

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.201 of 2015
and M.P.No.1 of 2015

M.I.Thajudeen

...

Petitioner

Vs

1.Tajudeen

2.A.M.A.Kather @ Mohamed Abdul Kadar ...

Respondents

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act) 1960 against the order dated 04.08.2014 made in RCA No.1 of 2014 on the file of the Rent Control Appellate Authority / Subordinate Judge, Mannargudi, confirming the decree and judgment dated 01.07.2013 in RCOP No.12 of 2011 on the file of Rent Control Authority / District Munsif, Thiruthuraipoondi.

For Petitioner : Mr.S.Arivazhagan

For Respondents : Mr.A.B.Fazluddin

ORDER

This Civil Revision Petition is filed against the judgment dated 04.08.2014 made in RCA No.1 of 2014 on the file of the Rent Control Appellate Authority / Subordinate Judge, Mannargudi, confirming the fair and decretal order dated 01.07.2013 in RCOP No.12 of 2011 on the file of Rent Control Authority / District Munsif, Thiruthuraipoondi.

2. The petitioner is the second respondent and respondents are the landlord in RCOP No.12 of 2011 on the file of District Munsif Court, Thiruthuraipoondi. The respondents filed the above said RCOP against the petitioner and one S.Murugesan for eviction, on the ground of wilful default and sub-letting. According to the respondents, the said Murugesan was a tenant under their father, as per oral agreement, for a monthly rent of Rs.150/- for running a xerox shop and the rent was subsequently enhanced to Rs.250/-. The said Murugesan paid rent only upto September 2008 and did not pay the rent from October 2008. Further, without the consent and knowledge of the respondents, the said Murugesan sub-let the premises to the petitioner. Notice was issued on 14.07.2011 to the said Murugesan and petitioner. They neither sent any reply nor paid

the arrears of rent and did not vacate the shop. Hence, the respondents filed the above RCOP.

3.The said Murugesan filed counter statement stating that he vacated the shop eighteen years before filing of the RCOP and surrendered the possession to the respondents' father. He also stated that he did not sub-let the premises to the petitioner and that he is not liable to pay any arrears of rent to the respondents.

4. The petitioner filed counter statement and submitted that he is not a sub-tenant but he is a tenant under the respondents' mother. After termination of lease with the said Murugesan, the petition premises was leased out to the petitioner for a monthly rent of Rs.150/- and it was enhanced to Rs.230/-. The petitioner paid rent upto September 2010 to the respondents' mother. Subsequently, the respondents refused to receive the rent from the petitioner. The petitioner spent Rs.50,000/- and renovated the shop premises. The respondents demanded enhanced rent of Rs.1,500/- and petitioner refused to pay the same. The second respondent, along with his friend one Mohamed Yunus, trespassed into the petition premises and threatened the petitioner. The petitioner filed O.S.No.14 of 2011 against the respondents for

permanent injunction. After filing of the suit, the respondents issued legal notice on 14.07.2011 making false allegations that the shop was sub-let to the petitioner.

5. Before the learned Rent Controller, the second respondent was examined as PW1 and four documents were marked as Exs.P1 to P4 on the side of the respondent. Petitioner examined himself as RW1 and three others were examined as RWs2 to 4. Eight documents were marked as Exs.R1 to R8 on the side of the petitioner.

6. The learned Rent Controller, considering the pleadings, oral and documentary evidence, especially Ex.R6 and evidence of PW1, allowed the petition ordering eviction on the ground of wilful default holding that the respondents have proved that the petitioner has not paid the rent from September 2010 and also held that the respondents failed to prove that the petitioner is a sub-tenant.

7. Against the said order dated 01.07.2013 made in RCOP No.12 of 2011, the petitioner filed RCA No.1 of 2014 before Subordinate Judge, Mannargudi.

8. The learned Appellate Authority, independently considering the materials and facts and order of the learned Rent Controller, dismissed the RCA, confirming the order of the learned Rent Controller with regard to wilful default and also allowed the RCOP on the ground of sub-letting.

9. Challenging the said judgment dated 04.08.2014 made in RCA No.1 of 2014 confirming the fair and decretal order dated 01.07.2013 in RCOP No.12 of 2011 and order of eviction on the ground of sub-letting, the present Civil Revision Petition is filed.

10. Heard the learned counsel for the petitioner as well as respondents and perused the materials available on record. Both the learned counsel appearing for the petitioner as well as respondents reiterated the averments made in the petition, counter affidavits, contentions raised in the grounds of appeal and in the present revision.

11. The point for consideration arisen in this Civil Revision Petition are -

- (i) Whether the petitioner has committed wilful default in payment of rent ?

(ii) Whether the Appellate Authority is right in allowing the RCOP ordering eviction on the ground of sub-letting also ?

Point No.1 : From the materials on record, it is seen that the petitioner, on his own admission has stated that he did not pay the rent from September 2010 onwards. According to the petitioner, the respondents demanded Rs.1,500/- per month as rent. He refused to accept the same and respondents thereafter refused to receive the rent. The petitioner, in the circumstances ought to have called upon the respondents to furnish their Bank Account so as to deposit the monthly rent and on their failure to do so, the petitioner ought to have initiated proceedings under Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, for permission to deposit the rent. The petitioner failed to follow the procedures, as contemplated under Section 8 of the Act and without paying the rent, he was in possession and enjoyment of the shop in question. Both the Courts below, appreciating the oral and documentary evidence and judgments relied on by the parties and scope of Section 8 of the Act, have rightly held that the petitioner committed wilful default in payment of rent and ordered eviction of the petitioner.

Point No.2 : The contention of the petitioner that Appellate Authority erred in ordering eviction on the ground of sub-letting also has considerable force. The learned Rent Controller has given valid reason for rejecting the contention of the respondents for ordering eviction on the ground of sub-letting. The learned Appellate Authority, without considering the pleadings, evidence in respect of sub-letting and without giving proper reason, ordered eviction on the ground of sub-letting also. Without there being any evidence, the learned Appellate Authority has erroneously held that the petitioner and first respondent in RCOP are colluding together and squatting on the property of the respondents without paying any rent. In view of the erroneous finding of the Appellate Authority, the eviction ordered on the ground of sub-letting alone is hereby set aside. However, the eviction ordered by the Courts below on the ground of wilful default is hereby confirmed.

12. In the result, this Civil Revision Petition is partly allowed modifying the judgment dated 04.08.2014 made in RCA No.1 of 2014 with respect to eviction on the ground of sub-letting and confirming the fair and decretal order dated 01.07.2013 made in RCOP No.12 of 2011. No costs. Consequently, connected Miscellaneous Petition is closed. The petitioner/tenant is granted

two (2) months time, i.e. till 19.02.2018 to vacate and hand over vacant possession of the petition premises to the respondents/landlord.

20.12.2017

Index : Yes/No

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To

1.The Subordinate Judge,
Mannargudi.

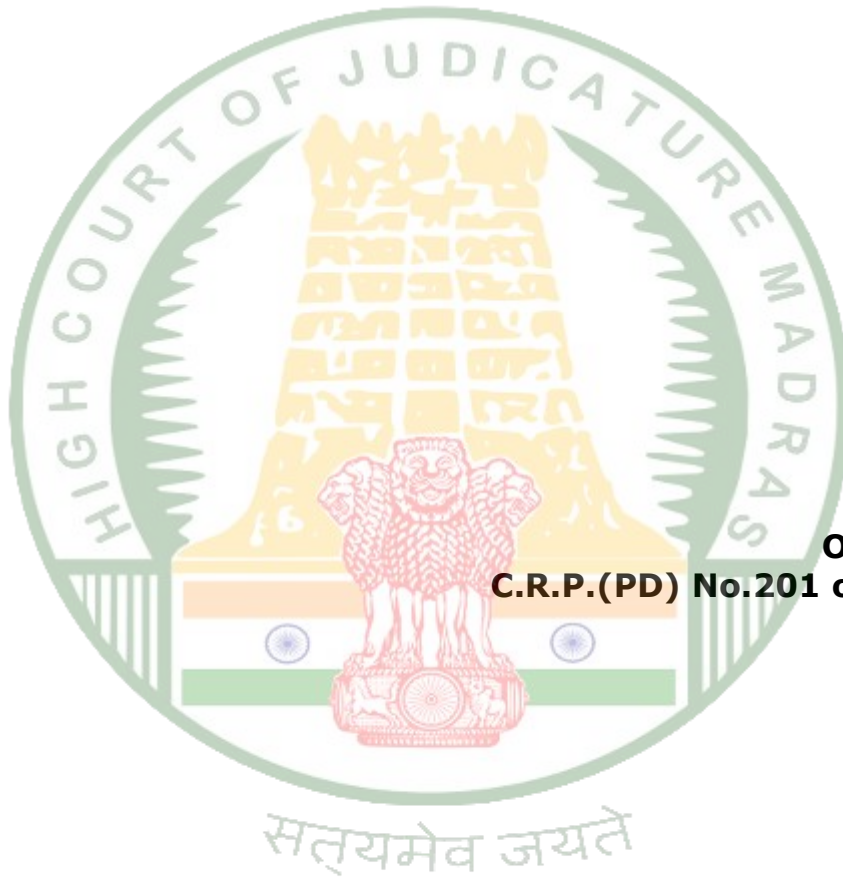
2.The District Munsif,
Thiruthuraipoondi.



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V.M.VELUMANI, J.

rgr



**Order in
C.R.P.(PD) No.201 of 2015**

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