



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 10.08.2017

Date of Reserving the Order	Date of Pronouncing the Order
03.08.2017	10.08.2017

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE T.RAVINDRANC.R.P. (NPD) (MD) No.118 of 2007

Sornam ...Petitioner/Respondent/Landlord

-vs-

Umayal ...Respondent/Appellant/Tenant

PRAYER: Civil Revision Petition is filed, under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, to call for the records relating to the order and decreetal order, dated 26.09.2006 in R.C.A.No.2 of 2006, on the file of the learned Rent Control Appellate Authority (Sub Court), Devakkottai, reversing the order and decreetal order, dated 11.01.2005 in R.C.O.P.No.14 of 2003, on the file of the learned Rent Controller-cum-District Munsif-cum-Judicial Magistrate, Karaikudi and set aside the same.

For Petitioner: Mr.R.Sundar Srinivasan

For Respondent: Mr.K.K.Senthil

O R D E R

The petitioner / landlady being aggrieved over the fair and decreetal orders, dated 26.09.2006, passed in R.C.A.No.2 of 2006, on the file of the Sub Court / Rent Control Appellate Authority, Devakkottai, reversing the fair and decreetal orders, dated 11.01.2005, passed in R.C.O.P.No.14 of 2003, on the file of the learned Rent Controller / District Munsif, Karaikudi, has preferred this civil revision petition.

2. The landlady has sought for the eviction of the respondent / tenant on the grounds of wilful default and denial of title. According to the petitioner / landlady, the petition property (hereinafter, referred to as "the property") originally belonged to the respondent. The respondent and the petitioner entered into an agreement of sale in respect of the property on 04.04.1997 and on receipt of the entire sale consideration, inasmuch as the respondent asked for some time to deliver the vacant possession of the property, which is in her possession and also in the possession of the tenants under her, as per the recitals found in the sale agreement, the respondent had executed a Power of Attorney in favour of the petitioner's husband, namely,



Lakshmanan for the completion of the sale. Subsequently, the petitioner's husband as the power of attorney holder of the respondent executed a registered deed of conveyance on 13.12.2000 in favour of the petitioner. The respondent has been in the occupation of the property as a tenant at the monthly rent of Rs.650/- and also paid a sum of Rs.1,300/- as advance and with reference to the same, the respondent had also executed an agreement of lease, dated 04.04.1997. Subsequent to the deed of conveyance, dated 13.12.2000, the petitioner has become the owner of the property and inasmuch as the respondent did not pay the rent as promised nor vacated the property as assured by her and the tenants had also vacated and handed over the possession of the property to the respondent, the petitioner has terminated the tenancy of the respondent by issuing a notice, dated 18.05.1999 and though the respondent received the notice, she neither responded to the same nor sent any reply repudiating the contents of the said notice and inasmuch as the petitioner entered into a sale agreement with one Manimegalai for the sale of the property and has to deliver the possession of the property to her and coming to know of the same, the respondent has laid a suit in O.S.No.93 of 2003, on the file of the Sub Court, Devakottai, as if she is still the owner of the property and thereby a police complaint had also been lodged by her and her husband and therefore, considering the above conduct of the respondent in not paying the rent wilfully and also denying the title of the petitioner to the property, the petitioner has been necessitated to prefer the rent control original petition.

3. The case of the respondent / tenant in brief is that it is false to state that the respondent had agreed to convey the property in favour of the petitioner as put forth in the petition. The respondent, in view of her family necessity, borrowed a sum of Rs.45,000/- from the petitioner's husband Lakshmanan on 04.04.1997 and in evidence thereof, she had executed a mortgage deed and also handed over the title deeds in respect of the property to the petitioner's husband and thereafter, she has discharged the said debt by adjustment. Therefore, the case of the petitioner that there has been an agreement of sale in respect of the property between the petitioner and the respondent dated 04.04.1997 and pursuant to the same, the respondent had received the entire sale consideration as recited in the sale agreement is false and if the entire sale consideration has been paid on 04.04.1997 itself, there is no need for the execution of the sale agreement and the respondent would have conveyed the property in favour of the petitioner by a pucca conveyance deed. The petitioner taking advantage of the mortgage deed executed by the respondent in favour of the petitioner's husband had fraudulently created a sale agreement and it is false to state that the respondent had entered into a sale agreement in favour of the petitioner agreeing to pay the monthly rent of Rs.650/- and also paid a sum of Rs.1300/- as advance. The petitioner was not the owner of the property on



the date of the sale agreement or on the date of the lease agreement and it is false to state that the sale agreement was executed or time was sought for by the respondent to handover the vacant possession of the property. The petitioner is noway connected with the property and she does not have any ownership in respect of the property and inasmuch as the respondent continued to be the owner of the property, she had not responded to the notice sent by the petitioner and the petitioner is not entitled to evict the respondent on the grounds put forth in the petition and inasmuch as the petitioner attempted to evict the respondent from the property one way or the other illegally, the respondent had been necessitated to lay the suit, in O.S.No.93 of 2003, before the Sub Court, Devakottai and therefore, the rent control original petition is liable to be dismissed.

4. In support of the petitioner's case, P.W.1 was examined and Exs.P1 to P9 were marked and on the side of the respondent, R.W.1 was examined and no documentary evidence was adduced.

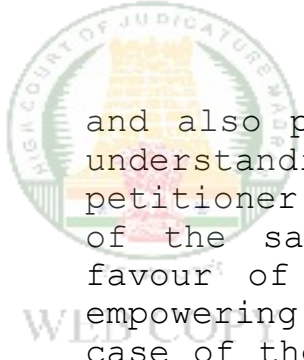
5. On a consideration of the oral and documentary evidence adduced by the respective parties, the learned Rent Controller was pleased to order the eviction of the respondent on the grounds put forth by the petitioner. Challenging the same, the respondent preferred an appeal and the Rent Control Appellate Authority, on a consideration of the materials produced, was pleased to set aside the fair and decreetal orders of the Rent Controller and thereby dismissed the rent control original petition preferred by the petitioner. Aggrieved over the same, the present civil revision petition has been preferred.

6. The following points arise for consideration in this civil revision petition:

- i. Whether the petitioner is entitled to evict the respondent from the property on the grounds of wilful default and denial of title as put forth in the petition? and
- ii. To what relief the petitioner is entitled to?

POINT NO.I:

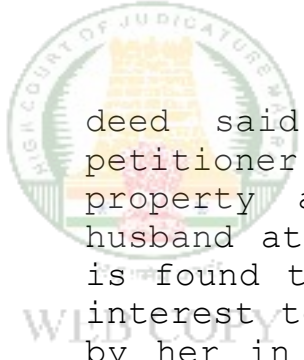
7. The property originally belonged to the respondent. It is the case of the petitioner that she and the respondent entered into an agreement of sale in respect of the property on 04.04.1997 and thereunder, the petitioner had parted with the entire sale consideration to the respondent and inasmuch as the respondent had sought for time to deliver the vacant possession of the property, which is in her possession and also in the possession of the tenants under her, it is the case of the petitioner that the agreement of sale was entered into and further, it is the case of the petitioner that on the date of the sale agreement i.e., on 04.04.1997, the respondent had also executed a lease agreement in favour of petitioner agreeing to pay the monthly rent of Rs.650/-



and also paid a sum of Rs.1300/- as advance and pursuant to the understanding between the parties, it is the further case of the petitioner that the respondent, in order to ensure the completion of the sale transaction, had executed a power of attorney in favour of the petitioner's husband in respect of the property empowering him to convey the property and accordingly, it is the case of the petitioner that her husband on 13.12.2000 conveyed the property in her favour by way of a registered sale deed and thereby the petitioner has become the owner of the property and further according to the petitioner, inasmuch as the respondent had not paid the rent as promised by her and which also according to the petitioner is nothing but wilful and also started denying the title of the petitioner by instituting a suit against the petitioner in O.S.No.93 of 2003 for injunction after the receipt of the notice sent by the petitioner terminating her tenancy and directing her to handover the possession of the property, according to the petitioner, the respondent had wilfully denied her title and therefore, she had been necessitated to lay the petition for eviction.

8. The respondent had denied the sale agreement said to have been executed in favour of the petitioner in respect of the property on 04.04.1997 and according to her, on that date, she had received a sum of Rs.45,000/- as debt from the petitioner's husband on account of her family necessity and executed a mortgage deed and also handed over the title deeds in respect of the property in favour of petitioner's husband and according to her, taking advantage of the above said mortgage, the petitioner had created a sale agreement, dated 04.04.1997 and it is also the case of the respondent that she had not executed any lease agreement in favour of the petitioner agreeing to pay the rent as put forth by the petitioner and inasmuch as the respondent continued to be the owner of the property as she had already discharged the debt borrowed from the petitioner's husband and as the petitioner had sent a false notice terminating her tenancy, she had been necessitated to lay the suit, in O.S.No.93 of 2003, against the petitioner for injunction and hence, the petition is liable to be dismissed.

9. The petitioner had admitted the execution of the mortgage deed in favour of the petitioner's husband on 04.04.1997 after receiving a sum of Rs.45,000/- from him. Further, according to the respondent, she had subsequently discharged the said debt and it is her specific case that the petitioner taking advantage of the above said mortgage had created the sale agreement, dated 04.04.1997, said to have been executed by the respondent in respect of the property. The respondent, as rightly put forth by the petitioner's counsel, if had executed a mortgage deed in favour of the petitioner's husband as claimed by her and subsequently had discharged the debt borrowed under the said mortgage deed, nothing prevented her from retrieving the mortgage



deed said to have been executed by her in favour of the petitioner's husband or get back the title deeds in respect of the property admitted to have been handed over the petitioner's husband at the time of executing the mortgage deed. However, it is found that the respondent had not, if her case is true, shown interest to get back the mortgage deed said to have been executed by her in favour of the petitioner's husband and also the title deeds, which had been handed over by her to the petitioner's husband at the time of execution of the mortgage deed. According to the respondent, the petitioner's husband had been delaying the handing over of the mortgage deed and the title deeds in respect of the property though she had discharged the mortgage and therefore, she could not get back the title deeds as such cannot be accepted in any manner. If really, once a mortgage deed has been executed by the respondent in favour of the petitioner's husband on 04.04.1997 and if really she had subsequently discharged the debt borrowed under the mortgage deed, as rightly argued by the learned counsel for the petitioner, as a prudent person, the respondent should have taken appropriate steps to get back the mortgage deed and also the title deeds executed in favour of the petitioner's husband, which had been handed over to the petitioner's husband at the time of execution of the mortgage deed. The respondent having not shown any interest to retrieve the above said documents, her case that on account of the delay tactics adopted by the petitioner's husband, she was unable to get back the documents as such cannot be countenanced. This would go to show that inasmuch as the respondent's case that the alleged execution of the mortgage deed by the respondent in favour of the petitioner's husband on 04.04.1997 is not true and her further case that subsequently she had discharged the said debt is also not true, it is found that the respondent has not taken any interest to get back the documents from the petitioner's husband in the manner known to law.

10. The respondent's case being found to be not true, as discussed above, it is found that as put forth by the petitioner, it is only the power of attorney deed, which had been executed by the respondent in favour of the petitioner's husband on 04.04.1997 and this could be seen from the said document marked as Ex.P3. According to the petitioner, on 04.04.1997, the respondent had entered into a sale agreement with her in respect of the property and thereunder the petitioner had paid the entire sale consideration to the respondent and the respondent sought for time to deliver the possession of the property in her possession as well as the possession of the other tenants under her and thereby, it is the case of the petitioner that an agreement of lease was executed by the respondent in favour of the petitioner on the same date and to ensure the completion of the sale transaction, it is the case of the petitioner that the respondent had executed a power of attorney deed in favour of her husband on the same date. The sale agreement has been marked as Ex.P1 and the lease



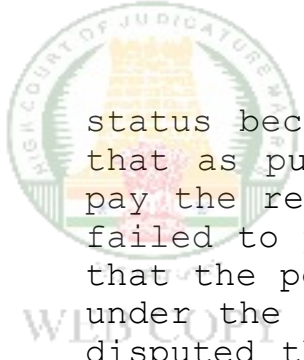
agreement has been marked as Ex.P2. A cumulative reading of the documents marked as Exs.P1 to P3 would go to show that as put forth by the petitioner, it is found that the sale agreement had been executed by the respondent in respect of the property to the petitioner and thereunder, she had received the entire sale transaction in respect of the property, accordingly, it is found that inasmuch as the respondent had sought for time to deliver the possession of the property, as put forth by the petitioner, it is found to be probable that in order to ensure the completion of the sale transaction, the respondent had also agreed to execute a lease agreement in favour of the petitioner and further, she had also executed a registered power of attorney deed in favour of the petitioner's husband and therefore, the above facts together would only probablise the theory put forth by the petitioner that the respondent had agreed to convey the property in favour of the petitioner by way of the sale agreement marked as Ex.P1. No doubt, the entire sale transaction had been given under the said sale agreement. However, as rightly argued by the petitioner's counsel as the respondent had sought for time to deliver the possession of the property, it is found that the parties have made other arrangements with reference to the same and therefore, Exs.P1 and P3 had been come into existence between the parties and hence, according to the respondent, the failure on the part of the petitioner in obtaining the sale deed on 04.04.1997 by itself would not render the respondent's case unacceptable or false.

11. It is found that the above said documents had come to be attested by the respondent's husband. If really the respondent had not executed the documents of her own or against her will or the same had been fraudulently obtained from her by the petitioner or the petitioner's husband as rightly argued by the petitioner's counsel, as a prudent person, the respondent should have taken appropriate steps in the manner known to law with reference to the same. It is the specific case of the respondent that she had executed a mortgage deed after reading the contents thereof in favour of the petitioner's husband. However, as discussed above, there is no mortgage deed executed by the respondent as put forth by her. Therefore, the only conclusion, which may be drawn is that the respondent had only executed a power of attorney deed in favour of the petitioner's husband marked as Ex.P3 and her evidence so assessed would only lead to the conclusion that the respondent had knowledge about the execution of Ex.P3 and the contents thereof and accordingly, in view of the documents marked as Exs.P1 and P2 executed by her in favour of the petitioner, she had without any demur also executed a registered power of attorney deed in favour of the petitioner's husband marked as Ex.P3. Therefore, as rightly argued by the learned counsel for the petitioner, the failure on the part of the respondent in examining the petitioner's husband to substantiate her defence, at least to a per-sonas level, would only go to expose the falsity of her claim to squat on the property endlessly with a view to give troubles to the petitioner.



12. Pursuant to the arrangements made under the documents marked as Exs.P1 to P3 in respect of the property between the parties, it is found that the petitioner's husband as the power of attorney holder of the respondent had conveyed the property in favour of the petitioner under Ex.P4 on 13.12.2000 and it is, thus, found that the petitioner has become the owner of the property since then. Exercising of the ownership by the petitioner could also be seen from the electricity bill marked as Ex.P5, water tax receipt marked as Ex.P6 and the property tax receipt marked as Ex.P7 in respect of the property. All these documents are only pertaining to the property concerned. Therefore, it is found that once the respondent had conveyed the property in favour of the petitioner, through her power agent in continuation of the documents marked as Exs.P1 to P3, it is found that the petitioner has become the absolute owner of the property. There is no material placed on behalf of the respondent to establish that after the execution of Exs.P1 to P3 or as the case may be after the execution of Ex.P4, she had continued to be the owner of the property with necessary proof. With reference to the same, there is nil material on the part of the respondent. On the other hand, as seen above, it is only the petitioner, who has been exercising the absolute ownership over the property and therefore, this would only go to show that as pleaded by the petitioner, inasmuch as the respondent had executed the sale agreement in her favour marked as Ex.P1 and also the lease agreement executed in her favour marked as Ex.P2 and also the power of attorney deed executed in favour of the petitioner's husband marked as Ex.P3 and subsequently, the property had been conveyed in her favour under Ex.P4, it is found that since the respondent had sought for time to deliver the possession of the property, all the above documents have come to be entered into between the parties as put forth by the petitioner and therefore, it is found that the respondent is only a tenant in respect of the property and not the owner of the property as claimed by her and it is only the petitioner, who has become the landlady of the property even as rightly argued from the date of the sale agreement, dated 04.04.1997 and accordingly, it is found that the respondent admitting her status as the landlady of the property executed a lease agreement in her favour marked as Ex.P2.

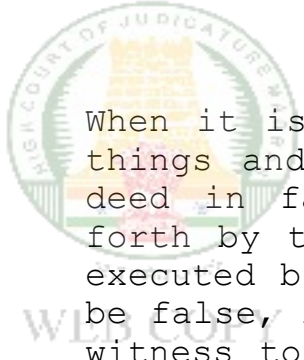
13. As rightly argued by the learned counsel for the petitioner, the definition of the "Landlord" as outlined in Section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 would only go to show that any person, who is entitled to receive the rent or be entitled to receive the rent would also come or fall within the definition of the landlord and therefore, it is not necessary that only the owner of the property alone should be the landlord. So viewed, it is found that as rightly determined by the Rent Controller, the petitioner having become the landlady of the property pursuant to Ex.P2, the respondent's



status becoming a tenant in respect of the property, it is found that as put forth by the petitioner, the respondent is liable to pay the rent to the petitioner and inasmuch as the respondent had failed to pay the rent as promised by her under Ex.P2, it is seen that the petitioner had been necessitated to terminate her tenancy under the notice marked as Ex.P8 and the respondent has also not disputed the receipt of the notice under the acknowledgement card marked as Ex.P9. If the theory now projected by the respondent that she still continued to be the owner of the property and the case projected by the petitioner is not true, as rightly argued by the learned counsel for the petitioner, as a prudent person, the respondent should have endeavoured to repudiate the contents of the notice marked as Ex.P8 and asserted her title to the property by sending a reply notice by putting forth her defence in detail. However, it is seen that the respondent has not evinced any interest whatsoever to respond to the notice marked as Ex.P8 and on the other hand, it is found that the respondent with a view to wilfully deny the title of the petitioner in respect of the property, had levied the suit in O.S.No.93 of 2003 against the petitioner for injunction, thereby as rightly argued by the petitioner's counsel, the respondent had denied the title of the petitioner in respect of the property. Thus, it is found that the respondent has become liable to be evicted from the property on the ground of wilful default and denial of title as put forth by the petitioner.

14. Considering the above facts in toto, particularly, the wilful default committed by the respondent, as rightly determined by the Rent Controller, the denial of title, which cannot be described as nothing more but deliberate and wilful and when it is also further seen that as admitted by the respondent during the course of her evidence that the above suit had also ended in dismissal would cumulatively establish that the truth of the petitioner's case and the falsity of the respondent's claim and therefore, it is seen that the Rent Controller has properly appreciated the materials placed on record in the right perspective and correctly come to the conclusion that the respondent has become liable to be evicted from the property on the grounds of wilful default and denial of title.

15. In the light of the above discussions, it is found that the Rent Control Appellate Authority has misled itself into a wrong conclusion that the respondent continues to be the owner of the property and that the case put forth by the petitioner is false merely on the *ipse dixit* testimony of the respondent without any material or proof to substantiate the same and this approach and the resultant view taken by the Rent Control Appellate Authority is nothing but perverse and it cannot be sustained in law. The further approach of the Appellate Authority that the case of the petitioner cannot be accepted on account of her failure to enter into the witness box cannot be accepted.



When it is found that the petitioner's husband is in the know of things and when the respondent has executed a power of attorney deed in favour of the petitioner's husband and the theory put forth by the respondent that the mortgage deed said to have been executed by her in favour of the petitioner's husband is found to be false, it is found that the petitioner's husband is a competent witness to testify on behalf of the petitioner and therefore, the findings of the Appellate Authority that the petitioner's case should fail on account of her failure to depose evidence as such cannot be accepted in any manner. That apart, as rightly argued the petitioner's counsel, P.W.1 being the husband of the petitioner is entitled to testify on behalf of the petitioner and coupled with the fact that P.W.1 is in the know of the things about the facts in entirety right from the inception. Therefore, it is found that the fair and decreetal orders of the Appellate Authority cannot be allowed to sustain any further and the same is liable to be set aside.

16. In toto, I hold that the petitioner is entitled to evict the respondent from the property on the grounds of wilful default and denial of title as put forth by her in the petition. Accordingly, Point No.I is answered in favour of the plaintiff.

POINT NO.II:

17. In view of the foregoing reasons, the fair and decreetal orders, dated 26.09.2006, passed in R.C.A.No.2 of 2006, on the file of the Sub Court / Rent Control Appellate Authority, Devakkottai, are set aside and the fair and decreetal orders, dated 11.01.2005, passed in R.C.O.P.No.14 of 2003, on the file of the learned Rent Controller / District Munsif, Karaikudi, are confirmed. Resultantly, the civil revision petition is allowed with costs.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To:

1.The Subordinate Judge, Rent Control Appellate Authority, Devakkottai.

2.The District Munsif cum Judicial Magistrate, Rent Controller, Karaikudi.

Copy to:- The Record Keeper, Vernacular Section,

Madurai Bench of Madras High Court, Madurai

+One cc to Mr.R.Sundar Srinivasan, Advocate, SR.No.71742

+One cc to Mr.K.K.Senthil, Advocate, SR.No.71956

krk/ia

RL/6C/9P/KP/SAR1/10/11/2017

ORDER

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