

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2341 of 2013
& M.P.No.1 of 2013

M.Venkatachalam ... Petitioner

Vs.

1.Dr.K.M.Velu

2.Lalitha Balasubramaniam
Rep. By Power Agent,
B.Senapathy.

3.B.Senapathy

4.Bhuvaneshwari Balasubramaniam
Rep. by Power Agent,
B.Senapathy.

..Respondents

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act against the fair and decretal order dated 04.02.2013 passed in R.C.A.No.3 of 2011 on the file of the Appellate Authority Rent Tribunal (Sub Judge) Gobichettipalayam, reversing the fair and decretal order dated 27.01.2011 passed in R.C.O.P.No.1 of 2010 on the file of the Rent Controller (District Munsif) Gobichettipalayam.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mr.N.Manokaran

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 04.02.2013, passed in R.C.A.No.3 of 2011 on the file of the Appellate Authority Rent Tribunal (Sub Judge) Gobichettipalayam, reversing the fair and decretal order dated 27.01.2011, passed in R.C.O.P.No.1 of 2010 on the file of the Rent Controller (District Munsif) Gobichettipalayam.

2.The petitioner is the tenant and respondents are the landlords in R.C.O.P.No.1 of 2009. The respondents filed the said R.C.O.P against the petitioner for eviction, on the ground of wilful default, denial of title, demolition and reconstruction and for own use and occupation. According to the respondents, the petitioner was originally inducted as tenant in the year 1970, on a monthly rent of Rs.50/-. It was gradually increased and monthly rent was Rs.700/- from 01.04.2008. The petitioner was regularly paying the rent till 31.03.2009 and committed default from 01.04.2009 to 31.12.2009 for the period of 9 months, totalling Rs.(700 X 9) = Rs.6300/-. In spite of repeated demands and reminders, the petitioner did not pay the rent. The petition premises is very old and

is in a dilapidated condition. The respondents require the petition premises for demolition and reconstruction. The first respondent is a medical practitioner having clinic in a rented building on a monthly rent of Rs.1800/-. Therefore, he requires the petition premises for his own use and occupation. Hence, the respondents have filed the present R.C.O.P.

3.The petitioner filed counter affidavit and denied the landlord-tenant relationship between the respondents and petitioner. According to the petitioner, he is a permissive occupant of the petition premises. He was a cook in the house of the grand father, M.S.Muthugounder, of the first respondent and his son, K.M.Murugaiyan. The grandfather and father of the first respondent permitted the petitioner to reside in the petition premises and after the marriage of the petitioner, they gifted the said property to the petitioner. Therefore, the Rent Control Act is not applicable. In the year 2005, the petitioner requested the respondents to carry out the repair work of the petition premises. They refused to carry out the repair on the ground that the petitioner is owner of the petition premises. On refusal by the respondents, the petitioner carried out the repair by spending a sum of Rs.1,00,000/-. The respondents

have not mentioned the date from which the petitioner has become the tenant.

4. Before the learned Rent Controller, the first respondent examined himself as PW1 and one Viswanathan, the Engineer was examined as PW2 and marked 30 documents as Exs.P1 to P30. The petitioner examined himself as RW1 and did not mark any document.

5. The learned Rent Controller, considering the pleadings and materials on record, dismissed the R.C.O.P.

6. Against the said order dated 27.01.2011, made in R.C.O.P.No.1 of 2010, the respondents filed R.C.A.No.3 of 2011. The learned Appellate Authority, independently considering the evidence on record, allowed the R.C.A by the order dated 04.02.2013 and set aside the order dated 27.01.2011 made in R.C.O.P. The learned Appellate Authority ordered eviction of the petitioner and directed the petitioner to vacate and handover the petition premises to the respondents within a period of three months.

7. Against the said order dated 27.01.2011, made in R.C.O.P.No.1 of 2011, reversing the order dated 04.02.2013, made in R.C.A.No.3 of 2011, the present Civil Revision Petition is filed by the petitioner.

8. The learned counsel appearing for the petitioner contended that the Appellate Authority, on assumption and presumption, allowed the appeal, reversing the well considered order of the learned Rent Controller. The respondents have not pleaded and proved the date of handing over the tenancy to the petitioner; when the rent was increased periodically and when the rent was paid by the petitioner to the respondents. The learned Appellate Authority failed to consider that petitioner is in a portion of the building and erred in holding that the petitioner is a tenant. In Ex.P16, the reply notice sent by the petitioner, he has denied the landlord-tenant relationship and respondents have not sent any rejoinder. The learned Appellate Authority has not considered the evidence of the petitioner as RW1 in entirety, wherein it was not even suggested that the case of the petitioner is false.

9. Per contra, the learned counsel appearing for the

respondents submitted that the petitioner has taken inconsistent stand, namely, he is the permissive occupant and he has become owner of the property by oral gift of M.S.Muthugounder and his son, K.M.Murugaiyan, the grandfather and father of the first respondent. Any gift deed can be only in writing and it must be registered. Even now, the E.B connection is in the name of the respondents and they proved their title and tenancy of the petitioner by oral and documentary evidence. The learned Rent Controller has not properly appreciated the oral and documentary evidence and on erroneous ground, dismissed the R.C.O.P, filed by the respondents. On the other hand, the learned Appellate Authority, on proper appreciation of the facts, allowed the appeal and set aside the order of the learned Rent Controller by giving valid reason. In support of his contentions, the learned counsel for the first respondent relied on the judgment reported ***in 2014 (5) CTC 217 (Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh):***

"45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on reappreciation of the evidence, its view is different from

the Court/Authority below. The consideration or examination of the evidence by the High Court in Revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its Revisional Jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an Appellate power to reappreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a Court of First Appeal. Where the High Court is required to be satisfied that the decision is

according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

10. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

11. From the materials on record, it is seen that petitioner denied landlord-tenant relationship and that originally he was permitted to reside in the petition premises as he was working as a cook in the respondents family. Subsequently, the petition premises was gifted to him by the grandfather and father of the first respondent. The petitioner has denied the claim of the respondents on two inconsistent pleas: सत्यमेव जयते

1. That he is a permissive occupant;
2. The property was orally gifted to him.

12. As per Section **123 of Transfer of Property Act, 1882**, for gifting an immovable property, the transfer of title of the property

must be effected only by a registered instrument signed by or on behalf of the donor and attested by atleast two witnesses. In the present case, the petitioner claims ownership based on the oral gift, which is not recognised by the provision of Transfer of Property Act, 1882.

13. Further, the respondents have produced the documents to show that Revenue records stand in their name and they are paying property tax, water tax and other statutory dues. The petitioner has stated in the counter affidavit and deposed that, in the year 2003, he requested the respondents to carry out repair work in petition premises and respondents refused to carry out the same on the ground that petitioner is the owner of the property. According to the petitioner, he carried out the repairs by spending a sum of Rs.1,00,000/-. The petitioner has not produced any evidence to show that he carried out the repairs to the tune of Rs.1,00,000/-. If really he is the owner of the property as per the gift by grandfather and father of the first respondent, he would not have approached respondents to carry out the repairs. The petitioner in his evidence had stated that one Deivasigamani was inducted as a tenant by oral

tenancy on the northern portion of the property and petitioner only collected the rent and handed over the same to the respondents for which no receipt was issued by the respondents. These facts go to show that contention of the petitioner that he is not a tenant and he is the permissive occupant occupying the petition premises as owner of the property cannot be true.

14. It is also to be noted that after the alleged petition premises was gifted to the petitioner, he did not take any steps to get his name mutated in the Revenue records. The contention of the learned counsel for the respondents is that the respondents have not stated from when the petitioner is tenant in the petition premises. This contention is contrary to the averments in the paragraph 4 of the R.C.O.P petition wherein the respondents have stated that petitioner was inducted as a lessee in January 1970 (தை மாதம்). The respondents have stated that the petition building is 80 years old and is in dilapidated condition. The petitioner also admitted in his evidence that petition building is old and is in dilapidated condition. He has also admitted in his evidence that the respondents are well to do family. The respondents have filed

Exs.R17 and R18, estimate & building plan for construction of the building and blue print. The respondents also filed Exs.P26 to P30, the fixed deposit receipts standing in the name of the first respondent. In view of the admission of petitioner that building in dilapidated condition is very old and respondents have sought to demolish and reconstruct the building, the learned Appellate Authority allowed the appeal and reversed the order of the learned Rent Controller, on consideration of the facts stated above, by giving cogent and valid reason.

14.For the above reason, this Civil Revision Petition is dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

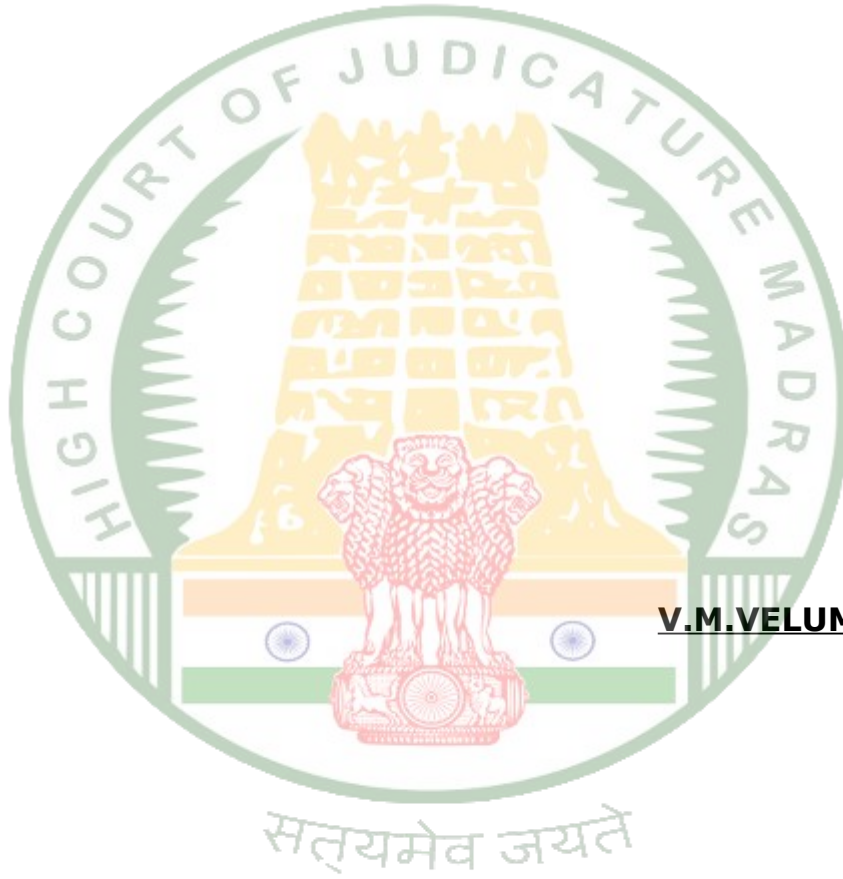
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To

1.The Appellate Authority
Rent Tribunal (Sub Judge)
Gobichettipalayam

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2.The Rent Controller (District Munsif)
Gobichettipalayam.

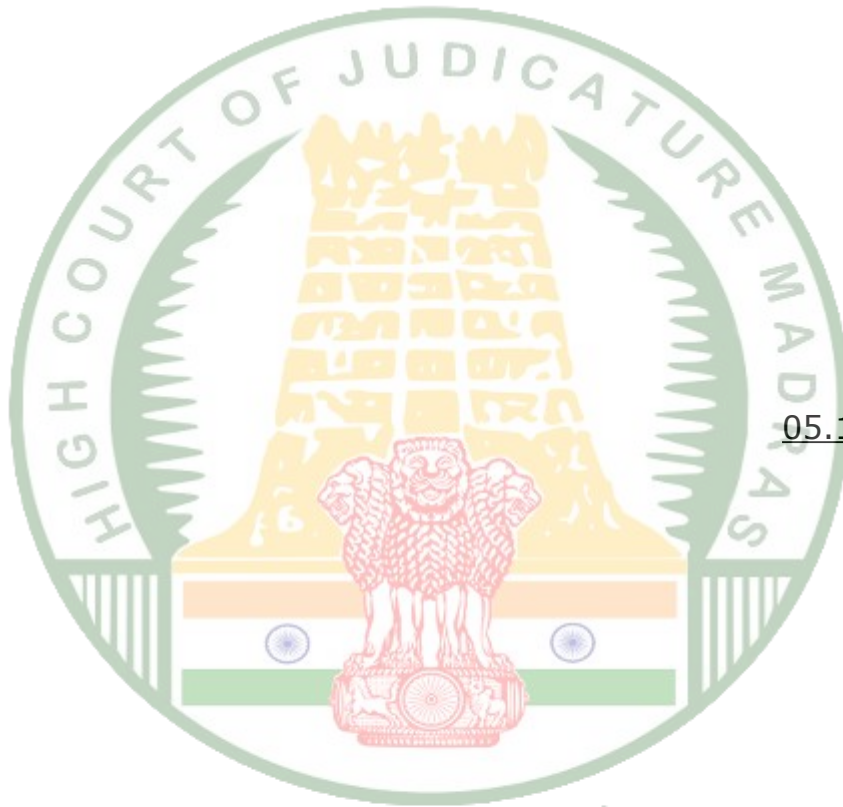


V.M.VELUMANI,J.

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