

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.2850 & 2851 of 2012

A.S.George (died)

1.Yesu Maduram
2.Isabella Immaculate Marie
3.Earnest Paul
4.Christian Josephine Marie ... Petitioners in both CRPs

Vs.

M.Johnson ... Respondents in both CRPs

COMMON PRAYER: Civil Revision Petitions filed under Section 25 of the Pondicherry Buildings (Lease and Rent Control) Act 18/1960 as amended by Act 23 of 1973, against the Judgment dated 12.04.2010 made in RCA Nos.12 of 2009 and 6 of 2010 on the file of III Additional District Judge at Pondicherry as confirmed by the Judgment and Decree made in HRCOP No.44 of 2005 on the file of Learned Rent Controller, Pondicherry dated 30.07.2009.

For Petitioner : Mr.M.Baskar
in both CRPs

For Respondent : Mr.V.Lakshmi Narayanan
in both CRPs

ORDER

This Civil Revision Petition has been filed against the judgment dated 12.04.2010 made in RCA Nos.12 of 2009 and 6 of 2010 on the file of III Additional District Judge at Pondicherry as confirmed by the Judgment and Decree made in HRCOP Nos.44 of 2005 on the file of Learned Rent Controller, Pondicherry dated 30.07.2009.

2. One A.S.George is the tenant and the respondent is the landlord. The tenant A.S.George died. His wife, son and daughters have filed the present Civil Revision Petition.

3. The respondent/landlord filed HRCOP No.44 of 2005 for eviction of the tenant on the ground of wilful default. According to the respondent/landlord, the said A.S.George was a tenant in respect of a portion of the petition premises from 01.04.1999. The lease agreement was executed for eleven months from 01.04.1999 and the same was renewed subject to consent and approval of the respondent/landlord with enhancement of 5% additional rent for every subsequent eleven months. Finally, lease agreement was executed on 01.04.2004 for eleven months and the monthly rent

was fixed at Rs.2,450/-. The tenant failed to pay the rent for the period from April 2004 to March 2005. Subsequently, on 10.10.2004, the tenant admitted the arrears of rent and issued a letter of undertaking promising to pay the arrears of rent but he failed to keep up his promise. The respondent/landlord issued notice dated 08.03.2005 calling upon the tenant to pay the arrears of rent and vacate the petition premises. The tenant received the said notice and gave a reply on 21.03.2005 containing false averments. The respondent/landlord sent rejoinder on 04.04.2005 to the tenant and filed HRCOP No.44 of 2005 for the relief stated above.

4. The tenant filed counter statement and contended that the respondent/landlord is not the owner of the petition premises, the said lease agreement was executed only for obtaining licence for running bakery business of the tenant. The respondent/landlord is a professional money lender and the tenant borrowed a sum of Rs.1,00,000/- and agreed to pay the same together with interest. The respondent/landlord took the signature of the tenant in blank promissory note and in white papers. Original owner one Lalitha had appointed one Saravanan as her Power Agent who in turn had

appointed the first petitioner herein/Yesu Mathuram as power-agent and the said Yesu Mathuram executed sale deed in respect of the suit property in favour of the respondent/landlord and hence said sale deed based on the power to power cannot be valid and legal and prayed for dismissal of the HRCOP.

5. Before the learned Rent Controller, the respondent/landlord examined himself as PW1 and one Francis was examined as PW2. Twenty (20) documents were marked as Exs.P1 to P20 on the side of the respondent/landlord. The tenant examined himself as RW1 and marked seven documents as Exs.R1 to R7.

6. The learned Rent Controller, considering the pleadings and oral and documentary evidence, held that the respondent/landlord is the owner of the suit property but dismissed the RCOP holding that the respondent/landlord failed to prove the wilful default committed by the tenant and landlord – tenant relationship exists between them.

7. Against the said order, the respondent/landlord filed RCA No.12 of 2009 and the tenant filed RCA No.6 of 2010. The learned

Appellate Authority, considering the pleadings, oral and documentary evidence and order of the learned Rent Controller, allowed RCA No.12 of 2009 filed by the respondent/landlord and dismissed the RCA No.6 of 2010 filed by the tenant holding that the respondent/landlord has proved the wilful default committed by the tenant.

8. Against the said judgment dated 12.04.2010 made in HRCOP No.44 of 2005 and RCA Nos.12 of 2009 & 6 of 2010, the present Civil Revision Petitions are filed.

9. Heard the learned counsel for the petitioners as well as respondent/landlord and perused the materials available on record.

10. The points for consideration in both the Civil Revision Petitions are -

(a) Whether the respondent is the owner of the petition premises and A.S.Geroje was a tenant under the respondent ?

(b) Whether A.S.George committed wilful default in payment of rent ?

11. **Points 1 & 2 :-** The respondent/landlord has filed HRCOP for eviction of the tenant on the ground that he is the owner of petition premises and the tenant committed wilful default in payment of rent from 01.04.2004. The tenant denied the title of the respondent/landlord on the ground that the sale deed dated 04.06.1998 executed by the tenant's wife in favour of the respondent/landlord is sham and nominal and is not valid and legal.

12. According to the tenant, for the amounts borrowed by him from the respondent/landlord, the respondent/landlord threatened and coerced the tenant and his wife to execute the sale deed in respect of the petition premises. The lease deed is sham and nominal and same was entered into only for obtaining licence from local authority to run the bakery business by the tenant. In Ex.R7, lease deed dated 01.04.2004, it has been categorically stated that the lease deed is entered only for obtaining licence from the local authority and that no rent is payable.

13. The respondent/landlord, by notice dated 08.03.2005 called upon the tenant to pay the arrears of rent. The tenant sent reply dated 21.03.2005 and respondent/landlord also sent rejoinder dated 04.04.2005. In the notice, the respondent/landlord has claimed arrears of rent on the ground that he is the owner of the petition premises. In spite of such claim by the respondent/landlord, the tenant or his wife did not initiate any legal proceedings to get the decree that sale deed dated 04.06.1998 is sham and nominal and was executed only by threat and coercion. They did not give any complaint to the concerned police alleging the threat and coercion by the respondent/landlord. Further, the respondent/landlord admitted that electricity connection has been changed in his name and the tenant also admitted in the cross examination that electricity charges and water charges are paid only by the respondent/landlord.

14. The learned counsel for the petitioners relied on Ex.R7, lease deed dated 01.04.2004 wherein it has been mentioned that lease deed is entered only for obtaining licence from the local authority and no rent is payable. If really the intention is only to get licence based on the lease deed, the said clause will go against

the tenant. If the said lease deed is produced before the local authority for obtaining licence for running the bakery business, local authority will reject the same on the ground that the same is not valid.

15. The Appellate Authority, considering Ex.R7 filed by the tenant held that the clause relied on by the learned counsel for the petitioners is an insertion and held that the said document is produced by the tenant and has played fraud on the court by inserting last line, between the two paras. The learned Appellate Authority also considered the admission of the tenant that he has not paid the rent from 01.04.2004 holding that the tenant has committed wilful default. In view of the above finding, the Appellate Authority set aside the order of the learned Rent Controller in respect to the finding of the learned Rent Controller that the tenant did not commit any wilful default and ordered eviction of the tenant.

16. In view of the fact that the tenant or his wife have not taken any legal proceedings to declare the sale deed dated 04.06.1998 as null and void and produced fabricated lease deed claiming that no rent is payable by the tenant to the

respondent/landlord and denying the title of the respondent/landlord, I hold that the finding of the courts below that the respondent/landlord is the original owner of the petition premises and the said A.S.George was a tenant and finding of the learned Appellate Authority that the tenant committed wilful default are valid and based on cogent and valid reasons.

17. In the above said facts and circumstances of the case, I do not find any illegality or irregularity in the judgment of the Appellate Authority dated 12.04.2010 made in RCA Nos.12 of 2009 and 6 of 2010 as confirmed by the Judgment and Decree of the learned Rent Controller dated 30.07.2009 made in HRCOP No.44 of 2005 warranting interference by this Court.

18. In the result, both the Civil Revision Petitions are dismissed. No costs.

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19.09.2017

V.M.VELUMANI, J.
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To

1.The Principal District Munsif,
Pondicherry.

2.The III Additional District Judge,
Pondicherry.

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