

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2018

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD) Nos.4758 & 4760 of 2014
and M.P.Nos.1 of 2014

Judgment reserved on 27.03.2018	Judgment pronounced on 28.03.2018
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P.A.Balaji ... Petitioner in CRP No.4758 of 2014

M.Ravichandran ... Petitioner in CRP No.4760 of 2014

Vs

Mrs.Rajakumari ... Respondent in both CRPs

Common Prayer : Civil Revision Petitions are filed under Section 25 (1) of the Tamil Nadu Buildings (Lease and Rent Control Act) 1960 against the orders dated 29.10.2014 passed in RCA Nos.449 & 450 of 2013 on the file of the IX Judge, Small Causes Court, Chennai reversing the dismissal order passed in RCOP Nos.431 & 432 of 2011 dated 31.07.2013 on the file of the XI Judge, Small Causes Court, Chennai.

For Petitioner : Mr.R.Manickavel
in both CRPs

For Respondents : Mr.G.Jayachandran
in both CRPs

COMMON ORDER

These Civil Revision Petitions are filed against the orders dated 29.10.2014 passed in RCA Nos.449 & 450 of 2013 on the file of the IX Judge, Small Causes Court, Chennai reversing the dismissal order passed in RCOP Nos.431 & 432 of 2011 dated 31.07.2013 on the file of the XI Judge, Small Causes Court, Chennai.

2. The petitioners are the tenants and the respondent is the landlady. The respondent filed RCOP Nos.431 & 432 of 2011 for eviction of the petitioners on the ground of wilful default and denial of title.

3. Since the respondent and issues involved in both the Civil Revision Petitions are one and the same, these revision petitions are disposed of by this common order.

4. According to the respondent, she is the absolute owner of the petition premises bearing New No.12 (Old No.15) New West Thandavaraya Mudali Street, Purasawalkam, Chennai - 7. She purchased the property by a registered sale deed dated 11.12.1998. The petitioners have been inducted as tenants several years ago in respect of portion of the petition premises on a monthly rent of Rs.1491 & Rs.497/- respectively for residential purpose, excluding electricity charges. The petitioners were irregular in payment of rent right from inception of tenancy and paid rent upto August 2007 and thereafter deliberately failed and neglected to pay rent from September 2007, inspite of repeated requests and legal notice dated 06.03.2008. The petitioners received the said notice but neither replied nor paid the rent. The petitioners, in collusion with other tenants and rival claimants, with a view to escape from the order of eviction, filed RCOP Nos.677 to 685 of 2008 for deposit of rent into court alleging that the respondent refused to receive the rent from January 2008 onwards and stating that the monthly rent is Rs.600/- & Rs.900/- respectively and has stated that they paid rent upto December 2007. The petitioners also denied the title of the respondent to the petition premises in the said RCOP without impleading the alleged rival claimants and filed RCOP against the

respondent alone.

4(a) The petitioners, obtained illegal consent order dated 25.07.2008 in RCOP Nos.677 to 685 of 2008. As the contract rent is far below the fair rent, the respondent filed RCOP No.2310 to 2316, 2405 & 2406 of 2008 against the petitioners and other tenants for fixation of fair rent. The learned Rent Controller, by order dated 26.10.2010 fixed the fair rent, far below the contract rent. Against the said order made in RCOP No.2310 to 2316, 2405 & 2406 of 2008, the respondent filed RCA Nos.323 to 331 of 2010 and the same is pending. The impugned fair rent fixed in RCOP No.2310 to 2316, 2405 & 2406 of 2008 is under challenge and the petitioners are not entitled to deposit entire contract rent fixed by the Rent Controller and they are liable to pay the entire arrears of contract rent from 01.09.2007 until the rival claimants prove their right of shares in the petition property. The respondent also issued second notice dated 02.09.2010 to the petitioners calling upon them to pay the arrears of rent at Rs.1491 & Rs.497/- per month respectively from 01.09.2007 to 31.08.2010. The notice sent by the respondent through certificate of posting was received by the petitioners. However, the notice sent by RPAD was returned with endorsement "unclaimed".

4(b) The petitioners have no right to deny the title of the respondent to the petition premises under the guise of false and frivolous claim of 2/5th share by the rival claimants which denial of title is not bonafide and motivated with a view to squat on the petition premises without paying lawful rent. The respondent is the absolute owner and she is in possession and enjoyment of the petition premises for the past 23 years continuously. The petitioners were inducted as tenants under the respondent and paying the rent continuously for several years to the respondent alone. The petitioners have no right to deny the title of the respondent until the rival claimants prove their right in the petition premises. Hence, the respondent filed RCOP against the petitioners for eviction on the ground of wilful default and denial of title.

5. The petitioners filed separate counter statements denying the averments made in the petitions. According to them, they are tenants under the respondent in respect of the petition premises for a monthly rent of Rs.750/- & Rs.200/- respectively, excluding electricity charges and paid a sum of Rs.10,000/- and Rs.6,000/- respectively as advance to the respondent. The petitioners denied that the monthly rent is Rs.1491/- and Rs.497/- respectively and

further stated that they have not committed any default in payment of rent. The petitioners were regular in payment of rent and while so, one Manikandan and six others claiming over the rent paid by the petitioners. The said claim was informed by letter dated 06.02.2008 to the respondent and requested the respondent to produce copy of the sale deed for ascertaining the true and real owner of the petition premises for entering into a lease agreement with the real owner and to tender the rent. After receipt of the said letter, the respondent demanded the petitioners to vacate the petition premises and refused to receive the monthly rent from January 2008. In view of the same, the petitioners filed RCOP Nos.680 & 681 of 2008 under Section 9 (3) of the Tamil Nadu Buildings (Lease & Rent) Control Act on the file of XI Judge, Small Causes Court, Chennai to deposit the rent into court. While the said RCOP was pending, the respondent entered into a compromise with petitioners and consented for depositing the rent into Court in the RCOP filed by the petitioners and also endorsed to that effect by the respondent's counsel. In view of the endorsement made by the learned counsel for the respondent, by order dated 25.07.2008, RCOP Nos.680 & 681 of 2008 was ordered directing the petitioners to deposit the monthly rents of Rs.750/- & Rs.200/- before the court from the month of January 2008. As per the said order, the

petitioners are depositing the rent without any default and further a suit in O.S.No.5194 of 2008 is pending on the file of III Asst. Judge, City Civil Court, Chennai filed by one Manikandan and six others claiming title over the petition premises and prayed for dismissal of the RCOPs.

6. Before the learned Rent Controller, one Mohan was examined as PW1 on the side of the respondent and marked seven documents as Exs.P1 to P7. The petitioners examined one M.Dass as RW1 and marked twelve documents as Exs.R1 to R12.

7. The learned Rent Controller, considering the pleadings, oral and documentary evidence, by orders dated 31.07.2013, dismissed both the RCOP Nos.431 & 432 of 2011 holding that the petitioners cannot be termed as wilful defaulters and the petitioners have not denied the title of the respondent.

8. Against the order dated 31.07.2013 made in RCOP Nos.431 & 432 of 2011, the respondent filed RCA Nos.449 & 450 of 2013 on the file of IX Small Causes Court, Chennai. The learned Appellate Authority, independently considering the materials and facts and order of the learned Rent Controller, by judgment dated

29.10.2014 allowed both the RCAs reversing the order of the learned Rent Controller holding that the petitioners are liable to be evicted on the ground of wilful default and denial of title.

9. Against the said judgment and decree dated 29.10.2014 made in RCA Nos.449 & 450 of 2013, the present Civil Revisions Petitions are filed by the petitioners.

10. The learned counsel for the petitioners in both the Civil Revision Petitions contended that the learned Appellate Authority failed to apply mind properly to the facts of the case. When RCOPs filed by the respondent were dismissed on 31.07.2003, the learned Appellate Judge held that "Trail Judge ordered eviction on the ground of wilful default and denial of title". Similarly, the learned Appellate Judge failed to frame proper points for consideration. The petitioners filed RCOPs under Section 9 (3) of the Tamil Nadu Buildings (Lease & Rent Control) Act as one Manikandan and six persons others also claim share in the rent payable by the petitioners. The respondent has endorsed no objection and petitioners are regularly depositing the rent into court as per the order passed by the Rent Controller in RCOP Nos.677 to 685 of 2008. The respondent filed application for payment of the amount

deposited by the petitioners which would show that the respondent has admitted that petitioners have deposited the rent without any default.

10(a) The learned Appellate Authority erred in holding that petitioners did not deposit the rent in time and deposited the same according to their convenience and some time deposited arrears in lumpsum after long intervals. The petitioners have not denied the title of the respondent. Ex.R2 would clearly show that the petitioners have not committed any default and there is no default from September 2007 but petitioners have paid the rent till December 2007. The learned Appellate Authority failed to see that the respondent ought to have obtained declaration of title from competent Civil Court as per Section 9 (5) of the Act.

11. Per contra, the learned counsel appearing for the respondent contended that the petitioners failed to pay the rent from September 2007 onwards. The petitioners, with malafide intention have denied the title of the respondent and has made false claim that they are rival claimants and filed RCOP under Section 9 (3) of the Act to deposit the rent into court and obtained fraudulent order to deposit the rent into court. The petitioners failed to deposit

the rent even as per the order passed in RCOP Nos.677 to 685 of 2008 filed by them under Section 9 (3) of the Act. The petitioners ought to have deposited the rent on or before 5th of every month but they have deposited the same belatedly and did not deposit the rents, some times for months together and deposited the rent in lumpsum. The suit filed by the rival claimants in O.S.No.5194 of 2008 was dismissed for default and title of the respondent is not in dispute now. The petitioners having entered into a rental agreement with the respondent and having paid rent to the respondent for number of years upto August 2007, recognizing the respondent as owner, is not entitled to deny the title of the respondent. The petitioners, in the counter statement filed by them in the RCOP denied the title of the respondent and prayed for dismissal of both the Civil Revision Petitions.

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

13. The respondent has filed respective RCOPs for eviction of the petitioners on the ground of wilful default and denial of title. According to the respondent, the petitioners have committed wilful default in payment of rent from September 2007 onwards. On the

other hand, according to the petitioners, they have paid rent upto December 2007. One Manikandan and six others demanded the petitioners for payment of rent to them. The petitioners, by letter dated 06.02.2008 requested the respondent to produce the copy of the sale deed so that they can enter into an agreement with real owner. In view of the same, the respondent refused to receive the rent from the petitioners from the month of January 2008 and petitioners and other tenants, in such circumstances, filed RCOP Nos.677 to 685 of 2008 under Section 9 (3) of the Act for permission to deposit the rent into court. The respondent consented for deposit of rent and petitioners are regularly depositing the rent into court without default. The said contention of the petitioners is without merits.

14. From the impugned judgment of the learned Appellate Authority, it is seen that as per Ex.R2, the petitioners are directed to deposit the monthly rent into court, on or before 5th of every English Calendar month. The petitioners filed and marked Exs.R5, R6, R8 and R12, the receipts for having paid rent into court. Considering the said documents, the learned Appellate Authority has held that the petitioners did not deposit the rent regularly in time but they have deposited the rent according to their convenience and

some time, deposited the rental arrears in lumpsum after long intervals. The learned Appellate Authority, taking into consideration the subsequent event, has concluded that the petitioners have committed wilful default.

15. As far as denial of title is concerned, from the counter statement filed by the petitioners and the grounds of revision, it is seen that the petitioners have not stated that they received demand from one Manikandan and six others but petitioners have not produced any material to substantiate their claim. Their only contention is that the respondent consented for deposit of rent into court by which respondent had admitted the claim of the petitioners about rival claimants with regard to title of the property. The said contention is without merits as the respondent has denied having authorised his Advocate to give consent to deposit rent into court. Further, the suit in O.S.No.5194 of 2008 on the file of III Asst. Judge, City Civil Court, Chennai filed by the rival claimants were dismissed for default. The learned Rent Controller rejected the dismissal of the suit on the ground that it was subsequent to the petition for eviction on the ground of denial of title.

16. The Act contemplates that denial of the title by the tenant

must be bonafide and should not be malafide. In the present case, the petitioners have admitted the respondent as owner and landlady and paid the rent for number of years upto August 2007. Having admitted the ownership of the respondent and accepted her as landlady, it is not open to the petitioners to deny the title of the respondent. Further, the learned Appellate Authority has rightly held that petitioners have not produced any material to substantiate their claim that Manikandan and six others made claim on the petitioners for payment of rent to them. Further, the suit filed by Manikandan and others was dismissed for default. The learned Rent Controller failed to appreciate these facts in proper perspective and erroneously dismissed the RCOPs filed by the respondent. The learned Rent Controller failed to take into account the subsequent event of dismissal of the suit. The learned Appellate Authority is the final court to decide the facts. The revisional court can interfere with the said finding of fact only if the said finding is arbitrary and arrived at without properly appreciating the materials on record or arrived at without there being any material for such finding. In the present case, the Appellate Authority has properly appreciated all the materials on record and reversed the judgment and decree dated 31.07.2013 passed in RCOP Nos.431 & 432 of 2011 by giving cogent and valid reasons. There is no error in the judgment of the

Appellate Authority warranting interference by this Court.

17. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

28.03.2018

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Index :Yes

To

1.The IX Judge,
Court of Small Causes,
Chennai.

2.The XI Judge,
Court of Small Causes,
Chennai.



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V.M.VELUMANI, J.

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**Pre-delivery Common Order in
C.R.P.(NPD) Nos.4758 & 4760 of 2014**

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