

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. 393 of 2006
& C.M.P.No.3008 of 2006

Orders Reserved on	Orders pronounced on
18.09.2017	21.09.2017

N.Srinivasa Chettiar ... Petitioner/Tenant

Vs.

1.V.V.Bala Iyer
2.Jayanthi @ Vedavalli
3.Yasodhammal ... Respondents/Landlords

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.4 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.13 of 1994 on the file of the District Munsif Court, Kancheepuram.

For Petitioner : Mr.N.Nagu Sah

R1 : died

For R2 and R3 : 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.4 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.13 of 1994 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.13 of 1994 for eviction on the ground of wilful default and own use and occupation for residential and business purpose.

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 and Rs.3,000/- from 29.04.1987 to 30.06.1993 and the default is wilful with supine indifference. Therefore, the petitioner is liable to be evicted. The second respondent is the daughter of first and third respondents. The second respondent is living in a rented premises and therefore, the petition premises is required for own use and occupation of the second respondent. The husband of second respondent is also running a scooter mechanic shop in a rented premises and she requires the petition premises for business of her husband. The respondents issued notice dated 26.07.1984 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 R.C.O.P.

4. The petitioner filed counter statement and denied landlord-tenant relationship between the respondents and himself. 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 rent is not Rs.40/- per month and it is only Rs.30/- per month. The respondents are not landlords and they have no right to file R.C.O.P. in respect of vacant site and they have not filed any application to implead themselves as parties. Only Parangusa Chettiar and his two sons namely, Jagannathababu and Devarajan are owners of the petition premises. Vendors of the petition premises have already filed R.C.O.P.No.55 of 1984 and hence, the present R.C.O.P. is barred by *resjudicata*. The landlord/first petitioner in R.C.O.P.No.55 of 1984 viz., Parangusa Chettiar used to collect current rent as well as future rent and he requested the petitioner to pay the property tax and the petitioner had paid property tax to all the properties and there is no arrears of rent. As the said Parangusa Chettiar refused to receive the rent, the petitioner has filed a petition in R.C.O.P.No.13 of 1986 as against Parangusa Chettiar, on the file of the District Munsif Court, Kancheepuram, to deposit the rent into the Court and that he deposited the rent. Subsequently, as per the order of this Court dated 18.03.1994 made in Tr.C.M.P.Nos.2662 to 2664 of 1994, the petitioner deposited the rent to the credit of O.S.No.23 of 1984 on the file of the District Munsif Court, Kancheepuram. The notice dated 26.07.1984 issued by the respondents terminating the tenancy is not valid in law. 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 16 documents as Exs.R1 to

R16. The respondents examined first respondent/Balaiyer as P.W.1 and one Armugam as P.W.2 and no document was marked.

6. The learned Rent Controller considering the pleadings, oral and documentary evidence, ordered eviction on the ground of own use and occupation.

7. Against the said order dated 23.12.1997 made in R.C.O.P.No.13 of 1994 on the file of the District Munsif Court, Kancheepuram, the petitioner filed R.C.A.No.4 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 respondents have proved that they require the petition premises for their own use and occupation.

9. Against the said order dated 19.09.2005 made in R.C.A.No.4 of 2004 and order dated 23.12.1997 made in R.C.O.P.No.13 of 1994, 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. The Courts below failed to see that the petitioner has deposited monthly rent in R.C.O.P.No.3 of 1986 and I.A.No.51 of 1984 in O.S.No.23 of 1984 on the file of the District Munsif Court, Kanchipuram. The learned Appellate Authority erred in holding that the petitioner failed to pay the rent for the period mentioned in R.C.O.P. without properly considering the evidence of the petitioner that he deposited the rent into the Court for the said period as per the direction of this Court in transfer C.M.P.Nos.2662 to 2664 of 1994 and there is no arrears of rent. The Courts below failed to see that the respondents failed to prove the ingredients of Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. He further contended that the vendors of the petition premises have already filed R.C.O.P.No.55 of 1984 and therefore, the present R.C.O.P.No.13 of 1994 is not maintainable. The respondents have no locus standi to file the present R.C.O.P. In support of his contention, he relied on the judgment of this Court reported in 2010 (6) CTC 454 (The Regional Manager, Tamil Nadu Handloom Weaver's Cooperative Society Ltd., Thanjavur v. V.Natarajan), wherein it has been held as follows:

"11. As per Section 10(3)(a)(iii) of the Act, the following ingredients are necessary to maintain the petition for eviction:

- a. Building should be non-residential in character;
- b. Landlord should be carrying on business on date of application for eviction;
- c. Landlord should not be occupying any building belonging to him;
- d. Claim should be bona fide and not found to be indirect or false attempt to evict tenant to obtain more rent or to harass tenant;"

11. 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 and Rs.3,000/- from 29.04.1987 to 30.06.1993. According to the respondents, default is wilful with supine indifference. No document was produced by the petitioner to show that he has paid rent for the default period. The second respondent is the daughter of first and third respondents. P.W.2/Arumugam is the husband of second respondent. Her husband is running a scooter mechanic shop in a rented premises and hence, she requires the petition premises for the business purpose. They have given notice to the petitioner and after receipt of notice, the petitioner never made payment. Except the sale deeds, no document was filed by the petitioner. The subsequent purchaser of the petition premises stepped into the shoes of the earlier landlord is not correct. 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 requirement of the respondents for owner's occupation is bonafide or not.

14. The respondents filed R.C.O.P. for eviction on the ground of wilful default and own use and occupation for residential and business purpose. The Courts below ordered eviction on the ground of own use and occupation.

15. The learned Rent Controller held that the respondents have not proved that the petitioner has committed wilful default and rejected the claim of the respondents for eviction on the ground of wilful default. The learned Appellate Authority held that the respondents also have proved wilful default committed by the petitioner, but he did not order eviction on that ground. The learned Appellate Authority did not set aside the findings of the learned Rent Controller with regard to wilful default and did not order eviction on that ground. In view of the same, the contentions of the learned counsel for the petitioner with regard to wilful default is misconceived and has no relevance to the issue in the Civil Revision Petition.

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. The contention of the petitioner is that the respondents have no right to file R.C.O.P. in respect of vacant site. The learned Rent Controller has rightly rejected the said contention holding that all the respondents are residing in the same premises and four portions occupied by the petitioner are also in the same premises. Even though it is a vacant site, since it is adjacent to the petition premises, it should be considered as the site used for the building. Since the respondents are same family and they are residing in the same place, no need to file separate R.C.O.P. by each of the respondents.

18. The respondents have sought eviction on the ground of owner's occupation. According to them, the second respondent is residing in a rented house and her husband is running a two-wheeler mechanic shop in a rented premises and the suit premises is suitable for their own occupation as well as business. The first respondent and husband of the second respondent have deposed to this effect. According to the petitioner, the second respondent's husband is owning a premises on his own and the petition premises is not suitable for his use and the premises owned by the second respondent's husband is more suitable for the occupation of the second respondent. The respondents have proved that the property mentioned by the petitioner is owned by the mother of husband of second respondent and it is in a narrow street and not suitable for the business of the second respondent's husband. The Courts below, considered the evidence of the respondents and petitioner and accepted the evidence of the respondents and rejected the evidence of the petitioner. The tenant cannot dictate terms to landlord as to which premises is suitable for the landlord. There is no error in the reasoning of the Courts below that the requirement of the second respondent is bonafide and has proved the requirement for owner's occupation. There is no irregularity in the reasons given by the Courts below warranting interference by this Court. The Civil Revision Petition is liable to be dismissed as devoid of merits.

19. 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

To

1. The Subordinate Judge, Madurantakam
Kancheepuram District.

2.The District Munsif, Kancheepuram.

Copy to:The Section Officer,
VR Section, High Court, Madras 104

+1cc to Ms.N.Nagusah, Advocate SR.No.70313

order in

C.R.P. (NPD) No. 393 of 2006
& C.M.P.No.3008 of 2006

RJ(CO)
sm:27.11.2017



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