

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Orders Reserved on</i>	<i>Orders pronounced on</i>
21.4.2017	12.9.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.No.1749 of 2015 and M.P.No.1 of 2015

- 1 S.Vadivel (died)
- 2 Marimuthu
- 3 Thangamani
- 4 V.Srinivasan
- 5 V.Raghu
- 6 V.Ranjith

... Petitioner/Tenant

Vs.

Rani

....

Respondent/Landlord

(Petitioners 2 to 6 are brought on record as LR's of the deceased sole petitioner vide order, dated 23.1.2017 made in C.M.P.No.433 to 435 of 2017 in C.R.P.(NPD) No.1749 of 2015)

This Civil revision is filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 to set aside the judgment and decree, dated 28.1.2015 made in R.C.A.No.638 of 2010 on the file of the Rent Control Appellate Authority (VIII Judge, Small Causes Court), Chennai confirming the judgment and decree dated 13.09.2010 of the Rent Controller (XII Judge, Small Causes Court), Chennai in R.C.O.P.No.1482 of 2009.

For Petitioners : Dr.G.Krishnamoorthy
For Respondent : Mr.S.Meenakshi Sundaram
Senior Counsel for
Mr.C.R.Venkateswara

ORDER

The brief facts of the case is as follows:

According to the respondent/landlady, the respondent herein/landlady has filed RCOP No.1482 of 2009 before the Rent Controller (XII Judge, Court of Small Causes), Chennai. The revision petitioners are brought on record as the legal heirs of one S.Vadivel, respondent/tenant before the Rent Controller. The deceased Vadivel was a tenant of the demised property bearing door No.4, Abdul Sukkur street, Pudupet, Chennai under the respondent/Landlady. The petitioner/tenant has committed default in payment of rent of Rs.2000/- per month from January, 2007 till this date. The respondent/landlady demanded the petitioner/tenant to vacate the schedule mentioned premises for her own use and occupation of the family members. The revision petitioner/tenant has filed counter affidavit wherein he denied that he is a tenant under the respondent herein/landlady and claimed that the RCOP is not maintainable on facts. On the side of respondent/landlady, she was examined

as P.W.1 and Ex.P1 was marked. However, no witnesses were examined and no documents were marked on the side of the revision petitioner/tenant. The Rent Controller come to the conclusion that the respondent/revision petitioner is a tenant under the petitioner/landlady and he is also subject to the Rent Control Act and held that the petitioner has proved her case under Section 10(2)(i) of the Tamil Nadu Buildings (Lease & Rent Control) Act, but rejected the claim under Section 10(3)(a)(i) of the Act and directed the revision petitioner/tenant to pay rental arrears from January 2007 to August 2010 at the rate of Rs.2000/- per month totalling Rs.88,000/- to the petitioner/landlady/respondent herein on or before 27.9.2010 failing which the petition will be allowed on the ground of wilful default. Challenging the said order, the petitioner has filed an appeal before the Rent Control Appellate Authority (VIII Judge, Court of Small Causes), Chennai R.C.A.No.638 of 2010.

2 The Rent Control Appellate Authority recorded a finding that both sides have not produced sale agreement said to have been entered into between the parties. In the RCOP, the revision petitioner/tenant has not adduced any oral or documentary evidence to disprove the contentions of the landlady/ respondent herein. The Appellate Authority has held that the alleged sale agreement can be enforced under court of law by way of specific performance suit. In the absence of any material, the contentions of the

revision petitioner/tenant that the trial Court failed to apply provisions under Section 53(a) of the Transfer of Property Act was rejected. The Appellate Court relied upon the judgment in ***S.Venkatesulu Vs. V.Chandra and two others reported in 1997(3) CTC 39***, wherein it was held as under:

"Sections 11(4) & 23 of Tamilnadu Buildings (Lease and Rent Control) Act, landlord and tenant entering into agreement of for sale of property occupied by tenant, tenant is bound to pay rent even if landlord enters into agreement of sale unless there is specific recital not to pay rent in sale agreement."

3 The Appellate Court has held that proceedings in RCOP is a summary trial proceedings based on the issues of the owner's and tenant rights only. The Appellate Court rejected the contention raised by the appellant under Section 53-A of the Transfer of Property Act stating that the alleged agreement for sale can be enforced under court of law by specific performance only and also the triable issues involves that whether the agreement for sale is genuine or not. Hence, Section 53(a) of the Transfer of Property Act shall not support his claim.

4 Both the courts below have held that the revision petitioner is a tenant under the respondent/landlady. In the judgment passed in suit in O.S.No.9383 of 2005, it was held that the respondent was tenant and an

agreement holder. Pursuant to the said judgment in the suit, the alleged sale agreement was not enforced by the revision petitioner/tenant and the possession of the petitioner as tenant has been recognised in the aforesaid suit. Hence, the appeal filed by the revision petitioner/tenant was dismissed. Challenging the judgment and decree of the Appellate Authority, the tenant has preferred the present Civil Revision petition before this Court.

5 The learned counsel for the revision petitioner/tenant would submit that the appeal has been filed to set aside the direction issued by the learned Rent Controller for payment of arrears of rent. Without considering Section 53 of the Transfer of Property Act, the Appellate Authority has passed the judgment which is perverse and liable to be set aside.

6 The learned counsel for the respondent/landlady would submit that the petitioner herein filed a suit in O.S.No.9383 of 2006 against the respondent herein and one Vanisree seeking for permanent injunction from interfering with his possession. In the said suit, the revision petitioner admitted that the petitioner entered into possession of the property as tenant under the landlady/respondent herein. Subsequently, the sale agreement was entered into between the petitioner's wife Pappammal and the respondent/landlady on 16.12.1998 and advance amount of Rs.80,000/- was

paid by Pappammal to the respondent herein for a total sale consideration of Rs.1.75 lakhs. In the said suit, the trial court found that the sale agreement has become time-barred. Therefore, on the basis of finding of the trial court in the earlier suit, the learned Rent Controller come to the conclusion that landlady-tenant relationship exist and held that existence of sale agreement will not entitle a tenant for non payment of rental arrears unless there is specific clause in the agreement to that effect. The learned Senior counsel for the respondent/landlady would submit that the learned Rent Controller come to the conclusion that non issuance of notice prior to filing of RCOP will not give lever to the revision petitioner. The issuance of notice is not mandatory for filing RCOP for eviction on the ground of wilful default. Therefore, both the courts have rightly come to the conclusion that the revision petitioner/tenant failed to pay rent from January 2007 to August 2010 @ Rs.2000/- per month.

7 Heard the learned counsel for the revision petitioner/tenant and the learned Senior counsel for the respondent/landlady and perused the materials available on record.

8 The respondent/landlady has filed RCOP No.1482 of 2009 under Section 10(2) (i) and 10(3) (a) (i) of the Tamilnadu Buildings (Lease and Rent

Control) Act for eviction of the revision petitioner for wilful default and owners occupation. The learned Rent Controller held that the revision petitioner/tenant has committed wilful default and allowed the petition under Section 10(2) (i) of the Act. However, the learned Rent Controller rejected the ground raised for eviction for owner's occupation under Section 10(3) (a) (i) of the Act. The revision petitioner/tenant was directed to pay rental arrears from January 2007 till August 2010 @ Rs.2000/- per month.

9 The learned Appellate Authority has rejected the contention of the revision petitioner/tenant that he paid the entire sale consideration and he is in occupation of the premises without paying any rent as a sole and absolute owner of the premises, by stating that in the judgment passed in O.S.No.9383 of 2006, it was held that the revision petitioner was in occupation of the property as a tenant and agreement holder. It was also held that no relief claimed was granted in the said suit that the revision petitioner/ tenant need to pay rent to the respondent/landlady. In so far as the ground raised under Section 53-A of the Transfer of Property Act, the learned Appellate Authority has rightly held that the alleged agreement of sale can be enforced under court of law by a suit for specific performance only and thus rejected the claim under Section 53-A of the Transfer of Property Act.

10 The learned counsel for the revision petitioner would submit that the petitioner has originally entered the premises as a lessee in the year 1965. On 16.12.1998, the petitioner's wife entered into sale agreement with the respondent/landlady for a sale consideration of Rs.1,75,000/-, out of which Rs.80,000/- was paid as advance and promised to repay the balance amount. On 17.9.2000 a sum of Rs.50,000/- was paid by the revision petitioner to the respondent/landlady towards sale consideration in respect of portion of house property measuring 400 sq.ft owned by the respondent/landlady. The revision petitioner filed a suit in O.S.No.9383 of 2005 before the I Assistant Judge, City Civil Court, Chennai for permanent injunction. The suit was decreed. Therefore, the revision petitioner has claimed relief under Section 53-A of the Transfer of Property Act. The revision petitioner has contended that notice has not been issued prior to the filing of the RCOP, therefore, the respondent/landlady has not complied with the mandatory provisions as contemplated under Section 10(2) (i) of the Tamil Nadu Building (Lease and Rent) Control Act. Therefore, both the Courts have exceeded their jurisdiction in granting relief to the respondent/landlady and directed the revision petitioner to pay arrears of rent to the landlady/respondent herein.

11 The revision petitioner relied upon the decision of the Hon'ble

Supreme Court in **RAKAPALLI RAJA RAMA GOPALA RAO VS. NARAGANI GOVINDA SEHARARAO AND ANOTHER (1989(4) SCC 255)** wherein the Hon'ble Supreme Court has held as follows:

"3. The facts lie in a narrow compass. The respondents purchased the demised premises by a registered sale-deed dated 7th December, 1977 for Rs.70,000/-. The appellant was in actual possession of a part of the premises as a tenant of the vendors at the date of purchase. After the purchase of the property the respondents served the appellant with a notice dated 13th December, 1977 calling upon him to pay the rent due and deliver vacant possession of the demised premises. The appellant replied to the notice on 29th December, 1977 alleging that the vendors had orally agreed on 14th October, 1977 to sell the property to him for Rs.70,000/- and had received Rs.5,000/- as earnest. The appellant, therefore, contended that he was under no obligation to pay the rent and vacate the premises since he was ready and willing to purchase the property. The respondents sent a reply denying the existence of any such oral agreement and filed a suit for eviction. It may here be mentioned that on the date of the purchase of the property the rent was paid to the vendors up to the end of November 1977. The respondents, therefore, claimed the rent from December 1977 to May 1978 from the appellant. Since the appellant failed to pay

the rent for the said period the courts below came to the conclusion that he was a wilful defaulter and passed a decree in ejectment against him. The tenant has, therefore, come in appeal to this Court.

4. The short question then is whether it can be said that the tenant's default to pay or tender rent from December 1977 to May 1978 was not wilful to avail of the benefit of the proviso extracted above. It may be noticed that in cases where the tenant has defaulted to pay or tender the rent he is entitled to an opportunity to pay or tender the same if his default is not wilful. The proviso is couched in negative form to reduce the rigour of the substantive provision in Section 10(2) of the Act. An Act is said to be wilful if it is intentional, conscious and deliberate. The expressions 'wilful' and 'wilful default' came up for consideration before this Court in *S. Sundaram Pillai etc. v. V.R. Pattabiraman etc.*, [1985] 2 SCR 643. After extracting the meaning of these expressions from different dictionaries (See: pp. 659 & 660) this Court concluded at p. 661 as under:

"Thus a consensus of the meaning of the words 'wilful default' appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom".

Since the proviso with which we are concerned is couched in negative form the tenant can prevent the decree by satisfying the Controller that his omission to pay or tender the rent was not wilful. If the

Controller is so satisfied he must give an opportunity to the tenant to make good the arrears within a reasonable time and if the tenant does so within the time prescribed, he must reject the landlords application for eviction. In the present case, it is not in dispute that the tenant did not pay the rent from December 1977 to May 1978 before the institution of the suit. Under the eviction notice served on him in December 1977 he was called upon to pay the rent from December, 1977 only. The appellant-tenant did not pay or tender the rent from December 1977 to May 1978 not because he had no desire to pay the rent to the respondents but because the bona fide believed that he was entitled to purchase the property under the oral agreement of 14th October, 1977. He had also paid Rs.5,000 by way of earnest under the said oral agreement. True it is, his suit for specific performance of the said oral agreement has since been dismissed but he has filed an appeal which is pending. He, therefore, bona fide believed that he was entitled to purchase the property under the said oral agreement and since he had already paid Rs.5,000 by way of earnest thereunder he was under no obligation to pay the rent to the respondents. In order to secure eviction for non-payment of rent, it must be shown that the default was intentional, deliberate, calculated and conscious with full knowledge of its consequences. Here is a tenant who felt that even though he had invested Rs.5,000 as earnest the vendor has sold the property to the respondents in total disregard of his right to

purchase the same. This is not a case of a tenant who has failed to pay the rent without any rhyme or reason. He was not averse to paying the rent but he genuinely believed that he was under no obligation to do so as he had a prior right to purchase the property. We are, therefore, of the opinion that this is a case in which the Controller should have invoked the proviso and called upon the appellant to pay the arrears from December 1977 to May 1978 within a certain time. Failure to do so has resulted in miscarriage of justice. We are, therefore, of the opinion that the ejectment decree cannot be allowed to stand."

12. In the above decision, the Hon'ble Supreme Court has held that the Rent Controller should have invoked the proviso and called upon the appellant to pay the arrears from December 1977 to May 1978 within a certain time, failure to do so has resulted in miscarriage of justice. Therefore, direction given by the learned Rent Controller is within time.

13 Yet another decision relied upon by the learned counsel for the revision petitioner is **R.GANDHIMATHI AND OTHER VS. BEATRICE XAVIER** reported in **AIR 2003 SC 4149**. The relevant paragraph is extracted hereunder:

"7. This Court in Arjunlal Bhatt Mall Gothani v. Girish Chandra Dutta held as under: The appellants were tenants in the premises of the respondent-landlord and three suits, including an eviction suit, were pending

against them. By an agreement between the appellants and the respondent, the respondent agreed to sell the whole property to the appellants for a certain sum to be paid to him by equal instalments. Clause 5 of the agreement provided that in case of default of any instalment, the agreement for sale would stand cancelled and if the purchasers failed to pay the defaulted instalments within one month's notice the payments made would stand forfeited and purchasers would make over possession of the property to the vendor.

xxx xxx

Under Clause (5) of the agreement the question of giving notice arises only if the vendor wanted to forfeit the instalments paid by the purchaser. Not even one instalment having been paid the question of forfeiture does arise and no notice was necessary for cancelling agreement. It stood automatically cancelled. It was sought to be argued before us that once the agreement stood cancelled the appellants stood restored to their original position as tenants and the suit could not be filed without giving notice under the Transfer of Property Act. We are of opinion that when the agreement, D/ June 7, 1959 was entered into the old relationship of landlord and tenant came to an end. The rights and liabilities of the parties have to be worked out on the basis of that agreement. This decision clearly spells out that once there is agreement of sale between a land lord and a tenant, the old relationship as such

comes to an end. It goes on to record that even after the cancellation of such agreement of sale the status of tenant is not restored as such. In other words, on the date of execution of the aforesaid agreement of sale their status as that of landlord and tenant changed into a new status as that of a purchaser and a seller."

14 Therefore, once agreement stands cancelled, it has not been restored to original position as tenant. Therefore, in the aforesaid case, it was held that the plaintiff was in possession of the property not only as a tenant, but also as an agreement holder and the sale agreement entered between the parties, has been marked before the Rent Controller. In the present case, no sale agreement has been marked before the Rent Controller. Further, in the present case on hand, admittedly, the alleged sale agreement was entered into between Pappammal and the respondent/ landlady, not with the revision petitioner/tenant. Further, the alleged sale agreement has not been enforced. The revision petitioner/tenant cannot claim right or title over the property through sale agreement before the Rent Controller. The learned Appellate Court has rightly held that RCOP is a summary trial proceedings based on the issues of the landlord and tenant's right only and the agreement of sale can be enforced under the Court of law by a suit for specific performance only and also the triable issues therein involves as to whether the agreement of sale is genuine or not and hence, Section 53(a) of the Transfer of Property Act cannot

be invoked. Moreover, no sale agreement has been filed before the Rent Controller to show that the revision petitioner is an agreement holder, landlady-tenant relationship ceased and he need not pay rent to the respondent/landlady. Therefore, the decision of the Hon'ble Supreme Court has no relevance to the facts of the present case.

15 The learned counsel for the respondent/landlady submitted that no notice prior to filing of RCOP is required, in view of the decision rendered by this Court in **N.JANAKIRAMAN VS. C.B.RADHAKRISHNAN (2001(4) CTC 371)** wherein this Court in para 13 held as under:

"13. The explanation which is extracted above will only show that the default in payment of rent shall be considered as wilful, if the default is committed by the tenant even after two months' notice. Learned counsel for the respondent/ landlord also brought to my notice a direction decision of this Court on this question. In the decision reported in Majestic leather Ware vs. Govind Chetty, (1999 (3) CTC 199 : 2000 (1) L.W. 474, this Court had an occasion to consider the said aspect of the case. In the above decision, the Court has held thus:-

"Under the said Act, only to presume wilful default in payment of rent, explanation to Section 10(2)(i) has been introduced. So, if the submission of the learned counsel is accepted it

amounts to rewriting the provision of the Act. Such a presumption as suggested by the learned counsel cannot be arrived at, merely because after three years if a tenant deposits or pays the rent on the first hearing date without any valid reason. For example, if a tenant did not pay any rent inspite of two months' notice, under Explanation to Section 10(2) (i) of the Act, then the legal presumption is wilful and the landlord need not further establish the same.'

As already stated, it is nowhere stated in Section 10 of the Act that the landlord should issue notice to the tenant calling upon him to pay arrears of rent before filing eviction petition. But if the landlord gives notice to the tenant claiming arrears of rent, then he has to wait for two months and in that event only, the failure to pay rent even after the expiry of two months from the date of notice, will amount to wilful default. If the above course is adopted by the landlord and if it is proved that the tenant failed to pay rent even after the expiry of two months' notice, the landlord need not prove anything to establish that the tenant has committed wilful default. The Court has also held in the above decision that the Court can enter a finding taking into consideration the conduct of the tenant to consider whether the default is wilful and no notice is required. In view of the above decision, I am unable to sustain the contention of the revision petitioner that as the landlord failed to issue notice as contemplated in the explanation, the tenant cannot be said to have

committed default in payment of rent. It is contended on behalf of the landlord that the tenant has not tendered or deposited rent within time and that the mere fact that the tenant has deposited six months' rent at Rs.300/- per mensem in the civil suit, will not absolve the tenant from the definition of wilful default. Admittedly, the tenant has not deposited the arrears of rent in the Court of Rent Controller. Even admitting but not conceding that the agreed rent is Rs.300/- only, the revision petitioner/tenant is not justified in not paying even the said rent or deposited within time. Even assuming that the landlord refused to receive the rent of Rs.300/- per mensem, the legal course open to the tenant is to issue notice to the landlord requiring the landlord to specify the name of the bank into which the rent could be deposited. If the landlord does not specify the bank, it is open to the tenant to remit the rent to the landlord by money order. Further, Section 8 of the Act enables the tenant to deposit the rent before the Rent Controller if the landlord refuses to receive the rent remitted by money order. It is thus, seen that Section 8 of the Rent Control Act provides procedure for tendering rent to the landlord. The tenant has not resorted to the above remedy contained in Section 8 of the Act for depositing the rent. Learned counsel for the landlord also pointed out the consequences which the tenant has to face for non-compliance of Section 8 of the Act. In this case, the tenant filed suit, in the month of September 1999 and deposited arrears of rent due for the period from March 1999 to August 1999. If really

there is any truth in the case of the tenant that the landlord refused to receive the rent and that he demanded enhanced rent, the tenant should have issued notice contemplated under Section 8 of the Act to the landlord and deposited the rent before the Rent Controller. The above conduct of the tenant will only show that the default in payment of even the admitted rent is nothing but wilful."

16. This Court in the judgment reported in **1996(1) CTC 398 (JESSIE THAVAMANI VS. LIAKATH BASHA)**, in paragraph 9 held as under:

"9. It is not in dispute that the respondent has purchased the property in dispute under Ex.A-1, dated 17.7.1984 and that the property tax registry has also been transferred in his name as per the order of Vellore Municipality, dated 26.8.1985 under Ex.A-7. This apart, as per Exs.A-8 to A-11, the respondent/landlord had been paying the property tax to the property in question ever since the date of his purchase. In Ex.A-2, the vendor of the respondent/landlord herein had informed the petitioner/tenant about the sale under Ex.A-1 and attorned the tenancy asking the petitioner to pay the rent to the respondent. Above all, the petitioner herein while denying the title of the respondent/landlord, has miserably failed to prove her independent title under any testament. The petitioner is alleged merely to have entered into an agreement to sell with the respondent's vendor paying a sum of Rs.1,000/- (by three persons) for

the alleged sale consideration of Rs.90,000/-. In fact, the title is vested only with the respondent landlord as per the originals of Exs.A-1 and A-7. I am of the view that the Rent Controller has clearly erred in holding that Ex.A-2 was not proved, as he failed to note that no seller would permit his vendee to grab all the property for nearly five years, without recovering any rent and satisfying with the meagre advance of Rs.1,000/- alleged to have been received five years back.

As rightly pointed out by the counsel for the respondent the Rent Controller has erred in holding that the denial of title of the respondent herein by the petitioner was bonafide, deliberately omitting to mention Exs.A-1, A-2 and Exs.A-7 to A-11. In my opinion, the relationship of landlord and tenant has been established between the parties to this proceedings in view of Ex.A-2. In fact, O.S.No.276 of 1984 said to be pending on the file of the Sub Court, Vellore, has nothing to do with the establishment of the alleged title of the petitioner herein, since it is a suit for specific performance of certain agreement, which is denied even by the vendor."

17. This Court in the judgment reported in 2007(2) CTC 326 (S.GURUMURTHY VS. N.RAMAN) in paragraph 13 held as follows:

"13. This Court in Kuppulal vs. Sagunthala, 1987 (1) MLJ 242, held that despite the alleged oral agreement of sale with one of the co-owners, even if it

is found to be true, the tenant will still be under an obligation to pay the rent to the landlord. This Court reiterated that mere agreement of sale will not terminate the landlord-tenant relationship and the liability of the tenant to continue to pay the rent and consequently the tenant will have to continue to pay the rent unless there are specific recitals to the contrary in the agreement of sale."

18. This Court in the judgment reported in 2011(7) MLJ 264 (K.Mani vs. M.D.Jayavel and others) held as under:

"28. Per contra, the learned counsel for the landlords would cite the following decisions.

(i) S.Doraisami Nadar vs. Nagammal (1981)1 MLJ 35; LNIND 1980 Mad 301; 93 LW 858, certain excerpts from it would run thus at p.37 of MLJ:

"Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960) Section 10(3), Transfer of Property Act, Sections 53-A and 105 - Plea by tenant that he is entitled to be in possession as a purchaser in pursuance of an agreement for sale under the principle of part performance (Section 53-A, T.P. Act) - Absence of proof of possession under the terms of the agreement - plea, held not sustainable.

3 In this case, even if there has been an agreement of sale and advance has been paid in pursuance of that agreement, no agreement has been filed before the Court and none of the parties had

spoken about the agreement containing a term putting an end to the relationship of landlord and tenant and that the continued possession by the tenant should be traced only to the agreement of sale. Though in a way the petitioner says that his possession is traceable to the agreement of sale, unless the agreement of sale itself refers to that fact his possession which is traceable to the lease arrangement cannot now be treated as possession under the agreement of sale. Even assuming that the petitioner is entitled to the benefit of Section 53-A his liability to pay rent does not cease unless the agreement of sale puts an end to that liability in specific terms. In this case, it is not claimed even by the petitioner that under the agreement the liability to pay rent has ceased"

(ii) *B.Kuppulal vs. D.Sagunthala and another (1987)1 MLJ 242; LNIND 1986 Mad 399 : 100 LW 577, certain excerpts from it would run thus at p. 246 of MLJ:*

"10. Mere agreement of sale will not terminate the landlord tenant relationship and the liability of the tenant to continue to pay the rent, unless there are specific recitals to the contrary in the agreement of sale. In this case the tenant-respondent, despite the alleged oral agreement of sale with one of the co-owners, even if it is found to be true, will still be under an obligation to pay the rent to the petitioners. Further, it is settled law that under Section 53-A of the Transfer of Property Act the agreement has to be in writing and even if there was one, mere agreement of sale does not transfer title. In the instant case, even

according to the respondent, there was only an oral agreement between him and one of the co-owners. There is no perversity or illegality in the finding of both the Courts below that there has been a default in the payment of rent."

(iii) *Jessie Thavamani vs. Liakath Basha* (1996) 1 MLJ 304 : LNIND 1995 Mad 878 : 1996(1) CTC 398, certain excerpts from it would run thus:

"11. In the written statement filed by the second defendant in the above suit (the respondent herein), he has specifically stated that the alleged receipt dated 1.2.1984 would not in any way affect the right, title and interest of the parties and the property purchased by him and the said receipt is not binding on him. Learned counsel for the respondent/landlord has cited a decision of Padmini Jesudurai, in *J.Kuppulal, B.V.D. Sagunthala*, 100 L.W. 577 which runs as follows:

"Mere agreement of sale will not terminate the landlord-tenant relationship and the liability of the tenant to continue to pay the rent, unless there are specific recitals to the contrary in the agreement of sale. In this case, the tenant-respondent, despite the alleged oral agreement of sale with one of the co-owners, even if it is found to be true, will still be under an obligation to pay the rent to the petitioners. Further, it is settled law that under Section 53-A of the transfer of Property Act the agreement has to be in writing and, even if there was one, mere agreement of sale does not transfer title. In the instant case, even according to the respondent, there was only an oral

agreement between him and one of the co-owners. There is no perversity or illegality in the finding of both the Courts below that there has been a default in the payment of rent....."

I am of the same view that an oral agreement to sell would not terminate the landlord-tenant relationship and even if there was an agreement of sale it had to be in writing and the agreement itself should, in clear terms, specify that the landlord-tenant relationship was being terminated and that there was no future liability on the part of the tenant to pay rent to the landlord and in the absence of such specific recitals in the written statement the mere oral agreement of sale would not exonerate the tenant from continuing to pay rent to the landlord. In this case, admittedly, the tenant has not paid any rent to the respondent herein, even after the notice. The explanation offered by the petitioner herein is not at all acceptable.

12. Ramanujam, J. in an identical case, in *Duraisami Nadar vs. Nagammal (supra)*, observed as follows:

"A landlady filed a petition for eviction against the tenant on two grounds (1) wilful default in payment of monthly rent, and (ii) bonafide requirement of the building for the purpose of running a hotel business by her son. The application was resisted by the tenant on the ground that the relationship of landlady and tenant had come to an end by reason of his having entered in an agreement to purchase the property and that the

requirement of the landlady for the purpose of running her son's hotel business was not bonafide. The Rent Controller accepted the defence of the tenant that he had entered into an agreement of sale with the landlady and held there was no relationship of landlady and tenant after the agreement. However, the appellate authority held that notwithstanding the agreement of sale, the relationship of landlady and tenant continued and ordered eviction. On revision against the order.

Held: In this case there was no evidence that the parties agreed that the relationship of landlady and tenant should cease and the tenant's possession should be traced only to the agreement of sale. By merely entering into an agreement of sale the tenant did not acquire any right in the property.

If possession is traceable to the agreement of sale, then such possession can be sustained on the basis of the principle of part-performance under Section 53-A, Transfer of Property Act. Even assuming that the petitioner is entitled to the benefit of Section 53-A, his liability to pay rent does not cease unless the agreement of sale puts an end to that liability in specific terms. The liability to pay rent, therefore, continued. The default in payment of the rents in the present case was wilful and the requirement of the building by the landlady for the purpose of the business of her son was bonafide. The order of eviction had therefore to be sustained."

29. Absolutely, there could be no hesitation in falling in line with the view found highlighted in those

precedents and there is no conflict of opinion also in this regard. There is no hard and fast rule that soon after the emergence of an agreement to sell between a landlord and a tenant with regard to a demised premises, the possession of the tenant should automatically get itself converted into one that of an agreement holder, unless there is specification to that effect in the agreement itself."

19 The Hon'ble Supreme Court in ***Vidhyadhar vs. Mankikrao and another (AIR 1999 SC 1441)*** has held as follows:

"15. It was defendant No. 1 who contended that the sale deed, executed by defendant No. 2 in favour of the plaintiff, was fictitious and the whole transaction was a bogus transaction as only Rs. 500 were paid as sale consideration to defendant No. 2. He further claimed that payment of Rs. 4,500 to defendant No. 2 at his home before the registration of the deed was wholly incorrect. This plea was not supported by defendant No. 1 as he did not enter into the witness box. He did not state the facts pleaded in the written statement on oath in the Trial Court and avoided the witness box so that he may not be cross examined. This, by itself, is enough to reject the claim that the transaction of sale between defendant No. 2 and the plaintiff was a bogus transaction.

16. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side,

a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh and Anr. . This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh and Ors. AIR (1930) Lahore 1 and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh AIR (1931) Bombay 97. The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat also followed the Privy Council decision in Sardar Gurbakhsh Singh's case (supra). The Allahabad High Court in Arjun Singh v. Virender Nath and Anr. held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in Bhagwan Dass v. Bhishan Chand and Ors. , drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box."

The aforesaid judgments relied upon by the counsel for the respondent/landlady would apply to the facts of the present case.

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20 The revision petitioner has not marked any sale agreement before the Rent Controller and the revision petitioner has not entered into the witness box, nor produced any documentary evidence before the Rent

Controller to show that the revision petitioner is an agreement holder, landlady-tenant relationship ceased and he need not pay rent to the respondent/landlady. The said contention is liable to be rejected. The respondent/ landlady has filed RCOP before the Rent Controller for eviction of the revision petitioner on the ground of wilful default and owner's occupation. Therefore, the relationship of landlord-tenant has been proved and both the Courts below have rightly held that the relationship is of landlady-tenant between the revision petitioner and the respondent herein.

21 Therefore, the revision petitioner cannot contend that the landlady-tenant relationship between the petitioner and the respondent has ceased by virtue of sale agreement between the parties. In the light of the decision of the Hon'ble Supreme Court, it is not mandatory to issue notice under Section 10(2) (i) of the Tamil Nadu Building (Lease and Rent) Control Act. The contention raised by the petitioner that the demised property is a vacant land is rejected because the said ground has not been raised before the Rent Controller or the Appellate Authority and only raised before this Court. Therefore, the same cannot be sustained before this Court. Hence, there is no warrant to interfere with the concurrent finding rendered by the Courts below. Hence, no question of law is involved in the Civil Revision petition.

22 The Civil Revision petition is dismissed. No costs. The revision petitioner has to vacate the premises within a period of two months from today. Connected miscellaneous petition is closed.

12.9.2017

Speaking/Non Speaking order

Index: Yes/No

Internet: Yes/No

vaan

To

1. The Rent Control Appellate Authority (VIII Judge, Small Causes Court), Chennai.
2. The Rent Controller (XII Judge, Small Causes Court), Chennai



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D.KRISHNAKUMAR, J.

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Pre-Delivery Order in
C.R.P.No.1749 of 2015
and M.P.No.1 of 2015

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