

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3850 of 2009

1.P.Pongaiyan

2.P.Natesan (Deceased)

3.M.Venkatesan

4.N.Thambidurai

5.V.Arulmozhi

6.Malarkodi

7.T.Gomathi

8.Lakshmi

.. Petitioners

(Petitioners 4 to 8 brought on record as legal heirs of the deceased second petitioner vide Court order dated 06.10.2017 made in M.P.No.2 of 2013 in C.R.P.No.3850 of 2009)

Vs.

Saradhambal

.. Respondent

PRAYER: Civil Revision Petition is filed under Section 25 of Tamil Nadu Building (Lease and Rent Control) Act, against the judgment and decree dated 26.03.2009 made in R.C.A.No.6 of 2007 on the file of the Principal Subordinate Court, Salem, confirming the fair and decretal order dated 06.01.2005 made in R.C.O.P.No.44 of 2001 on the file of the (Rent Controller) II Additional District Munsif Court, Salem.

For Petitioners : Mr.D.Shivakumaran

For Respondent : Not ready in notice

O R D E R

The Civil Revision Petition is filed against the judgment and decree dated 26.03.2009 made in R.C.A.No.6 of 2007 on the file of the Principal Subordinate Court, Salem, confirming the fair and decretal order dated 06.01.2005 made in R.C.O.P.No.44 of 2001 on the file of the (Rent Controller) II Additional District Munsif Court, Salem.

2. The petitioners are the landlord and respondent is the tenant in R.C.O.P.No.44 of 2001 on the file of the I Additional District Munsif Court, Salem. The petitioners have filed the said R.C.O.P., against the respondent for eviction on the ground of wilful default and own occupation for third petitioner.

3. According to the petitioners, the petition property was allotted to mother of the petitioners 1 and 2 and grandmother of the third petitioner viz. Unnamalai Ammal, by Ammapet Handloom

Weavers Co-operative Manufacturing and Sales Society Limited No.(S532) at Ammapet, Salem Town. The respondent was permitted to reside in the said property along with Unnamalai Ammal to look after her. Their mother Unnamalai Ammal died intestate on 08.07.1994. The petitioners succeeded the petition property to the estate of Unnamalai Ammal, as Class I legal heirs, as per Hindu Succession Act 1956, after her death. The petitioners asked the respondent to vacate and hand over the possession of the petition property. The respondent agreed to pay a rent of Rs.150/- per month and also agreed to vacate and surrender the vacant possession.

4. Taking into consideration the old age of the respondent, the petitioners approved the attornment and permitted the respondent to reside in the petition property on payment of Rs.150/- per month as rent. Subsequently, the respondent did not pay the rent and committed wilful default in payment of rent. The respondent is in arrears of Rs.12,000/- from 08.07.1994 for 18 months. Further, the third petitioner requires the petition property for his own use and occupation.

5. The respondent filed counter statement and denied all the averments made by the petitioners. The respondent submitted that there is no landlord-tenant relationship between petitioners and respondent. The said Unnamalai Ammal was not able to pay the dues to the Ammapet Handloom Weavers Co-operative Manufacturing and Sales Society Limited No.(S532) at Ammapet, Salem Town. The said Unnamalai Ammal transferred her right to one Shanmugam. The petition property originally belonged to Ammapet Handloom Weavers Co-operative Manufacturing and Sales Society Limited No.(S532) at Ammapet, Salem Town and respondent is also a member of the said society. Originally, the said petition property was allotted to Unnamalai Ammal, subsequently, she did not want the said property and the respondent agreed to purchase the said property. In view of the terms of agreement with the society, the respondent could not purchase the said property. Unnamalai Ammal's son Marimuthu was paying the dues for certain period. Subsequently, deceased Unnamalai Ammal entered into an agreement of sale with respondent in the presence of one Arumugam, Panchayat Board President. The respondent agreed to pay a sum of Rs.11,500/- which should be paid by Unnamalai Ammal and the possession of the petition property was handed over

to the respondent in the year 1979 and the same was agreed between Unnamalai Ammal and the respondent that the change in the registry will be made after getting the sale deed from the Ammapet Handloom Weavers Co-operative Manufacturing and Sales Society Limited by the original allottee Unnamalai Ammal. The respondent only paid dues to the society and she is in possession of the petition property for more than 27 years as owner of the petition property. The said Unnamalai Ammal agreed to convey the property to the respondent after execution of sale deed by the society in her favour.

6. Before the learned Rent Controller, the first petitioner was examined as P.W.1 and one Murugan was examined as P.W.2. Six documents were marked as Exs.A1 to A6 on the side of the petitioner. The respondent examined herself as R.W.1 and two other persons were examined as R.W.2 & R.W.3. Thirty two documents were marked as Exs.B1 and B32 on the side of the respondent.

7. The learned Rent Controller, considering the pleadings, oral and documentary evidence, dismissed the R.C.O.P., holding that

there is no landlord-tenant relationship between the petitioners and respondent and denial of title of the petitioners by the respondent is bonafide.

8. Against the said order of dismissal dated 06.01.2005 made in R.C.O.P.No.44 of 2001, the petitioners filed R.C.A.No.6 of 2007 on the file of the Principal Sub Court, Salem.

9. The learned Appellate Authority, considering the pleadings, oral and documentary evidence and order of the learned Rent Controller, dismissed R.C.A. holding that the respondent is in possession of the petition property for more than 30 years, the electricity connection is in the name of the respondent and taking note of the fact that Unnamalai Ammal died in the year 1994 and R.C.O.P. was filed in the year 2001 and petitioners have not stated that whether the respondent paid the rent from the date of death of Unnamalai Ammal or not.

10. Against the said judgment and decree dated 26.03.2009 made in R.C.A.No.6 of 2007, the present Civil Revision Petition is filed by the petitioners.

11. Heard the learned counsel for the petitioners and perused the materials available on record.

12. The learned counsel appearing for the petitioners reiterated the averments made in the petition and contentions raised in the grounds of appeal and in the present revision.

13. From the materials on record, it is seen that the petitioners have claimed that the respondent was permitted to reside in the petition property as a tenant on a monthly rent of Rs.150/-. On the other hand, the respondent contended that there is no landlord-tenant relationship between the petitioners and respondent. The respondent is residing in the petition property for more than 30 years prior to filing of R.C.O.P. The respondent has produced passbook issued by the society, EB card, property tax receipts and also letters addressed to her to show that she was residing in the petition property for more than 30 years. The petitioners have not proved that the said Unnamalai Ammal permitted the respondent to stay and look after her. On the other hand, the said Unnamalai Ammal was not residing in the petition

property and explanations given by P.W.1 do not substantiate the claim of the petitioners. Both the Courts below rejected the evidence of the P.W.1. The petitioners have not stated and proved from which date the respondent has become tenant and from which date, the respondent had committed wilful default.

14. It is admitted by the petitioners that Unnalmai Ammal died on 08.07.1994 and R.C.O.P.44 of 2001 was filed by the petitioners for eviction of the respondent in the year 2001 on the ground of wilful default in payment of rent for 18 months. The petitioners have not produced any documents to show that the respondent was paying the rent from the date of death of Unnamalai Ammal and subsequently committed wilful default. The Courts below, considering the oral and documentary evidence, concluded that the petitioners have not proved the landlord-tenant relationship between the petitioners and respondent.

15. The learned counsel appearing for the petitioners contended that the Courts below erred in deciding the title to the petition property. In rent control proceedings, the title of the petition property cannot be decided. To substantiate this

contention, the learned counsel appearing for the petitioners relied on the following judgments:

(i). CDJ 2013 SC 991 (Tribhuvanshankar Vs. Amrutlal)

"21. While adverting to the issue of title the Court ruled that in a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the Court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties. In the said case the learned Judges referred to the authority in *LIC v. India Automobiles & Co.* [(1990) 4 SCC 286] wherein the Court had observed that in a suit for eviction between the landlord and tenant, the Court will take only a *prima facie* decision on

the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law. It was further observed therein that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bonafide the Court may have to go into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bonafide in the circumstances of the case.

23. A limited enquiry pertaining to the status of the parties, i.e., relationship of landlord and tenant could have been undertaken. Once a finding was recorded that there was no relationship of landlord and tenant under the Scheme of the Act, there was no necessity to enter into an enquiry with regard to the title of the plaintiff based on the sale deed or the title of the defendant as put forth by way of assertion of long possession. Similarly, the learned appellate Judge while upholding the finding of the learned Trial Judge that there was no relationship of landlord and tenant between the

parties, there was no warrant to re-appreciate the evidence to overturn any other conclusion. The High Court is justified to the extent that no equitable relief could be granted in a suit instituted under the Act. But, it has committed an illegality by affirming the judgment and decree passed by the learned trial Judge because by such affirmation the defendant becomes the owner of the premises by acquisition of title by prescription. When such an enquiry could not have been entered upon and no finding could have been recorded and, in fact, the High Court has correctly not dwelled upon it, the impugned judgment to that extent is vulnerable and accordingly we set aside the said affirmation."

(ii). (1994) II MLJ 447 (E.Venkata Naicker Trust, a Private Trust represented by its Manager, E.V.Selvaral Vs. Muthusamy Chettiar)

"5. The materials available in this case would clearly go to show that there is a bona fide dispute with regard to title to the building situated in the premises described in the petition. The finding in this regard by the Appellate Authority is correct. Consequently the landlord is entitled to claim eviction of the tenant in a civil court."

(iii). 1998 (1) CTC 195 (R.M.Sundaram @ Meenakshi Sundaram and another Vs. The Correspondent, National Elementary School, Pundarigakulam, Vadakarai, Nagapattinam)

"39. Under Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1969 a tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provision of that Section or under Sections 14 to 16. There are two Provisos to Section 10(1) and the Second Proviso says that where the tenant denies the title of the landlord or claims right of permanent tenancy. The Controller shall decide whether the denial or claims is bona fide and if he records a finding 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 Courts finds that such denial does not involve forfeiture of the lease or that the claim is unfounded. Section 10(2)(vii) of the said Act further says that 'where the tenant has denied that title of the landlord or claimed a right of permanent tenancy and that such denial of claim was not bona fide the Controller shall make an order directing the tenant to put the landlord in

possession of the building and if the controller is not so satisfied he shall make an order rejecting the application. If we read the Second Proviso to Section 10(1) of the said Act, the cause of action for filing a suit is a decision or a finding by the Rent Controller that the denial of title is bona fide. That is a condition precedent for a Civil Court to decide the title to the property and also to grant eviction on the grounds mentioned in the Act. So, till such finding is entered by the Rent Controller, the Civil Court cannot usurp that power or enter a finding that the denial of title is bona fide. This point is settled by the decision of the Supreme Court reported in Messrs. East India Corporation Limited v. Shree Meenakshi Mills Limited, A.I.R. 1991 S.C.1094, a matter arising under the Tamil Nadu Act itself. It was held there in thus:"

(iv) 1992-2-L.W. 564 (Natesan Pillai Vs. Sethumani Ammal)

"6. It is the definite case of the plaintiff that the defendant is a tenant. Now, as per S.10(1) of the Act a tenant shall not be evicted whether in execution of decree or otherwise except in accordance with the provisions of this Section or Ss.14 to 16. Therefore it is imperative that the

plaintiff has to initiate proceedings for eviction against the defendant in a Rent Control Proceedings. To this S.10(1) an exception is provided under the second proviso according to which where the tenant denies the title of the landlord or claims right by permanent tenancy, the Controller shall decide whether the denial of title is bona fide, and if he records a finding to that effect the landlord shall be entitled to sue for eviction in Civil Court and the Court may pass a decree for eviction or any of the grounds mentioned in the said section notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded."

(v) CDJ 2012 MHC 4802 (K.B.Nawabjan Vs. Lodd Ramgopa & Others)

"41. Therefore, I could understand from the aforesaid judgments that whenever denial of title of the landlord has been raised by a tenant, the bona fide nature of such denial has been decided by the Rent Controller as per Section 10(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Section 10(i) would run as follows:

"10.(1) A tenant not be evicted whether in execution of a decree or otherwise except in

accordance with the provisions of this section or Sections 14 to 16:

Provided that nothing contained in the said sections shall apply to a tenant whose landlord is the Government:

Provided further that where the tenant denies 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."

42. According to the said provision, I could see that the second proviso of Section 10(i) is applicable to the present case and if the title of landlord has been questioned by a tenant, such denial of claim should have been adjudicated as bona fide and if found bona fide, the landlord shall be entitled to sue for eviction of tenant in a Civil Court on any of the grounds mentioned in Section 10 and Sections 14 to 16 of the Act."

16. In all the above judgments, the Courts have held that when the respondent denies the title of the petitioner, the Courts have to consider the said claim and find out whether the denial of the petitioners' title is bonafide or malafide. If the denial is bonafide, the Rent Controller or Appellate Authority must record that the denial of the title is bonafide. In the judgment relied on by the learned counsel for the petitioners, it has been held that in rent control proceedings, title can be incidentally considered by the Court. When the Rent Controller or Appellate Authority holds that denial of title by the respondent is bonafide, the remedy available to the petitioner is to approach the Competent Civil Court for possession of petition premises. In view of the above ratio, the judgments relied on by the learned counsel for the petitioners do not advance the case of the petitioners.

17. The contention of the learned counsel for the petitioners that in rent control proceedings, title of the property cannot be decided is contrary to the judgments relied on by the learned counsel for the petitioners. In the rent control proceedings, title cannot be decided but the findings has to be given whether the denial of title is bonafide or not.

18. In the present case, the respondent has stated that the said Unnamalai Ammal agreed to sell the property to her and she has paid the instalment amounts, on behalf of the Unnamalai Ammal to the Society and that she is in possession of the suit property as owner to the knowledge of Unnamalai Ammal and petitioners. She has substantiated this contention by oral and documentary evidence. Accepting the evidence of the respondent, the courts below held that denial of title by the respondent is bonafide.

19. In view of the above, the contention of the learned counsel for the petitioners that orders should be modified to the effect to refer to the Civil Court to decide the title of the petition property is without merits. As per proviso to Section 10 (1) of the Act, if the learned Rent Controller decides that denial of title by tenant is bonafide, then landlord shall be entitled to sue for eviction of tenant in a Civil Court. Therefore, it is for the landlord to initiate appropriate proceedings in competent Civil Court for eviction of tenant.

V.M.VELUMANI, J.

dm/rgr

20. In the result, this Civil Revision Petition is dismissed. No costs.

15.11.2017

dm/rgr

To

- 1.The Principal Subordinate Judge,
Salem.
- 2.The II Additional District Munsif,
(Rent Controller), Salem.

C.R.P.(NPD)No.3850 of 2009