

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.08.2018

Pronounced on : 03.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P. No.2129 of 2018

M/s.Gopal Chettiar Rolling Works, Rep. By Partners

(i) Managing Partner, Balasubramaniam

(ii) Mrs. B. Lakshmi

No.1033, T.H. Road,

Thiruvottiyur,

Chennai- 19

... Petitioner/Respondent/Tenant

Vs.

1. Shoba

2. Geetha @ Doda Geetha

Rep. by Power Agent Hemadri Vasu

3. Nirmala Chandra @ Nirmala Ranganathan

Rep. by Power Agent Chandrababu

... Respondents/Petitioners/Land Lords

Prayer:

Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease & Rent Control) Act to set aside the order and decreetal order passed in R.C.A.No.7 of 2005 on the file of the Rent Control Appellate Authority / Sub Judge, Ponneri dated 09.03.2018 confirming the order and decree dated 23.08.2005 made in R.C.O.P No.1 of 1996 on the file of the Rent Controller / District Munsif, Thiruvottiyur.

For Petitioner : Mr. V. Bhiman

for M/s.Sampath Kumar Associates

For Respondents : Mr. A. Venugopal

for Mr. R. Gopinath

ORDER

Tenant is the revision petitioner.

2. The Respondent/landladies preferred R.C.O.P. No. 1 of 1996 for eviction of the tenant from the petition mentioned premises on the ground of willful default in payment of rent and

causing act of waste under Section 10(2)(1) and Section 10(2)(V) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960. The revision Petitioner/Tenant resisted the R.C.O.P. on the ground that in respect of the survey number mentioned in the schedule of property the revision petitioner is the owner of the property and as such, denied the ownership of the respondents herein and also stated that they have deposited the rent before the court.

3. On consideration of both oral and documentary evidence, the Rent Controller cum District Munsif cum Judicial Magistrate, Thiruvottiyur, dismissed the R.C.O.P. in respect of alleged willful default in payment of rent. However, decreed the original petition on the ground of committing act of waste and denial of ownership of the landladies and hence, the tenant has preferred R.C.A, wherein the Sub Judge cum Rent Control Appellate Authority has confirmed the same and hence this Civil Revision has been preferred by the tenant.

4. The Learned Counsel for Revision Petitioner submitted that respondents are the owners of the property and the original petition filed by the Power of Attorney is not maintainable and the Revision Petitioner/Tenant has put up superstructure and hence, they are entitled to protection under the Tamil Nadu City Tenant Protection Act and they are not committed any act of waste as alleged in the Eviction petition. The Revision Petitioner is owner of the property in survey number 178/8 and the learned Counsel for the Revision Petitioner/Tenant further contended that both the courts below have erroneously come to the conclusion that the respondent is the owner of the property without framing any point for determination therefor.

5. Per contra, the learned Counsel for respondents/landladies submitted that the land in Survey No.174/8 has been wrongly typed in the schedule of the property to the petition as 178/8 and taking the discrepancy mentioned in the said survey number in the schedule of property the petitioner/Tenant seeks to set up title upon himself and both Courts below have concurrently held that there is an act of waste committed by the Revision Petitioner/Tenant and further held that there is deliberate denial of title of the landladies and made further submissions in support of the judgment of the Courts below.

6. Heard both sides and perused the records. The point for consideration in this civil revision petition is that

1. Whether the Revision Petitioner/tenant is the owner of the property in R.S.No.174/8 as mentioned in the schedule of the property?
2. Whether the order of the Lower Court is sustainable in law?

7. After hearing rival submissions of the learned Counsel for Petitioner and the learned Counsel for Caveator/Respondent at the admission stage, it is no doubt true that there is a typographical error in the sub division of the land in Survey No.174/8 which is typed as 178/8. However based upon the oral and documentary evidence adduced before the Trial Court, the Rent Controller had come to the conclusion that the Municipal Door No.1033, Thiruvottiyur High Road, Kaladipet and also taking note of the complete boundaries as mentioned in the schedule of the petition and following the ratio, laid down by this court that when there is a conflict in the survey number of the disputed property, the same may be identified by the four boundaries or with the Municipal door number and in the event of any discrepancy in the sub division in survey number or in the survey number, the said boundaries shall prevail over the survey number.

8. It appears from the records that when the tenant was in the witness box and examined himself as R.W.1, he has admitted about the existence of Ex.P.1 and Ex.P.3-Tenancy Agreements dated 01.09.1961 and 10.04.1985 respectively. It also appears that the Rent Controller also taken note of the boundaries of the schedule mentioned property and Municipal door number and also survey number mentioned in the admitted Lease Agreements Ex.P1 and Ex.P.3 have identified the petition property and based upon the admission in the cross examination of R.W.1 have held the petition property is identified as the property covered under tenancy agreement in Ex.P1 and Ex.P3 and further held that R.W1 is tenant under the petitioner, in RCOP and that the tenant R.W.1 has not obtained any prior permission for putting up permanent structure in the petition mentioned property as required under various clause under Ex.P.1-Tenancy Agreement wherein, liberty was given to the tenant to put up only temporary construction or shed with a further condition to resume the vacant site at the time of handing over and not to put up any permanent structure made up of brick and mortar and on evidence, it found that the tenant has put up permanent structure of concrete and pillar without even permission of the landlord and as such, R.W.1 specifically admitted that he has put up a superstructure measuring 5000 Sq.Ft. and also put up Bombay Terrace and Madras Terrace and as such the superstructure put up by him is classified as permanent and he also admitted he has not received any written consent or permission from the landladies.

9. Thus based upon the clauses in the tenancy agreement Ex.P1 and Ex.P3 and admission of R.W1, the Rent Controller has correctly come to the conclusion that Revision Petitioner/Tenant has committed an act of waste and ordered for eviction and on the similar reasoning the Rent Control (Appellate Authority) has correctly come to the conclusion that in view of the answer

elicited in the cross examination of R.W.1, regarding construction put up by the tenant without prior permission of the land lady and the extent of the super structure, and also admission of the R.W.1 regarding payment of rent as per Ex.P1 Rental Agreement have concurred with the finding of the Rent Controller. Thus, both the courts below have concurrently come to conclusion that Revision Petitioner/Tenant is a tenant in the premises and that the above said door number and the petition property has been duly identified by the Rent Controller and the same was confirmed by the Appellate Authority and has committed act of waste by putting up super structure to the larger extent of 5000 Sq.ft. and hence both the Courts below had correctly held that tenant has committed act of waste and they have deliberately denied the title of the landladies and for the said grounds, the order to eviction has been passed by the authorities under the Rent Control Act. This Court, on merits, is of the considered view that the well considered judgments does not warrant any interference by this court under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act. As such I do not find any ground to interfere with the order of Eviction passed by the authorities below as the same does not suffer irregularity and illegality.

10. Accordingly, this Civil Revision Petition is devoid of merits and liable to be rejected and hence, this Civil Revision Petition is dismissed, thereby the order of eviction passed by Rent Controller in R.C.O.P. No.1 of 1996 dated 23.08.2005, as confirmed in R.C.A.No.7 of 2015 dated 09.03.2018, is hereby confirmed. No Costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssi/ksa-2

To

1. The Rent Control Appellate Authority / Sub Judge, Ponneri.
2. The Rent Controller / District Munsif, Thiruvottiyur.

+1cc to Mr.A.Venugopal, Advocate in sr.no.60392

C.R.P. No.2129 of 2018

CS/12/09/18