

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (NPD) No.392 of 2006
& C.M.P.No.3007 of 2006

Orders Reserved on	Orders pronounced on
18.09.2017	21.09.2017

N.Srinivasa Chettiar ... Petitioner/Tenant

Vs.

1.Jagannathababu
2.Devarajan rep.by their Power Agent Haridass
3.V.V.Bala Iyer (deceased)
4.Jayanthi @ Vedavalli
5.Yasodhammal ... Respondents/Landlord

(R4 and R5 brought on record
as legal heirs of deceased
3rd respondent vide order of
Court dated 29.08.2017 by VMVJ
made in C.M.P.Nos.1042 to 1047 of
2013 in C.R.P.No.392 of 2006)

PRAYER: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease & Rent Control) Act, against the judgment and decree dated 19.09.2005 passed in R.C.A.No.2 of 2004 on the file of the Subordinate Court, Madurantakam, Kancheepuram District, confirming the fair and decretal order dated 23.12.1997 passed in R.C.O.P.No.55 of 1984 on the file of the District Munsif Court, Kancheepuram.

For Petitioner : Mr.N.Nagu Sah

For R1 and R2 : Not ready in notice
R3 : died
For R4 and R5 : Mrs.A.Sumathy

ORDER

The Civil Revision Petition is filed against the judgment and decree dated 19.09.2005 passed in R.C.A.No.2 of 2004 on the file of the Subordinate Court, Madurantakam, Kancheepuram

District, confirming the fair and decretal order dated 23.12.1997 passed in R.C.O.P.No.55 of 1984 on the file of the District Munsif Court, Kancheepuram.

2. The petitioner is the tenant and respondents are the landlords. The respondents filed R.C.O.P.No.55 of 1984 for eviction on the ground of wilful default and demolition and reconstruction.

3. According to the respondents, the petition premises was let out to the petitioner on a monthly rent of Rs.40/-. The petitioner committed wilful default in payment of rent for three years up to June 1984 amounting to Rs.1,440/-. The said default is wilful default and therefore, the petitioner is liable to be evicted. The respondents also stated that the petition premises is in dilapidated condition and the respondents want to demolish and reconstruct the same and requested the petitioner to vacate the premises. The petitioner agreed to vacate the premises and requested time to vacate the same, but failed to do so. The respondents issued notice dated 20.07.1984 terminating the tenancy by 31.08.1984 and called upon the petitioner to vacate and hand over the vacant possession by 01.09.1984. In the circumstances, the respondents filed the above said R.C.O.P.

4. The petitioner filed counter statement and denied all the averments made in the R.C.O.P. According to the petitioner, the respondents have not properly described petition premises and door numbers are wrongly given. The petitioner is tenant in respect of four different portions i.e. four items. Item Nos.1 and 2 were used for residential purpose and item Nos.3 and 4 were used for non residential purpose. The petition premises is not old and it is not in dilapidated condition. The respondents have no means to demolish and reconstruct the same. The respondents forcefully tried to evict the petitioner and therefore, the petitioner filed O.S.No.23 of 1984 on the file of the District Munsif Court, Kanchipuram. After filing the suit, the respondents refused to receive the rent from the petitioner. From September 1984, the petitioner sent the rent by money order and the respondents refused to receive the rent sent by money order also. In the circumstances, the petitioner deposited monthly rent in Savings Bank account in Bank of India, Kanchipuram branch and paid rent regularly. The petitioner has stated that he has spent Rs.47,500/- to develop the property. In view of the tenancy is composite one, the rent control proceedings is not applicable.

5. Before the learned Rent Controller, the petitioner examined himself as R.W.1 and marked 25 documents as Exs.R1 to R25. The respondents examined one Haridas as P.W.1 and marked two documents as Exs.P1 and P2.

6. The learned Rent Controller considering the pleadings, oral and documentary evidence, ordered eviction on the ground of wilful default.

7. Against the said order dated 23.12.1997 made in R.C.O.P.No.55 of 1984 on the file of the District Munsif Court, Kancheepuram, the petitioner filed R.C.A.No.2 of 2004 on the file of the Subordinate Court, Madurantakam, Kancheepuram District.

8. 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 petitioner has not proved that he has paid rent up to June 1984 and all the documents produced by the petitioner relate to the period from 1950 to 1964 and subsequent to filing of R.C.O.P.

9. Against the said order dated 19.09.2005 made in R.C.A.No.2 of 2004 and order dated 23.12.1997 made in R.C.O.P.No.55 of 1984, the petitioner/tenant filed the present civil revision petition.

10. The contention of the learned counsel for the petitioner is that the Courts below failed to see Exs.R1 and R2/ledger and extract signed by the original landlord (late) Parangusa Chettiar showing the monthly rent deposited by the petitioner. Further, the learned Appellate Authority failed to notice the recitals of Ex.R9/judgment in O.S.No.23 of 1984, which reveals the mode of payment of rent made by the petitioner. The Courts below failed to note that the R.C.O.P. on the ground of wilful default was filed prior to the expiry of two months from the date of Ex.R15/demand notice.

11. Per contra, the learned counsel for the respondents 4 and 5 submitted that the petitioner has not proved that he has paid rent for the period claimed by the respondents. The petitioner has produced documents only to show that he paid rent prior and subsequent to the period of wilful default committed by him. Further, the petitioner has not produced any document to show that he has paid rent for the period of wilful default. Both the Courts below have properly considered all the materials on record and ordered eviction.

12. Heard both sides and perused the materials available on record.

13. The point for consideration is that whether the petitioner has committed wilful default in payment of rent as alleged by the respondents.

14. The respondents filed R.C.O.P. for eviction on the ground of wilful default and demolition and reconstruction.

The Courts below ordered eviction only on the ground of wilful default and rejected the contention of the respondents on other ground.

15. The contention of the learned counsel for the respondents is that the petitioner failed to pay the rent and committed wilful default in payment of rent of Rs.1,440/- for three years upto June 1984. According to the respondents, default is wilful with supine indifference. The respondents have not filed any appeal challenging the order of the learned Rent controller rejecting the claim of the respondents in respect of demolition and reconstruction before the learned Appellate Authority.

16. The contention of the petitioner is that he became a tenant in respect of four portions with different door numbers. The two portions are for residential purpose and other two portions are for non residential purpose. In view of the composite tenancy, the rent control proceedings initiated by the respondents are not maintainable. The petitioner failed to prove this contention. The petitioner in the counter statement stated that he paid rent for each portions. The petitioner has not let in any evidence to show that tenancy is composite one. The Courts below appreciating the pleadings and evidence let in by the parties have rejected the contention of the petitioner. There is no error in the reasoning given by the Courts below.

17. According to the petitioner, he has deposited the rent up to date and there is no arrears of rent. The deceased Parangusa Chettiar/first petitioner in R.C.O.P.No.55 of 1984 used to collect current rent as well as future rent in lump sum. The said Parangusa Chettiar requested the petitioner to pay the property tax and the petitioner has paid property tax on behalf of Parangusa Chettiar. In view of the same, the petitioner has paid rent and there is no arrears of rent as claimed by the respondents. Further, the respondents have refused to receive the rent and also the money order sent by the petitioner. The petitioner deposited the rent in Savings Bank account maintaining by him in Bank of India regularly. Subsequently, the petitioner deposited the rent in I.A.No.51 of 1984 in O.S.No.23 of 1984 on the file of the District Munsif Court, Kanchipuram, which is filed by him for injunction. But the petitioner has not produced any document to show that he has paid rent for the period mentioned in the R.C.O.P. filed by the respondents. The Courts below have taken note of the same and have considered the fact that the petitioner has produced documents only for payment of rent for the period from 1950 to 1964 and the period subsequent to the filing of R.C.O.P. in the year 1984. In view of the failure on the part of the petitioner to substantiate his case that he has paid rent as well as deposited the rent into court up to date, the Courts below have rightly held that the petitioner has committed wilful default in payment of rent for the period

mentioned in R.C.O.P.No.55 of 1984 and have given cogent and valid reason for coming to the said conclusion based on the materials on record. There is no illegality or irregularity in the order of the Courts below.

18. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Madurantakam
Kancheepuram District.

2.The District Munsif Court, Kancheepuram.

Copy to:The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.N.Nagu Sah, Advocate Sr.No.70314

RJ(CO)
sm:27.11.2017

order in
C.R.P.(NPD)No.392 of 2006
& C.M.P.No.3007 of 2006

सत्यमेव जयते

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