

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2018
RESERVED ON : 29/06/2018
PRONOUNCED ON : 20/07/2018

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P.No.1184 of 2013
and
M.P.No.1 of 2013

Adilakshmi ... Petitioner/1st Respondent
(Tenant)

Vs

1.Humera Begum ... 1st Respondent/Land Lady
2.Khader Bee ... Respondents 2 & 3/
3.Hajira Respondents 1 & 3 (Tenant)

R2 and R3 were set
exparte in both RCOP.No.766/2009
and RCA.No.553/2011. Hence, R2
and R3 were given up in CRP.

PRAYER : Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, to set aside the fair and decreetal order of the learned VIII Court of Small Causes at Chennai (Appellate Authority) made in RCA.No.553 of 2011 dated 19.11.2012, partly allowing the fair and decreetal order of the XI Court of Small Causes, Chennai passed in RCOP.No.766 of 2009 dated 12.07.2011.

For Petitioner : Mr.J.Sudhakaran
For Respondents : Mr.C.B.Santhosh Kumar for R1
R2 & R3 - Given Up

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O R D E R

This Civil Revision Petition has been filed against the fair and and decreetal order of the learned VIII Court of Small Causes at Chennai (Appellate Authority) partly allowing RCA.No.553 of 2011 dated 19.11.2012, which was filed against the fair and decreetal order of the XI Court of Small Causes, Chennai passed in RCOP.No.766 of 2009 dated 12.07.2011.

2. The brief facts of the case are as follows:-

The first respondent herein, is a landlady. The petitioner is a tenant under her on a monthly rent of Rs.1500/-. Since the tenant failed to pay the rent for the period 1995 to March 2009 and committed willful default and also without the written consent of the first respondent sublet the premises to the respondents 2 and 3, the first respondent filed RCOP.No.766/2009 before the Court of Small Causes Chennai and by order dated 12.07.2011, the said petition came to be dismissed both on the grounds of willful default and subletting. As against which the first respondent filed RCA.No.553/2011 before the Rent Control Appellate Authority and by the judgment dated 19.11.2012, the appeal was partly allowed and the order and decree under Section 10 (2) (i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, (herein after called as 'Act') passed by the learned Rent Controller in RCOP No.766/2009 was set-aside and the order and decree under Section 10 (2) (ii) (a) of the Act was confirmed and two months time was given for eviction. Aggrieved by the same, the tenant filed this Civil Revision Petition before this Court.

3. After hearing both the parties, the Rent Controller Appellate Authority found that the petitioner Humera begum is one of the legal heirs of Abdul Malick. The father of the Abdul Razaak was the original owner of the subject property, who died on 06.07.1963. During his life time, Abdul Razaak executed a sale deed in favour of his wife Hava Bee for a sale consideration of Rs.600/- vide Doc.No.2835/1918 (Ex.P1). The said Hava Bee died intestate leaving behind her only son Mr.Abdul Malick. The said Abdul Malick died on 11.12.1995 intestate leaving behind his legal heirs viz., 1.Habeea 2. Ummul Huda 3. Hafeeza 4.Humura Begam, are the daughters. Therefore, the Appellate Authority found that the subject property was inherited by the petitioner as per the Mohammedan Law. The Appellate Authority found that the petitioner as a co-owner she is entitled to file a petition on behalf of other co-owners to evict the tenant. Further, the Appellate Court held that as per Section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act, the landlady includes the co-owner of the property. Therefore, the Appellate Authority found that the petitioner is the owner and the respondent is the tenant. Hence, the Appellate Authority had set aside the judgment and decree passed in RCOP.No.766/2009 on the ground of willful default and directed the respondent/tenant to vacate the premises. As against the said order, the present Civil Revision Petition has been filed by the petitioner/tenant.

4. Heard, Mr.J.Sudhakaran, on behalf of the petitioner and Mr.C.B.Santhosh Kumar, on behalf of the respondents.

5. The learned counsel for the petitioner submitted that the property was leased out during the year 1967 by Mr. Abdul Razack and the petitioner has paid a sum of Rs.1,00,000/- as refundable interest free lease amount. Subsequently, the petitioner paid a sum of Rs.1,00,000/-, to Mr. Abdul Malick who is son of Abdul Razack. Further, the petitioner submits that the respondent failed to claim rent for a long period of time. According to the petitioner there was no tenant and owner relationship between the petitioner and the respondent. According to the petitioner, the respondent also failed to establish before the Rent Controller that she is the owner of the property, but was one of the co-owners of the property. Therefore, the contention of the petitioner that the co-owner of the property cannot file the RCOP without impleading the other co-owners.

6. On behalf of the respondents, it is submitted that neither grandfather nor father received a sum of Rs.1,00,000/- from the petitioner. In order to prove the averments, the petitioner did not examine any witness before the Rent Controller or produced the evidence. The petitioner also not marked any documents for the payment of the lease amount to the owner of the property before the Rent Controller. Apart from that the owner of the property was his grand mother and as such, the petitioner claims that he has paid the lease amount to her grand father, will not have any merit. In the suit filed in O.S.No.4261/2008 on the file of the XI Assistant judge, City Civil Court, Chennai, the petitioner did not dispute the fact that the jural relationship of a tenant and owner between the petitioner and the respondents herein. Therefore, according to the respondents, this Civil Revision Petition is liable to be dismissed.

7. Under these circumstances, this Court finds that in this present Revision the following issues arises for consideration:-

1) Whether there is a jural relationship of tenant and owner between the petitioner and the respondents?

2) Whether one of the co-owner can initiate eviction proceedings against the tenant?

3) Whether the tenant committed default in payment of rent and therefore, liable for eviction?

8. Point No : 1

The petitioner has admitted that the respondent is one of the co-owner of the property. These facts are also confirmed by the order passed in O.S.No.4261/2008.

9. The Original Suit was filed before the XI Assistant Judge, City Civil Court, Chennai in O.S.No.4261/2008 for declaration that the said suit was filed by the present

petitioner against the respondent for permanent injunction restraining the respondent herein, from interfering with the possession of the petition mentioned suit property except under due process of law. While passing the order the Court has observed that the plaintiff in the suit did not dispute the relationship with the defendant (respondent herein) as tenant and owner at para No.8 and the said para No.8 is as follows:-

"8. The plaintiff has not disputed the ownership of the defendants. The plaintiff has not set up title in her. The plaintiff has only stated that she is a tenant. The defendants state that the plaintiff is living there without paying rent. The plaintiff, on the other hand claims that she paid Rs.2,00,000/- towards the lease. She has not stated whether this amount is rental advance or rent paid in lump sum. The plaintiff has not produced any proof to show that she actually paid this amount. This is not a Rent Control Court to go into these questions. I am not inclined to go into this question now. It is for the Rent Controller to decide this issue."

10. From the above observations, it is clear that the petitioner herein, has admitted the fact that the respondents are the joint owners. Further, the Court has observed that the plaintiff has not produced any proof to show that the actual payment of the advance amount of Rs.,2,00,000/-. In the said suit, the learned Judge refused to go into the question, as to whether, the said amount of Rs.2,00,000/- was paid towards the rental amount or lease amount and left it to the Rent Controller decide the same. I am not in a position to decide as to what was the amount paid towards rent or lease. It is admitted fact that no document was produced to prove the payment of the said amount paid by the petitioner, even before the Rent Controller in RCOP.No.766/2009 and also no witness was examined and no exhibits was marked on behalf of the petitioner.

11. According to the petitioner, the advance amount of Rs.1,00,000/- was given to one Mr.Abdul Razaak, who is grand father of the respondents. However, he was not owner of the property, but his wife. Therefore, the claim of the petitioner that as a tenant she paid a sum of Rs.1,00,000/- to Abdul Razaak as lease amount cannot be accepted. It is merely a false statement made by the petitioner without substantiating the said statement either by producing the necessary documents or letting oral evidence. Since as a tenant the petitioner herself, admitted that the respondent is the owner and she is a tenant. This Court finds that there is a clear existence of jural relationship of tenant and landlady between the petitioner and the respondents. Accordingly, point No.1 is answered that there is a jural relationship of tenant and owner existing between

petitioner and respondent No.I.

12.Point No.2:

Now, the first respondent is one of the co-owner of the property. According to the petitioner, the first respondent alone cannot file petition for eviction. The respondent No.1 clearly contended that the petitioner has no title to the property.

13. In support of the contentions, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of F.S.Rikhy Vs. New Delhi Municipal Committee, reported in (1962) 3 SCR 604: AIR 1962 SC 554. In this judgment, the learned counsel reported in Paragraph No.14, which reads as follows:-

"14. In view of these considerations it must be held that there was no relationship of landlord and tenant between the parties and that, therefore, the applications under Section 8 of the Act made by the appellants had been rightly dismissed by the High Court as incompetent. The appeals are accordingly dismissed with costs, one set of hearing fees."

14. In the said judgment, the Hon'ble Supreme Court came to the conclusion that there is no jural relationship of tenant and owner between the petitioner and respondent. Therefore, the petition was dismissed. Whereas in the present case as held earlier, there exist a jural relationship of tenant and owner between the petitioner and respondent. Hence, the facts in this case are different and therefore, the above citation will not be applicable to the case in hand.

15. According to the respondent, the co-owner can file the Original Petition on behalf of the others. According to the petitioner, the respondents filed the RCOP in the capacity as co-owner against the petitioner and it is not maintainable. On the other hand, the respondent submits that the petition for eviction can be filed by one co-owner on behalf of others. In support of his submission, he referred the judgment of A.Madasamy Nadar Vs.A.J.Khaja Nazamudeen and others, reported in (1991) 1 MLJ 532. which reads as follows:-

" 7. Even assuming that the petitioners are not the only heirs of their father and there are other heirs, who are not impleaded as parties in the Rent Control Original Petition, the petitioners alone as co-owner of the petition mentioned property after the death of their father can maintain the petition for eviction on behalf of other co-shares Section 2(6) of the Act defined a landlord' as follows:

" Landlord" includes person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others as an' agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitle to receive the rent, if the building were let to a tenant.

In Kanta God V.B.P.Pathak MANU/SC/0348/1977: [1977] 3 SCR 412, the Supreme Court dealing with the question whether one co-owner can maintain a petition for eviction on behalf of other co-owners held as follows:-

This Court in Sri Rant Pasricha Vs. Jaganatha MANU/SC/0473/1976: [1977] 1 SCR 395, clarified that a co-owner is as much an owner of the entire property as any sole owner of the property is: Jurisprudentially, it is not correct to say that a co-owner of property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner of the property...It is therefore not possible to accept the submission that the plaintiff, who is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of Section 13(1)(f). It is not necessary to establish that the plaintiff is the only owner of the property, being at the same time acknowledged landlord of the defendants. " That case also was one for eviction under the rent control law of Bengal. The law having been thus put beyond doubt, the contention that the absence of the other co-owner on record dis entitled the first respondent from suing for eviction, fails."

16. From the above judgment it is clear that the co-owner of the property can file the petition, on behalf of the other co-owners and the Original Petition is maintainable at the instance of one of the co-owners. Further in terms of the Section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act, the landlady includes the co-owner.

17. Therefore, this Court is of the view that one of the co-owners of the property is entitled to file the RCOP for eviction. The Point No.2 answered accordingly.

18. Point No.3:

It is an admitted fact that petitioner has not paid the rent to

the respondents. Since this Court has already come to the conclusion that there is no proof for the payment of Rs.2,00,000/- either as a lease amount or as a rental advance, the petitioner is liable to pay the rent to the respondent No.1. The petitioner is in willful default in making the rent to the respondent No.1. Hence, the Original Petition filed for eviction by the respondent No.1, on the ground of willful default is maintainable. Accordingly, this Court uphold the order of the Appellate Authority passed under Section 10 (2) (i) and set aside the order passed in RCOP and directs the petitioner to vacate the premises, within a period of three months from the date of receipt of the order/order made ready.

19. Therefore, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

dna
TO

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

Copy To

The Section Officer,
VR section, High court,
Madras.

+2cc to Mr.C.B.Santhosh Kumar, Advocate SR.No.48601

C.R.P.No.1184 of 2013
and
M.P.No.1 of 2013

PPA(CO)
GN(31/08/2018)