாக சாட்சியம் சொல்ல வந்துள்ளேன்.”

20.But on perusal of the records, it is made clear that there was no records to shows that RW1 Mr.R.N.Prabakar, who is the power agent of the tenant Thiru.R.Senthur Raja has obtained any permission from the trial Court namely the Rent Controller and there was no order to that effect also. But the above case cited supra reported in **2009 5 L.W. 73** the learned Judge of this Court specifically stated that the power of attorney has to be produced before the trial Court and a

specific order has to be passed by the judge permitting the power agent to appear on behalf of the party. Therefore, it is made clear that the tenant has not at all let in box and giving evidence. But, his power of attorney RW1 Thiru.R.N.Prabakar has given evidence that too without the Court permission and to that effect no application also filed by the power agent RW1 or the tenant Thiru.Sendhur Raja, seeking permission of the Court for permitting the Power Agent.

21.This Court has very much shocked, how the trial Court permitted the power agent namely RW1 Thiru.R.N.Prabakar to give evidence on behalf of the respondent/tenant in RCOP.No.2167 of 2002, without any Court permission and any application seeking permission. Therefore, the evidence of the power agent RW1 Thiru.R.N.Prabakar, is not at all valid in law and the said evidence has to be thrown out. Therefore, when the tenant was continued in the possession of the property and Rent Control Proceedings initiated against the tenant, it is bounden duty of the tenant to give evidence or through his power agent that too on application seeking permission and also appropriate permission of the learned Judge of the Rent Control. Therefore, the evidence given by the other witnesses on behalf of the tenant have no says in this case, since the tenant himself

has not given any evidence by denying the allegations set out by the respondent/landlord. Therefore, on this sole ground, this civil revision petitions has to be dismissed.

22.Per contra, this petitioner/tenant has produced a judgment rendered by this Court in the case of **John Kennady @ Murugan v. V.Bhagavathi Rep. By her Power of Attorney P.Cholaraja** reported in **2008 3 L.W. 840** in which as per the Order 3 Rules 1 and 2 of C.P.C., the Proof Affidavit filed by the Power Attorney Agent on behalf of the plaintiff, objection raised by the tenant that it is contrary to the Order 3, Rules 1 and 2, but in this case clearly held that the suit itself has been filed by the power of attorney after obtaining the leave from the Court and on that point of time, there was no objection raised by the petitioner/defendant. Therefore, the said case is not applicable in the present case on hand in respect of RW1/Power agent on behalf of the petitioner/tenant in the Rent Control Proceedings, since in the judgment on behalf of the said power of attorney appeared on behalf of the plaintiff was filed an application under Order 3 Rules 1 and 2 of CPC and thereafter only the Court has granted permission to file and represented by the power of attorney on behalf of the plaintiff. Therefore, the said case is not applicable in the present case on hand.

23. In the light of the abovesaid Judgment relied on by the respondent/landlord, the examination of Power agent on behalf of the Principal who had no personal knowledge of the acts done and understanding between Landlord and Tenant regarding term of Ex.R1, RW1 is neither attestor. He has not deposed his connection and personal knowledge about Ex.R1 and no permission was granted to the Power Agent by the Court. Therefore, his testimony is not proof of Ex.R1. Mere marking of Ex.R1 is not proof of contents of Ex.R1.

24. The petitioner/tenant herein is the best person to speak about Ex.R1. The petitioner felt shy of facing the trial and withstand the test of cross examinations. As far as the respondent/landlord, pleaded and proved the subject matter of tenancy is A, B and C portion. It is further corroborated by PW2 Engineer's report. According to PW2 it was open and he entered into B and C portion. It was objected by the petitioner/tenant. It is not his version that the said Asokan objected PW2's entry into the shop. On the said aspects there is no cross examination.

25. The respondent passed the subject matter of tenancy as

shown in Ex.P3 plan. In the plan, the toilet is also shown. The entire building on 3 sides is enclosed in the compound walls. PW2 also has spoken to mosaic tile flooring and existence of over head tank. The assessment of value of constructed portion by PW2 is proved beyond reasonable doubt. The petitioner/tenant herein has not produced bills relating to ACC sheets, Hardware materials and labour bills to prove the cost of construction if he really had put up ACC sheet roofing. The respondent/landlord proved the area and cost of construction. It was not contradicted by the petitioner/tenant herein by getting into box. In the absence of valid proof of the case of the petitioner/tenant cannot be accepted. The appellate Court slightly appreciated the oral and documentary evidence and considered, drawing adverse inference against the petitioner/tenant herein for non examination of himself and his brother Asokan to prove the area of Tenement under his occupation. There is no contra evidence against the respondent/landlord's case. Therefore, in exercise of revisional power under Section 25 of Tamil Nadu Building (Land and Rent Control) Act, this Court finds any irregularity or illegality in the order in RCA.No.1269 of 2004 and RCA.No.1063 of 2004 dated 28.09.2010, on the file of the VIII Small Causes Court at Chennai (Rent Control Appellate Authority) warranting interference by this Court.

26. Accordingly, both the civil revision petitions are dismissed.

No costs.

13.02.2017

Note: Issue order copy on 02.03.2017.

Index: Yes

Internet: Yes

vs

To

1. The VIII Small Causes Court
(Rent Control Appellate Tribunal),
Chennai.

2. The XIV Small Causes Court,
Chennai.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(NPD)Nos.2137 and 2138 of 2011
and
M.P.Nos.1, 2 and 2 of 2011**

13.02.2017