

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.640 of 2015
and M.P.No.1 of 2015

1.M/S.Raghunath Engineering Company
A partnership firm
Represented by its Partner
Jawaharnath

2.Jawaharnath
3.Jayanthi

.. Petitioners

Vs.

1.K.Ganesan
2.Anguraj @ Angammal
3.Padmavathy
4.Sumathi
5.Gomathi

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off R.C.O.P.No.199 of 2005 on the file of the District Munsif Court (Rent Controller), Coimbatore.

For Petitioners : Mr.P.K.Rajagopal

For Respondents : Mr.N.Manokaran

ORDER

The Civil Revision Petition is filed to strike off R.C.O.P.No.199 of 2005 on the file of the District Munsif Court (Rent Controller), Coimbatore.

2. The petitioners are tenants and the respondents are landlords. The respondents filed R.C.O.P.No.199 of 2005 on the file of the Principal District Munsif Court, Coimbatore, for eviction on the ground of wilful default, act of waste and own use and occupation. According to the respondents, petitioners as tenants paid rent up to 20.04.2005 and thereafter, failed to pay the rent. At the time of leasing out the property, machineries are given to the first respondent for lease. The petitioners are maintaining the machineries, but they are not maintaining the boiler and the same is in bad condition. The petitioners are deliberately trying to damage the coconut trees. The respondents are making arrangement to start a new business of buying and selling of foundry waste and they require the petition building for their own occupation.

3. The petitioners filed present Civil Revision Petition to strike

off R.C.O.P. as not maintainable. According to the petitioners, the lease is composite lease for building and machineries. In view of Section 30(iii) of the Rent Control Act, the provision of Rent Control Act is not applicable. The learned counsel for the petitioners referred to para-5 of the petition in R.C.O.P. and schedule to the petition and contended that the respondents leased out machineries also. The respondents leased out building together with fixtures and machineries for the purpose of running the industry. In this case, nature of lease is very important. The building was leased out only to run the industry. In the circumstances, the building cannot be subjected to rent control proceedings and it is exempted under Section 30(iii) of the Rent Control Act with regard to the building. Even if they filed R.C.O.P. only with regard to building, they cannot maintain R.C.O.P. in view of the nature of the lease. The learned counsel for the petitioner in support of his contention, relied on the following judgment passed by the Division Bench of this Court reported in **1995 1 L.W. 154 (K.V.Jaisingh v. C.R.Govindaswami Chettiar (died) and five others);**

"21. The main point, therefore, for consideration is:

Whether the suit property was leased out as a running cinema house and whether the plaintiffs provided the equipments such as projectors, sound equipments, machineries, furnitures, etc., which are essential for running a cinema industry and in the absence of projectors, sound equipments, furnitures, etc., provided by the plaintiffs, can the cinema theatre be declared as a running business and a composite lease?

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63. In our opinion, the principles laid down in the above case squarely apply to the facts and circumstances of the case on hand. We have already discussed the terms and conditions contained in Ex.A-1 in extenso in paragraphs supra. As clearly mentioned in the lease deed, the dominant purpose of the lease, as disclosed in the lease deed Ex.A-1, was for running a cinema theatre and that the lessee should run the theatre in the name of Sri Kothandarama Theatre for a period of 13 years with the building, furniture, electrical fittings, etc., as set out in Schedules A and B. Under the agreement, the lessee has to pay the rent for the building and hire charges for the furnitures, fittings, etc., and also apply and obtain

police permission, etc., for conducting the cinema theatre or exhibiting any films, pictures, etc. The lessee shall also pay the electricity charges, meter rent, etc., taxes like professional tax for the business and also the licence fee for running the cinema theatre. It is also seen from Clause 2(x) that the lessee shall bear and pay all the charges, fees, etc., for running the theatre as a going concern and for exhibiting any film, picture, etc. Thus, the intention of the parties has been very clearly spelt out in the clauses, referred to above. Therefore, we have no hesitation in holding that the dominant purpose of the lease is for running a theatre as a going concern together with the building in which it was being run. It would, therefore, follow that the lease is a composite one and that it is not governed by the provisions of the Act as contended by the appellant.

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68. Thus, the terms and conditions stipulated in the various agreements referred to and entered into between the parties to this action clearly go to show that the intention of the parties is to run the theatre as a going concern with the furnitures, fittings, etc., as originally provided by the lessors and subsequently altered and provided from time to

time by the lessees. As pointed out by a Division Bench of this Court in 86 L. W. 65, the question of intention of the parties will become relevant only if the terms of the transaction are not clear. In this case, the terms are very clear, simple and unambiguous and therefore, the intention also can be clearly seen and the purpose for which the building was taken is to run the business of the theatre with the fixtures, fittings, etc. There can be no doubt in holding that the intention of the parties was to enter into a transaction of lease of a going concern of theatre. So, we have no hesitation in holding that Ex.A-1 is a composite lease. We answer the point accordingly and in favour of the lessors and against the lessees."

4. The learned counsel for the respondents contended that originally, the property and machineries belonged to both the petitioners and respondents. Due to difference of opinion, the property and machineries were partitioned. The first respondent and his brother Natarajan were allotted to A, B and C schedule properties and D schedule property was allotted to the first petitioner. As far as machineries are concerned, the petitioners are having 1/2 share and in view of the fact that the petitioners are also

owners of 1/2 share, lease is not a composite lease and it is only with regard to land and building. The petitioners filed counter statement in R.C.O.P. disputing the present lease deeds dated 01.10.2004 and having taken such stand, the petitioners now cannot rely on the document to strike off R.C.O.P. R.C.O.P. is filed in the year 2005 and the petitioners filed present Civil Revision Petition after ten years and therefore, there is no bonafide in filing the Civil Revision Petition. On the date of filing of Civil Revision petition, I.A.No.168 of 2013 filed by the respondents was pending for amendment to delete machineries. The petitioners also filed counter affidavit and arguments were heard. After filing of C.R.P., order was passed in I.A.No.168 of 2013 on 09.12.2015. The petitioners have not disclosed the said averment in the Civil Revision Petition. In support of his contention, he relied on the following judgment of the Hon'ble Apex Court reported in **(2014) 6 SCC 508 (Jacky v. Tiny Alias Antony and others);**

"2. The only question which is required to be determined in this case is : whether the High Court while exercising its power under Articles 226 and 227 of the Constitution of India is competent to set aside the plaint ?

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9. While according to the appellant Writ Petition under Articles 226 and 227 of the Constitution of India was not maintainable to quash the plaint or the suit proceedings and/or the injunction order passed by the trial Court, per contra according to the 1st respondent it was open to the High Court to issue such writ on being satisfied that the order obtained by the appellant was by deceitful means in order to harm the 1st respondent.

10. From the impugned order, we find that the appellant challenged the very maintainability of the writ petition and argued that the writ petition was not maintainable to quash any plaint or a civil suit. The High Court noticed the stand taken by the 1st respondent who pleaded as follows:

The appellant has fraudulently filed the suit to harass the 1st respondent and to ensure that the business run in the shop is closed down. The said suit was filed by the appellant after having failed in all illegal attempts to evict the 1st respondent from the shop room which was in his possession as a tenant for a very long time. The appellant deliberately and fraudulently omitted to have

implead the 1st respondent as a defendant to the suit in order to obtain an order from the Court so that it could be misused to cause Municipal Corporation to pass an order to close down the shop.

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12. The maintainability of writ petition in a matter of landlord-tenant dispute was considered by this Court in *Shalini Shyam Shetty and another v. Rajendra Shankar Patil*, (2010) 8 SCC 329. In the said case, this Court noticed the scope of interference by the High Court in civil matters/private disputes under Article 226 of the Constitution of India and held that the High Court committed an error in entertaining writ petition in a dispute between landlord and tenant and where the only respondent is a private landlord.

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15. A petition under Article 226 or Article 227 of the Constitution of India can neither be entertained to decide the landlord-tenant dispute nor is it maintainable against a private individual to determine an intense dispute including the question whether one party harassing the other party. The High Court under Article 227 has the jurisdiction to

ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them within the bounds of their authority but it was not the case of the 1st respondent that the order passed by the Munsif Court was without any jurisdiction or was so exercised exceeding its jurisdiction. If a suit is not maintainable it was well within the jurisdiction of the High Court to decide the same in appropriate proceedings but in no case power under Articles 226 and 227 of the Constitution of India can be exercised to question a plaint."

5. Heard the learned counsel for the petitioners as well as respondents and perused the materials available on record.

6. The only contention of the learned counsel for the petitioners is that R.C.O.P. is not maintainable in view of Section 30(iii) of the Rent Control Act. The said section with explanation is as follows:

"30. Exemption in the case of certain buildings._Nothing contained in this Act shall apply to__

(i) any building for a period of five years from the date on which the construction is completed and notified to the local

authority concerned, or

(ii) any residential building or part thereof occupied by any one tenant if the monthly rent paid by him in respect of that building or part exceeds two hundred and fifty rupees”

Explanation._For the purposes of clause (ii), 'tenant' shall include_

(a) a person to whom the tenant has transferred his rights under the lease with the written consent of the landlord, and

(b) a sub-tenant in any case where the building or part thereof has been sub-let with the written consent of the landlord or where the lease confers a right to sub-let,

(iii) any lease of a building under which the object of the tenant is to run the business or industry with the fixtures, machinery, furniture or other articles belonging to the landlord and situated in such building.”

7. A reading of the said Section and explanation (2) makes it clear that when the building along with the machineries are leased out to the tenants, the provision of Rent Control Act is not applicable. The respondents in para-5 of the petition filed in R.C.O.P. as well as schedule to the petition have clearly stated that the lease

is for machineries also. One of the grounds for eviction sought is act of wastage of machineries. This clearly shows that the lease is composite lease of land and building and machineries. The contention of the learned counsel for the respondents that the petitioners are also owners of the machineries and therefore, lease is not composite lease, is without merits. Admittedly, the petitioners 1 and 2 are having 1/2 share in the machineries and the respondents have leased out their 1/2 share only to the petitioners 1 and 2. The lease is granted for land, building and machineries for running an industry. The lease is for running industry as going concern with the machineries mentioned in the petition. In view of the admitted fact, the contention of the learned counsel for the petitioners that the lease is composite lease and provision of Rent Control Act is not applicable, has considerable force. The Division Bench judgment of this Court relied on by the learned counsel for the petitioners reported in **1995 1 L.W. 154 (K.V.Jaisingh v. C.R.Govindaswami Chettiar (died) and five others)** is squarely applicable to the facts of the present case. The judgment relied on by the learned counsel for the respondents does not advance the case of the respondents. On the other hand, para-15 referred to above in fact advances the case of the petitioners.

8. In the result, the Civil Revision Petition is allowed. No costs.
Consequently, connected Miscellaneous Petition is closed.

04.01.2018

Index : Yes

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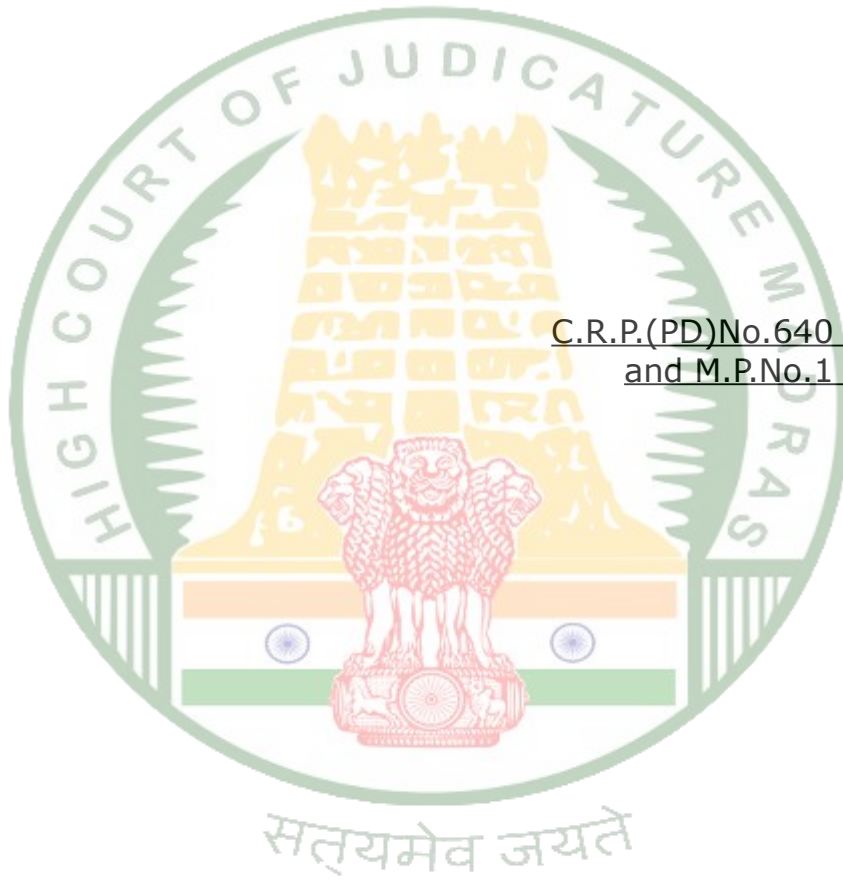
The District Munsif (Rent Controller), Coimbatore.



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V.M.VELUMANI, J.

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