

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on 03.07.2018

Order Pronounced on 12.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P.(NPD).Nos.3197 & 3276 of 2012

A. Rajagopal Chettiar ... Petitioner in both C.R.Ps

Vs.

1. Srinivasan
Proprietor
V.V.S.Stores
24 Part and 25 Part
East Bashyakaralu Street,
R.S.Puram, Coimbatore - 2. ... Respondent in both C.R.Ps

2. Meena ... Respondent in
CRP.No.3197 of 2012

Civil Revision Petitions filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the fair and final order made in RCA.Nos.19 & 20 of 2008 dated 05.09.2011, on the file of the Rent Control Appellate Authority and First Additional Sub Court, Coimbatore reversing the fair and final order dated 19.11.2007 made in RCOP.Nos.120 & 118 of 2004, on the file of the Rent Controller and First Additional District Munsif Court, Coimbatore.

For Petitioner : Mrs.C.Usha
(in both C.R.P.s)

For Respondents : M/s.P.Subba Reddy
(in both C.R.P.s)

COMMON ORDER

Aggrieved over the order passed in RCA.Nos.19 & 20 of 2008 dated 05.09.2011, on the file of the Rent Control Appellate Authority and First Additional Sub Court, Coimbatore, reversing the fair and final order dated 19.11.2007 made in RCOP.Nos.120 & 118 of 2004, on the file of the Rent Controller and First Additional District Munsif Court, Coimbatore, the petitioner has filed the above Civil Revision Petition.

2. The petitioner/landlord filed petitions under Section 10 (2) (a) (i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 on the file of the Rent Controller (District Munsif Court, Coimbatore) praying for an order of eviction against the respondents. According to the petitioner, he is the owner of the building premises in Old Door No.24 and 25 and New Door No.53 situated in East Bashyakaralu Street, R.S.Puram, Coimbatore. Further he submitted that the subject property originally belongs to the petitioner and his cousin brother V.Muthusamy Chettiyar and the petitioner had filed a suit O.S.No.448 of 1979 before the Sub Court, Coimbatore for partition. A

preliminary decree was passed in favour of the petitioner determining his half share of the property, which includes the subject property for lease to the respondents. Before passing the final decree, which was transferred to the file of Additional District and Sessions Judge, Fast Track Court III, Coimbatore, Muthusamy Chettiyar passed away and therefore the legal heirs of Muthusamy Chettiyar was impleaded in the final decree. The legal heirs of Muthusamy Chettiyar filed I.A.No.906/2004 to pass final decree based on the compromise arrived at between the legal heirs of the deceased Muthusamy Chettiyar with the petitioner. Accordingly, the Additional District and Sessions Judge, Fast Track Court III, Coimbatore recorded the compromise and passed a final decree on 31.03.2004 and the premises bearing Old Door No.24 and 25 and New Door No.53 situated in East Bashyakaralu Street, R.S.Puram, Coimbatore, was allotted as share of the petitioner absolutely. Therefore, the petitioner claimed that as per the final decree dated 31.03.2004 passed in O.S.No.448 of 1979, he has become absolute owner of the above said building and premises. After passing the final decree the petitioner contacted the respondents and directed to pay rent of Rs.2,000/- to him which was payable for the month of March 2004. It is further stated that though the respondents agreed to pay the rent they have not paid the rent. Therefore, the petitioner has sent a legal notice dated 01.06.2004 to the respondent directing them to pay the rent from

March 2004. But the respondents neither sent any reply nor paid the rent. Therefore the petitioner filed the RCOP for eviction on the ground of willful default.

3. The respondents in their counter statement filed in RCOP stated that the first respondent is the foster son of one Kannammal who is Junior wife of late.V.Muthusamy Chettiyar, the cousin of the petitioner, who died on 07.06.2002. Further, they stated that the first wife of Muthusamy Chettiyar pre-deceased him on 25.09.2001. During the life time of Muthusamy Chettiyar the Junior wife Kannammal lived with him for more than 40 years and they lived as husband and wife. According to the respondents the said Kannammal had been allotted with the petition mentioned residential property for her occupation and she has been living there along with the first respondent who is none other than her foster son and daughter-in-law Meena/second respondent in the Northern portion of the suit property. In this regard Muthusamy Chettiyar also executed a registered Will dated 24.01.1979. It is admitted fact that the petitioner sent a registered notice dated 01.06.2004, for which, the respondent did not send any reply.

4. After perusing statements, documents and evidences in support of

both the petitioner and the respondents, the Rent Controller (District Munsif Court, Coimbatore) came to the conclusion that there exists a petitioner(landlord) and the tenant relationship between the petitioner and the respondent and therefore allowed the RCOP 118 & 120 of 2004 and ordered eviction.

5. Aggrieved by the order of the Rent Controller, the respondents 1 & 2 preferred appeals before the Rent Control Appellate Authority and SubJudge Coimbatore and the Appellate Authority in RCA. No.20 of 2008 allowed the appeals and reversed the findings of the Rent Controller thereby the Appellate Authority set aside the order of eviction. Against this order, the petitioner/landlord preferred the present Civil Revision Petition challenging the order passed in RCA Nos.19 & 20 of 2008 dated 05.09.2011.

6. Heard both sides. सत्यमेव जयते

7. Admittedly, as contended by the learned counsel for the petitioner, the petitioner is the landlord of the property and originally the subject building belongs to V.Muthusamy Chettiyar and the petitioner and the said building by virtue of compromise arrived at between the legal heirs of the Muthusamy Chettiyar and the petitioner in O.S.No.448 of 1979 which

was recorded in the final decree, dated 31.03.2004 was allotted to him. When this property was under joint ownership, the rent was paid by the respondents to the one of the co-owner viz., V.Muthusamy Chettiyar. Since the said property was allotted to him, by virtue of compromise decree the petitioner started claiming rent from the March 2004. The petitioner also sent legal notice dated 01.06.2004 which was marked as Ex.P2 demanding rent and the same was received by the respondents and the said acknowledgement was filed and marked as Ex.P.3. After the receipt of the said demand notice, the respondents did not send any reply. These facts were appreciated by the Rent Controller and an order of eviction was passed. However, the Rent Control Appellate Authority did not appreciate all these facts while reversing the order of the Rent Controller.

8. In support of the contention of the petitioner, the judgment passed by this Hon'ble Court in CRP.No.2053 of 2010 filed by the mother of the first respondent one Kannammal against the petitioner was relied upon and the above CRP was filed by the said Kannammal on the ground that the RCOP filed by the Rajagopal Chettiyar to evict her was allowed in RCOP No.124 of 2004 against which the said Kannammal filed RCA No. 22 of 2008 before the Rent Control Appellate Authority and the same was dismissed. It is pertinent to mention here that Kannammal also one of the occupants of

the petitioner premises and the respondent portion also falls under the same property of the petitioner. In the above said judgment, it was accepted that there was a jural relationship of landlord and tenant between Kannammal and Rajagopal Chettiyar. In this regard, it is relevant to extract the following findings of this Hon'ble Court passed in CRP No.2053 of 2010

“ 8. In the aforesaid circumstances, it is not open to the petitioner to challenge the concurrent findings of the court below. As contended by the learned counsel appearing for the respondent there must be substantial or subsisting right in favour of the petitioner in the premises which is the subject matter in the Rent Control Original Petition, otherwise the court cannot interfere with the same. In order to establish such a right, the petitioner has not produced any support in document acceptable by any competent court. Without approaching the civil court to establish such a right, the petitioner cannot agitate the concurrent findings of the court below.

9. admittedly, the petitioner is in possession and enjoyment of the premises and she has not claimed the title of the premises and she has claiming right only through late Muthusamy Chettiar. In the consent decree, the legal heirs of Muthusamy Chettiar are parties and admittedly the revision petitioner herein is not a legal heir of Muthusamy Chettiar. Without any

subsisting legal right to the property, the petitioner is not entitled to raise a defence that she was second wife of late Muthusamy Chettiar and as such she was permitted by him to occupy the premises. The aforesaid defence raised by the petitioner is neither legal nor supported by any materials. The petitioner has stated what is her legal right in the property. When she is claiming right through the deceased Muthusamy Chettiar, she must legally substantiate her claim. The petitioner is claiming right only through late.Muthusamy Chettiar, though she is not a legal heir. In the suit in O.S.No.448 of 1979, between the respondent, legal heir of Muthusamy Chettiar and others, there was a compromise decree, whereby the property was allotted to the share of the respondent. According to the respondent, the petitioner herein was only a tenant under late.Muthusamy chettiar and as per the compromise decree, the respondent become the landlord and that was accepted by the Court below. Where there is no legal right established by the petitioner in the property, she cannot raise a defence against the concurrent finding stating that there is no jural relationship between the respondent and the petitioner as landlord and the tenant.

10. Therefore, I am of the view that there is no illegality or material irregularity in the impugned judgment and decree so as to warrant any interference by this Court in this revision. Accordingly, the revision

petition is liable to be dismissed.

9. Since already this Court came to the conclusion that Kannammal though she was a foster wife of the deceased Muthusamy Chettiyar, Court considered her neither as a legal heirs nor in any other way she is entitled to occupy the property on the basis of the relationship with the Muthusamy Chettiyar. Hence, in the above judgment this Hon'ble Court accepted the findings of the Rent Controller and the Appellate Authority of the Rent Controller and dismissed the CRP filed by Kannammal. The said Kannammal also preferred SLP and the same was dismissed.

10. The respondent contented that they have not paid rent for long time and the subject property was allotted to them by Muthusamy Chettiyar since his mother Kannamal lived with him for many years.

11. Under the above circumstances, the first respondent, who is the son of Kannammal, and the second respondent being the wife of the first respondent cannot claim any right over the property since this Court already established the jural relationship between the mother of the first respondent and the petitioner as tenant and owner. In the present case also, I uphold the findings of the Rent Controller that there was a jural

KRISHNAN RAMASAMY, J.

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relationship of tenant and owner exist between the respondents and the petitioner. Therefore, the respondents have no right to claim the property in any manner except as tenant in any of the subject property in both CRPs and obviously the jural relationship of tenant and owner exist between the respondents and the petitioner.

12. Therefore, this Court set aside the order passed in RCA Nos.19 and 20 of 2008 and up hold the order passed by the Rent Control Tribunal passed in RCOP.Nos.118 and 120 of 2004. Therefore this Civil Revision Petitions are allowed. No costs.

12.07.2018

Index : No

Internet : Yes

Speaking order/Non speaking order

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To

1. I Additional Sub Court, Coimbatore

2. I Additional District Munsif Court, Coimbatore.

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