

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2017

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (PD) No.2378 of 2010

R.Venkatrathnam

... Petitioner

Vs.

R.Muthusamy

... Respondent

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23 of 1973 and Act 1 of 1980 against the judgment and decree dated 22.10.2008 and made in R.C.A.NO.3 of 2007 on the file of the Rent Control Appellate Authority, (Sub-Court), Tiruppur confirming the order and decreetal order dated 17.10.2006 and made in R.C.O.P.No.12 of 2005 on the file of the Rent Controller (District Munsif) at Tiruppur.

For Petitioners : Mr.Rajnish Pathiyil

For Respondent : Mr.K.Govi Ganesan

ORDER

The judgment and decree dated 22.10.2008 and made in the Rent Control Appeal in R.C.A.No.3 of 2007 on the file of the Rent Control Appellate Authority (Sub-Court), Tiruppur, confirming the order of eviction dated 17.10.2006 and made in

the Rent Control proceedings in R.C.O.P.No.12 of 2005 on the file of the learned Rent Controller (District Munsif), Tiruppur are under challenge in this memorandum of civil revision.

2. Heard Mr.Rajnish Pathiyil, learned counsel appearing for the revision petitioner and Mr.K.Govi Ganesan, learned counsel appearing for the respondent.

3. It is brought to the notice of this Court by the learned counsel for the petitioner that after hearing both sides and reservation of orders, the sole respondent had died on 31.01.2017. He has also filed a memorandum to that effect and the same is recorded.

4. The revision petitioner herein claims to be the landlord of the demised premises and the respondent herein is said to be the tenant. The revision petitioner had moved the rent controller with a petition in R.C.O.P.No.12 of 2005 as against the respondent under Section 10(2)(i), 10(3)(a)(i) and 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent) Control, Act, 1960 (herein after be referred to as "the Act") for the eviction of the respondent/tenant on the grounds of wilful default in payment of rent, for his own occupation and also for additional accommodation. The respondent had denied the

relationship of landlord and tenant and he had also denied the title of the petitioner claiming himself to be the co-sharer.

5. The Rent Controller, while dismissing the petition, had found that since the respondent had denied the title of the petitioner, the other issues with reference to default in payment of rent, owner's occupation and additional accommodation need not be decided in this case and that it is open to the petitioner to seek remedy before the civil Court.

6. On appeal by the petitioner in R.C.A.No.3 of 2011, the Rent Control Appellate Authority, while rejecting the grounds raised by the petitioner in his appeal, had proceeded to dismiss the appeal after confirming the order of the Rent Controller.

7. The petitioner claims to be the owner of the properties described in the schedule of the Rent Control petition. According to him, he had become the owner of the property by virtue of a Settlement Deed dated 27.11.2003 executed by his father Ramaswamy. The respondent is the brother of the petitioner's father and had come to be in occupation of the suit property as a tenant from January 2004 onwards on a monthly rent of Rs.2,000/-.

8. The petitioner has stated that taking note of the relationship, no rental agreement was entered into between them as the tenancy is oral in nature. It is also his case that he had not received any advance, but the respondent had been paying the rent continuously from the month of January 2004 onwards.

9. In the month of August 2004, some misunderstanding was developed between the father of the petitioner and the respondent as they being brothers and a dispute was also pending with regard to the property owned by the petitioner's father. Only under this circumstance, the respondent had stopped payment of rent from the month of September 2004 and he, therefore, is in arrears of rent from September 2004 to March 2005 to the extent of Rs.14,000/-. The petitioner has claimed that the non-payment of rent and the default committed by the respondent is intentional.

10. It appears from the averments of the petition that the respondent is in occupation of the eastern portion of the house bearing Door No.34 and the petitioner is in occupation of the western portion. The petitioner has contended that the portion which is in his occupation is not sufficient and convenient as he has been residing there along with his aged parents and elder sister and therefore, he requires the

portion which is in occupation of the respondent for his own use and occupation as an additional accommodation.

11. In this connection, he had also issued a notice on 02.02.2005 and thereby called upon the respondent to pay the arrears of rent and vacate the demised premises. The respondent had also received the notice on 07.02.2005 and given a reply. The respondent in his counter statement had admitted that he had received a lawyers notice and subsequently issued an interim reply denying all the allegations.

12. It is the case of the respondent that the petition mentioned property and the adjoining property i.e., western portion were purchased by his mother Thangammal, who is also the grandmother of the petitioner. He has admitted that the petitioner's father Ramaswamy is his brother and that the petitioner is his brother's son. That on 05.05.1986, according to the respondent, their mother Thangammal had executed a settlement deed in his favour as well as in favour of his brother viz., the father of the petitioner Ramaswamy. This settlement deed covers two houses. The father of the petitioner Ramaswamy was in possession and enjoyment of the eastern side house; whereas the respondent has been residing in the western side house with their respective family members.

13. While so, there was some misunderstanding between the respondent and his wife which led him to execute a release deed in favour of his brother Ramaswamy on 14.09.1989 on an understanding that his brother Ramaswamy (father of the petitioner) shall re-convey the said property in his favour after resolving the family dispute. Only on the basis of this arrangement, the respondent had been residing in the petition mentioned premises as his own property because the said release deed was a sham and nominal document.

14. It is also the case of the respondent that the petitioner's father Ramaswamy had borrowed a sum of Rs.5 lakhs from him and in witnessing thereof, he had executed a demand promissory note on 27.03.2003 agreeing to repay the same on demand. But his brother Ramaswamy had not come forward to repay the said amount. It is relevant to note here that the respondent has strongly denied the relationship of landlord and tenant.

15. The petitioner R.Venkatrathinam, had examined himself as PW1. During the course of his examination, four documents were exhibited. On the other hand, the respondent R.Muthusamy had examined himself as RW1 and two more witnesses were also examined as Rws 2 and 3 respectively. During the course of their examination, 11 documents were exhibited.

16. As observed in the forgoing paragraphs, since the respondent had denied the title of the petitioner in respect of the demised premises, the learned Rent Controller had dismissed the petition with a finding that it is open to the petitioner to seek his remedy before the Civil Court. This was endorsed by the appellate authority and therefore, the appeal filed by the petitioner was dismissed.

17. It is a common judicial parlance that when the Courts below have given concurrent findings, the High Court, being the revisional Court, shall not normally interfere to exercise its revisional jurisdiction unless there are reasonable grounds to be recorded. As decided in ***M/s. Jagal Priya Medicals Vs. Mangammal, represented by Power Agent V. Kanchana*** reported in ***2010-5-LW-1009***, the appellate authority is the last Court of facts and even though the High Court's jurisdiction is wider than Article 227 of the Constitution of India and Section 115 CPC, still the High Court cannot assume the role of appellate Court. However, the High Court can interfere only when there is gross illegality or perversity.

18. Sub-Section (1) of Section 25 of the Act envisages that the High Court may, on the application of any person aggrieved by an order of the Appellate Authority, call for

and examine the record of the Appellate Authority, to satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and if, in any case, it appears to the High Court that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly

19. On coming to the instant case on hand, the Rent Controller as well as the Rent Control Appellate Authority have concurrently found that the denial of the title of the petitioner by the respondent was bonafide and that the petitioner had miserably failed to answer the question as to on what basis the respondent had been residing in the petition mentioned premises prior to January 2004. Both the courts have found basis on Exs.R1 to R8 for coming to this conclusion.

20. Mr.Rajnish Pathiyil, learned counsel for the petitioner has argued that the conclusion of both the Courts mainly on the basis of non-examination of the father of the petitioner, was totally against the settled principle of law. He has further argued that since the petitioner's father Ramaswamy and the respondent herein happened to be brothers, the normal practice of getting the document executed between

the parties would not apply to the facts of the case and he has also adverted to that the relationship of the landlord and tenant had definitely started only after the execution of the settlement deed in favour of the petitioner by his father and that the finding of the Courts below seems to be perverse in nature and therefore, he has urged that the interference of this Court to set the wrong committed by the Court below at right is absolutely necessary. In support his contention, the learned counsel has placed reliance upon the following decisions:

i) A learned Single Judge of this Court in ***Madasamy Nadar Vs. A.J.Khaja Nazamudeen and Ors.*** reported in ***Manu/TN/0539/1990***, has held as under:

"11. In the reply notice under Ex. A-21 and in the counter filed by the second respondent in the R.C.O.P. the second respondent has specifically denied the title of the petitioners by stating that they are the owners of the petition mentioned property. The settlement deed Ex. A-2 the house tax receipts Exs. A-3, A-4 and A-9 and A-10 go to show that the petitioners have got title to the petition mentioned property and, therefore, the denial of the petitioners' title by the second respondent is not bona fide. Under these circumstances, the concurrent findings of the Rent Controller and the Appellate Authority that the denial of title of the petitioners by the second respondent is not bona fide is correct and do not call for interference in this revision."

ii) This Court in **Rajam Ammal Vs. P.K.Pillai and others** reported in **Manu/TN/0056/1991**, has held as under:

"9. Further, a perusal of the counter filed by the respondents 1 and 2 in the R.C.O.P. shows that the respondents 1 and 2 have denied the title of the petitioner to the petition mentioned property. As already pointed out, there is sufficient evidence in the form of Ex. E. 11 and Ex. A. 12 in this case to show that the petitioner has got valid right to collect the rent for the petition mentioned property and that the lease agreement Ex. A.1 is a valid and genuine document. In these circumstances, on the basis of the evidence available on record, it can be safely concluded that the denial of the petitioner's title to the petition mentioned property by the respondents is not bona fide and, therefore, the respondents are liable to be evicted from the petition mentioned property under [S. 19\(2\) \(vii\)](#) of the Act also."

In **M/s.Hussain Lorry Booking Service, Coimbatore and others vs. A.Sirajuddin** reported in **Manu/TN/0060/1991**, it is held in Paragraph No.6 as under:

"6. Mr. Jamal Mohaned, learned counsel for the petitioner would submit that even assuming that the petitioner has not made out a case for eviction on the ground that the petitioner's requirement of the building for demolition and reconstruction is bona fide, the order of eviction passed by the Rent Controller and the Appellate Authority can be

sustained on the ground that the respondents' denial of the petitioner's title to the superstructure is not bona fide. Mr. K. Mohanram, on the other hand would contend that the respondents have denied the title of the petitioner to the superstructure in the petition mentioned premises even in the suit, O.S. No. 518 of 1979 filed by the respondents against the petitioner; the petitioner has not filed the petition for eviction in the present case on the ground that the respondents' denial of the petitioner's title to the superstructure is not bona fide, though that ground was available to the petitioner at the time of filing the present petition for eviction; when the petitioner has failed to claim an order of eviction in the present R.C.O.P. on the ground that the respondents' denial of the petitioner's title to the superstructure is wilful the petitioner must be deemed to have waived his right to claim eviction on the ground that the respondents wilfully denied the petitioner's title to the superstructure. The learned counsel for the respondents further contended that an order of eviction cannot be ordered on a ground which was not mentioned in the landlord's application for eviction...."

21. On the other hand, Mr.K.Govi Ganesan, learned counsel for the respondent has invited the attention of this Court to the 2nd proviso to sub-section (1) of Section 10 of the Act, which is extracted as under:

"Provided further that where the tenant deny

the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded."

22. In this regard, the learned counsel for the respondent had adverted to that the Courts below have given their concurrent findings saying that the denial of the title of the petitioner by the respondent was bonafide and therefore, it was for the petitioner to approach the Civil Court to seek appropriate remedy. He has further urged this Court that the interference of this Court with the concurrent findings of the courts below did not require and hence the revision itself was deserved to be dismissed.

23. The petitioner's case is that on 27.11.2003, his father Ramaswamy had executed a settlement deed in his favour and the same was accepted and acted upon and by virtue of this deed of settlement he had become the owner of the property. Ex.P1 is the copy of the Settlement Deed dated 27.11.2003 obtained from the Sub-Registrar Office. This settlement deed

seems to be a registered document bearing Document No.4881 of 2003. On a cursory perusal of this document, it appears that the property was given to the petitioner's father Ramaswamy and his brother Muthusamy, (respondent herein) by their mother Thangammal under a registered deed of settlement dated 05.05.1986. It also appears that the respondent had executed a registered release deed in favour of the petitioner's father Ramaswamy on 14.09.1989. Therefore, the petitioner's father has stated in the above said settlement deed (Ex.P1) that he became the owner of the property by virtue of the above said two documents viz., settlement deed dated 05.05.1986 and the release deed dated 14.09.1989 and therefore, the petitioner has contended that by virtue of the above said settlement deed (Ex.P1) executed in his favour by his father Ramaswamy, he became the absolute owner of the suit property. It is also the case of the petitioner that the respondent, being his junior paternal uncle, had become the tenant of the demised premises from the month of January 2004 on a monthly rent of Rs.2,000/-. According to petitioner, taking note of their relationship, no rental agreement was entered into between them as the tenancy between them was oral in nature.

24. Strictly speaking, when the respondent had relinquished his right in respect of his share in the property by executing a release deed on 14.09.1989 in favour of his

brother, it is to be imagined, under what capacity he would have been in the occupation of the said portion. Could he have been in the occupation of the demised portion as an absolute owner.

25. As contemplated under Section 58 of the Indian Evidence Act, an admitted fact need not be proved. The release deed was executed by the respondent on 14.09.1989. The letter of Vardhamanam (R5) seems to have been executed on 27.03.2003 i.e., after 14 years. Ex.P4 is the reply given by the respondent to the petitioner for the notice dated 02.02.2005 issued by the latter. In Ex.P4 (reply given by the respondent's counsel dated 26.02.2005), it is stated that as under:

"my client and your client's father had purchased the property jointly under a registered sale deed. Now your client is claiming the right under Settlement Deed. My client is in need of xerox copy of the said settlement deed."

26. The averments of the reply as aforestated would exemplify the presumption, as if the respondent and his brother Ramaswamy (father of the petitioner) had purchased the property jointly under a registered sale deed. The date of the sale deed is not given. But this version seems to be contrary to the case of the respondent as it is seen from Paragraph 6 of his counter statement. But without disclosing this fact, in his reply notice, he has stated that he and his

brother had purchased the property jointly under a registered sale deed. The respondent has clearly admitted in his cross-examination that he had not stated anything about the execution of release deed as well as the letter of Vardhamanam under Ex.R5.

27.He has also admitted in his cross-examination that he knew the fact that a settlement deed was executed by his brother in favour of the petitioner in respect of the suit property. He has also admitted that the property bequeathed under the settlement deed is his property. But, he had not initiated any legal action or legal proceedings challenging the validity of the settlement deed executed in favour of the petitioner by his father. He has also admitted that he had not even initiated any legal proceedings challenging the letter of Vardhamanam. Besides this, he has admitted in his cross-examination that in his reply notice, he had stated as if the suit property was purchased jointly by him and his brother.

28. Mr.K.Govi Ganesan, learned counsel for the respondent, while advancing his argument, has submitted that the respondent had filed a suit in O.S.No.60 of 2009 on the file of the District Munsif, as against his brother to execute a Deed of Reconveyance, based on Ex.R5 Vardhamanam Letter.

29. It is to be highlighted that on 14.09.1989 the respondent had executed a release deed in favour of his brother with an understanding that his brother Ramaswamy shall execute a deed of reconveyance in respect of his property after the settlement of his family dispute. This release deed had not been exhibited before the Rent Controller either by the petitioner herein or by the respondent. After the execution of the release deed on 14.09.1989, his possession in respect of the suit property could not be construed to be that of an absolute owner thereof. Then what would be his position?

30. The Courts below have categorically concluded that the petitioner had failed to answer the question as to under what capacity the respondent had been residing in the suit premises prior to January 2004. When the fact of execution of release deed dated 14.09.1989 has been admitted by the respondent, it is presumed that his possession would not definitely be in the capacity of absolute owner thereof. The petitioner has claimed that he became the absolute owner of the petition mentioned property by virtue of the settlement deed executed by his father dated 27.11.2003 under Ex.P1. It is also his case that the respondent came to be in occupation of the petition mentioned property as a tenant from the month

of January 2004 on a monthly rent of Rs.2000/-. The tenancy, according to the petitioner, was oral in nature and no agreement of lease was entered into between them as they are closely related to each other. Under this circumstance, it is concluded, in the absence of contrary evidence on the part of the respondent to show that he is the absolute owner of the demised portion, he cannot and shall not deny the title of the petitioner as he had not initiated any legal proceedings questioning the validity of the settlement deed dated 27.11.2003 executed in favour of the petitioner by his father. Section 114 of the Indian Evidence Act contemplates that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

31. Keeping in view of the provisions of Section 114 of the Indian Evidence Act, this Court can infer from the existing facts that the respondent, as claimed by the petitioner, is the tenant in respect of the petition mentioned premises on and from the month of January 2004. Since there is no clear denial on the part of the respondent, this Court finds that the monthly rent determined in between the petitioner and the respondent was Rs.2,000/-, which is payable

from the month of January 2004 onwards. Further the respondent has admitted that a misunderstanding was arisen between him and his brother Ramaswamy and therefore as alleged by the petitioner in Paragraph 4 of the petition, it is established that the respondent was in arrears of rent to the extent of Rs.14,000/- from the month of September 2004 to March 2005.

32. Secondly, it is admitted by the respondent that he is in occupation of the eastern portion of the house bearing Door No.34 and the petitioner is in occupation of the western portion along with his aged parents and elder sister. This portion, according to the petitioner, would not be sufficient and convenient to reside along with his family members and therefore, this Court finds that the requirement of the petition mentioned premises, is bonafide for his additional accommodation as well as his own occupation and accordingly, the grounds of wilful default in payment of arrears of rent, owners occupation as well as the additional accommodation have been unambiguously proved by the petitioner. However, the above facts have not been taken into consideration by the courts below.

33. Having given due regard to the relevant facts and circumstance of the case, this Court is of the view that the interference of this Court is absolutely necessary.

Accordingly, the revision petition is allowed. The impugned judgment and decree of the Rent Control Appellate Authority dated 22.10.2008 as well as the judgment and decree of the Rent Controller dated 17.10.2006 are set aside and the petition in R.C.O.P.No.12 of 2005 is allowed. The respondent is directed to vacate and surrender the vacant possession of the petition mentioned premises to the petitioner within a period of three months from the date of copy of this order. No costs.

10.02.2017

Index: Yes/No
Internet: Yes
gpa

To

1. The Rent Control Appellate Authority,
(Sub-Court), Tiruppur
2. The Rent Controller (District Munsif)
Tiruppur

T.MATHIVANAN.J.,

gpa

C.R.P (PD) No.2378 of 2010

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