

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P(NPD).Nos.2116 & 2117 of 2010

A.Suffia Bai (Deceased)
2.Abdulla zakria
3.Sabira Farook
4.Abdul Rahuman
5.Sajidha Mansoor
6.Khalid A.Sait

...Petitioners in
both C.R.P's

Dr.K.R.Mani

Vs

...Respondent in
both C.R.P's

COMMON PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu buildings (Lease and Rental control Act), to set aside the fair and decretal order dated 17.04.2007 in RCA Nos.27 & 28 of 2006 on the file of the Rent Control Appellate Authority (Sub Judge Nilgiris at Uthagamandalam) reversing the order dated 06.07.2006 in R.C.O.P. No.5 & 16 of 1997 respectively on the file of the learned Rent Controller (District Munsif, Coonoor).

For Petitioner : Mr.S.Kalyanaraman in both CRPs
For Respondents : M/s.S.Nandhini Ravi for
Mr.B.Ravi in both CRPs

COMMON ORDER

These civil revision petitions have been filed to set aside the fair and decretal order dated 17.04.2007 in RCA Nos.27 & 28 of 2006 on the file of the Rent Control Appellate Authority (Sub Judge) Nilgiris at Uthagamandalam reversing the order dated 06.07.2006 in R.C.O.P. No.5 & 16 of 1997 respectively on the file of the learned Rent Controller (District Munsif), Coonoor.

2. The landlady is the revision petitioner in both the revision petitions. C.R.P.No.2116 of 2010 arises against the order in R.C.A.No.27 of 2006 on the file of the Appellate Authority (Sub Judge) Nilgiris at Uthagamandalam which is an appeal filed against the order in R.C.O.P.No.5 of 1997 of the Rent Controller (District Munsif) Coonoor.

3. C.R.P.No.2117 of 2010 is filed against the order in R.C.A.No.28 of 2006 on the file of the Appellate Authority (Sub Judge) Nilgiris at Uthagamandalam which is in turn filed against the order in R.C.O.P.No.16 of 1997 on the file of the Rent Controller (District Munsif) Coonoor. The parties are described in the same array as in the rent control proceedings.

4. **R.C.O.P.No.5 of 1997** is filed seeking the eviction of the respondent on the ground of willful default. The landlady has filed the above petition *inter alia* contending that the respondent was inducted on a monthly rent of Rs.300/-. It is her case that as on 31.07.1995 the tenant was in arrears of rent to the tune of Rs.4250/- that after several months the tenant had paid a sum of Rs.2,000/- vide cheque dated 07.08.1995 leaving a balance of Rs.2,250/-. Thereafter, it is the case of the landlady that the tenant had failed to make even a single payment and for the period 01.08.1995 to 31.01.1997, the tenant was in arrears of rent to the tune of Rs.5,400/-. This default according to the land lady was willful thereby making the tenant liable for eviction.

5. The tenant has resisted the petition by contending that there is no land lady - tenant relationship between the parties as he was never a tenant in respect of the petition premises. Therefore there was no question his committing any default much less a willful default.

6. The land lady did not enter the box to adduce evidence, but her son had examined himself as P.W.1. The xerox copy of two cheques bearing Nos. 635659 and 635660 was marked on their side as Ex.P.1. The tenant examined himself as R.W.1 and one H.B.Vinoba was examined as R.W.2. The

respondent/tenant had filed Exs.R1 to R7 in support of his case. The Rent Controller placing reliance on the admission of R.W.1 that he had issued the two cheques marked as Ex.P.1 to the revision petitioner concluded that there was a land lady tenant relationship between the parties and that these cheques were issued towards part payment of the arrears of rent. The Rent Controller chose to ignore the documents marked as Exs.R2 to R7 on the ground that the license for running the medical store had not been renewed by the said Vinoba and therefore it should be presumed that he was not running the medical store. With this view, the learned Rent Controller had allowed the petition and directed eviction of the respondent from the petition premises.

7. **R.C.O.P.No.16 of 1997** has been filed by the land lady against four respondents the first respondent therein is the sole respondent in R.C.O.P.No.5 of 1997. It is her case that the first respondent is her tenant and that he was inducted into the petition premises wherein he was running a drug store in the name and style of Durga Medical Store; that the land lady came to know that the first respondent had sublet the petition premises to the second respondent who is his colleague and the second respondent's wife, the third respondent was running a Fancy Store in the name and style of Keerthi Fancy Store. The fourth respondent who is the employer of respondents 1 and 2 was impleaded as a formal party.

8. Only the fourth respondent had chosen to file a counter *inter alia* contending that they are unnecessary parties to the proceedings and the dealing that the land lady had with the principal tenant and sub-lessee was only in their individual capacity and not as employees of the fourth respondent. The respondents 1 to 3 chose to remain ex-parte though the first respondent had filed a counter in R.C.O.P.No.5 of 1997.

9. Even in this petition, the land lady did not choose to examine herself and it was her son who had adduced evidence as P.W.1. One S.Srinivasan, Officer of the Baroda Bank, Coonoor Branch had adduced evidence as P.W.2. The two cheques said to have been issued by the first respondent in favour of the land lady was marked as Ex.P.1. On the side of the respondents, the first respondent had examined himself as R.W.1 and H.B.Vinoba examined as R.W.2, Exs.R1 to R8 were marked on the side of the petitioner. Once again, the learned Rent Controller has placed reliance upon Ex.P.1 to come to the conclusion that the first respondent is the tenant in respect of the petition premises. The learned Rent Controller has also proceeded on a presumption, not backed by evidence, to come to the conclusion that the first respondent had been inducted as a tenant, after R.W.2 had vacated the premises and further the learned Rent Controller had proceeded to presume that the

respondents 2 and 3 have been inducted as sub tenant by the first respondent. On the above reasonings, the Rent Controller had proceeded to allow the R.C.O.P.No.16 of 1997 and directed eviction of the respondents 1 to 3.

10. Assailing the two orders the first respondent/tenant had preferred R.C.A.No.27 of 2006 and R.C.A.No.28 of 2006. Challenging the fair and decretal order in R.C.O.P.Nos.5 and 16 of 1997 on the file of the Appellate Authority (Subordinate Judge), Nilgris, Uthagamandalam.

11. The learned Appellate Authority allowed the two appeals and rendered a finding that the land lady had not let in any evidence to prove the relationship of the tenant and land lady, thereby giving her the right to invoke the provisions of the Rent Control Act. The Appellate Authority has clearly held that except for Ex.P.1, there is no iota of evidence let in by the land lady to prove the existence of tenancy between her and the respondent herein.

12. Mr.S.Kalyanaraman, learned counsel appearing for the revision petitioner/landlady based his entire contention on the admission of R.W.1 that the two cheques exhibited as Ex.P.1 was admitted by the tenant respondent herein, which according to the counsel buttress their case that the cheques were issued towards part payment of the rent. The learned counsel drew my

attention to the finding of the Rent Controller with reference to Ex.P.1. He also drew my attention to Ex.R1 which is a legal notice issued by H.B.Vinoba to the revision petitioner. The learned counsel would contend that this document is a letter created for the purpose of showing that the said Vinoba is the tenant of the petition's premises and that this notice has come only at the instance of the respondent that too only after filing of the rent control proceedings. The learned counsel therefore contended that this document cannot be looked into.

13. Ms.S.Nandhini Ravi, learned counsel who argued on behalf of the respondent would contend that there is absolutely no pleadings or proof on the side of the landlady to show the existence of a landlady and tenant relationship between the revision petitioner and the respondent. She would also contend that Ex.P.1 cannot be considered to have been issued in lieu of the rent because there is no independent evidence whatsoever to connect this payment to be in lieu of the rents.

14. Heard the counsel on either side, the revision petitioner who has come forward with the case that the respondent is a tenant under her, has neither given any details as to when the tenancy has commenced nor any evidence to show as to whether there has been any payment of rents on the

side of the respondent/tenant, apart from a stray cheque Ex.P.1. Although in paragraph No.5 of the petition, the revision petitioner would contend that cheque of Rs.2,000/- has been paid on 07.08.1995, the same has not been substantiated by way of documentary evidence; that apart there is no pleading with reference to Ex.P.1 in the petitioner filed by the revision petition. Further, the respondent having categorical pleaded that he is not a tenant in respect of the petition premises, the onus of proof lies solely on the revision petitioner. This in my opinion has not been discharged by the revision petitioner. The evidence with reference to the drawing of two cheques in favour of the land lady has not been satisfactorily proved to have been issued towards a part payment for the arrears of rent. R.W.2 has clearly deposed that he is the tenant in respect of the petitioner's premises and to prove the fact that he has been running drug store, Exs.R1 to R7 have been filed. It is also interesting to note that P.W.1, the son of the land lady had deposed to the fact that the said Vinoba was dead. There is also no explanation, as to why the landlady/petitioner has not responded to the legal notice Ex.R1 issued by H.B.Vinoba. If really the said Vinoba was not a tenant under the land lady, she would be rushed to deny the statements made therein more particularly when the letter has been received while the rent control proceedings were pending. The revision petitioner has failed to prove the existence of a tenancy agreement between her and the tenant/respondent which is the prime

ingredient for invoking the provisions of the Tamil Nadu (Building Lease and Rent Control) Act.

15. The petitioner who has come forward with the case that the respondent is a tenant under her and is guilty of willful default as well as subletting has not proved, the *prima facie* case that the respondent is a tenant and in these circumstances, I find no reason to interfere with the order of the learned Appellate Authority (Sub Judge Coonoor).

The order of the Appellate Authority dated 17.04.2007 in RCA Nos.27 & 28 of 2006 is confirmed. In the result, the civil revision petitions are dismissed. However, there is no order as to costs.

21.06.2018

Index: Yes/No

Internet: Yes/No

dh

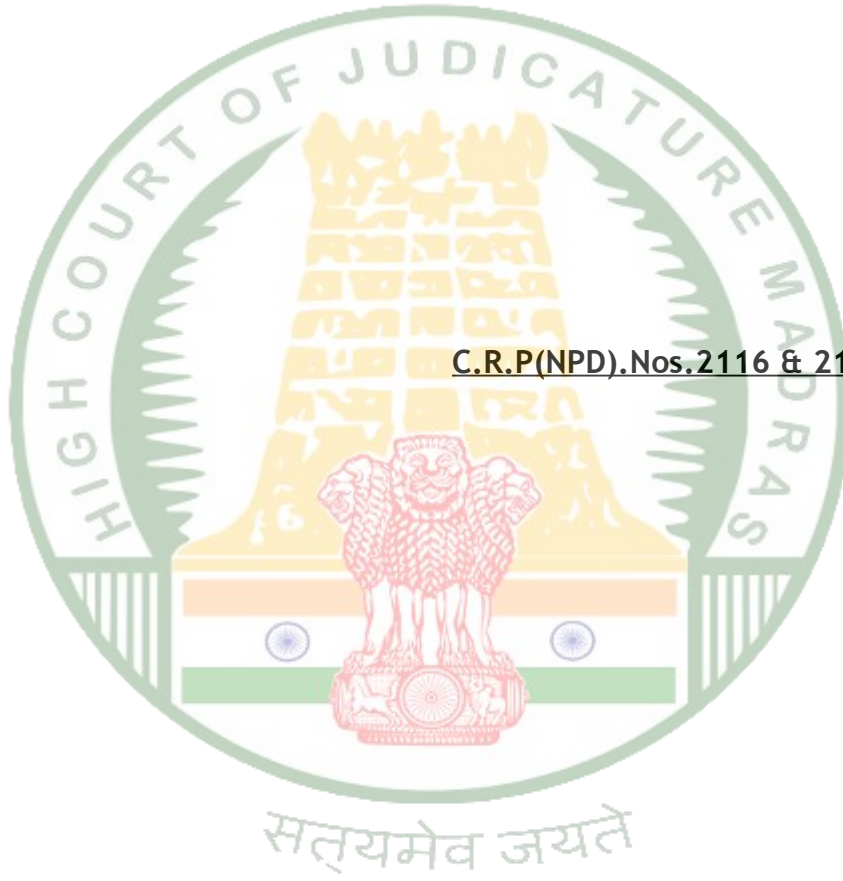
To

1. The Rent Control Appellate Authority,
Sub Judge Nilgiris at Uthagamandalam
2. The learned Rent Controller,
District Munsif, Coonoor.

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P.T.ASHA.J,

dh



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