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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.10.2018

PRONOUNCED ON : 14.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

C.R.P.No.2988 of 2018

and

C.M.P.No.17362 of 2018

Reena ... Petitioner / Respondent / Respondent
-vs-

Sathiskumar ... Respondent / Appellant / Petitioner

PRAYER: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 (Tamil Nadu Act XVIII of 1960 as amended by Act XXIII of 1973 and Act 1 of 1980, praying to set aside the fair and decreetal order of eviction, dated 03.03.2018, made in R.C.A.No.3 of 2015, by the learned Rent Control Appellate Authority/Subordinate Judge at Ponneri, reversing the decreetal order of dismissal of the eviction petition in R.C.O.P.No.4 of 2008, dated 11.02.2011, by the Rent Controller/District Munsif Court, Ponneri and consequently restore the order of dismissal of the eviction petition in R.C.O.P.No.4 of 2008, dated 11.02.2011, by the District Munsif, Ponneri by allowing the above Civil Revision Petition.

For Petitioner : Mr.R.Munuswamy

ORDER

The tenant is the revision petitioner herein. The landlord is the respondent herein.

2.The brief facts of the case, leading to filing of this Civil Revision Petition is that the petitioner was originally a tenant under one Suryaprakash with regard to the petition mentioned property. The respondent purchased the petition mentioned property on 20.09.2006 under a registered sale deed from Suryaprakash and his wife Latha. After purchase, the respondent received the rent from the petitioner from October, 2006. The receipt of the Money Order from the petitioner periodically was accepted. The respondent is running a Medical Shop under the name and style of "Thirumala Medicals" at No.97



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(Old No.188 and 189) Thayuman Chetty Street, Ponneri which is less than 200 Mts. from the petition mentioned property. The respondent requires the petition premises for his own use and personal occupation to shift his medical shop to the petition premises. The petitioner is well aware that this petitioner is running medical shop in a rented premises and his requirement is bona fide. Therefore, the petitioner agreed to vacate and hand over possession of the petition premises and the only condition was that he can hand over possession of the property only on discharge of the mortgage debt dated 08.08.2005 between the petitioner and Suryaprakash i.e., vendor of the respondent. After taking much pain, the respondent arranged to discharge the said mortgage loan on 09.04.2007. The arrangement was made after issuance of notice on 05.10.2006 and the reply notice dated 08.12.2006. There was default in rental amount even at that stage. As agreed the petitioner is expected to hand over possession of the petition premises at least by the end of April, 2007. But instead of handing over possession, the petitioner sent the rent by way of Money Order. Therefore, the respondent, who does not want to allow the petitioner to continue in the premises, refused to receive the rent sent by the petitioner. The respondent informed the petitioner not to send the rent by way of Money Order. But the petitioner has chosen to file application for deposit of rent before in R.C.O.P.No.4 of 2007. The respondent got already impleaded as a party in the suit between this respondent and Suryaprakash in O.S.No.198 of 2006 on the file of the District Munsif Court, Ponneri.

3.The respondent / landlord has filed R.C.O.P.No.4 of 2008 before the District Munsif Court, Ponneri, seeking eviction of the revision petitioner herein from the petition mentioned property on the ground of personal occupation and wilful default.

4.It appears from the counter statement filed by the tenant before the Rent Controller that he has admitted the tenancy having not been entered into with one Suryaprakash. However, he has denied that there is no arrears of rent and he is running fancy stores for her livelihood in the petition mentioned property and she is not having other sources of income.

5.Before the Rent Controller, P.W.1 and P.W.2 were examined and Exs.P.1 to P.8 were marked. On behalf of the tenant, she has examined herself as R.W.1 and Exs.R.1 and R.2 were marked.

6.On consideration of both oral and documentary evidence, the learned Rent Controller has dismissed R.C.O.P.No.4 of 2008 on the ground that there is no wilful default and owner occupation has not been proved to be bona fide.



7. On appeal by the landlord, in R.C.A.No.3 of 2015, the plea of wilful default has been negatived, however, owner occupation has been allowed and accordingly, ordered for eviction.

8. The tenant, who is the revision petitioner before this Court, has contended that the Lower Appellate Court has not considered the fact that the landlord is having a site nearby petition mentioned property and erred in ordering eviction on the ground of owner occupation.

9. It appears from the cross-examination of R.W.1 (tenant) that the landlord is having a building within the Ponneri Town and the evidence of R.W.1 is only hearsay in nature and further, on perusal of the evidence of the tenant R.W.1 it reveals that the landlord has purchased petition building for the purpose of shifting his medical shop. It is also noted that the plea of the revision petitioner / tenant is that he is not having any other property to conduct the business and the same cannot be disentitle the landlord's possession on the ground of personal occupation.

10. At this juncture, it is pertinent to note that the respondent / landlord has purchased the petition premises for the purpose of conducting his existing medical shop in the petition premises, which has been completely over looked by the trial Court.

11. The decision rendered in the case of Joginder Pal Vs. Naval Kishore Behal reported in 2002 (4) LW 802 and in the case of Devaraj and Ramala Devaraj Vs. Tharmar & Sons reported in 2018 (1) MWN (Civil) 249 is squarely applicable to the facts and circumstances of the present case.

12. Since the requirement of the respondent / landlord in respect of the petition mentioned property appears to be bona fide and since the very purchase of the property is to run his medical shop, the finding given by the Lower Appellate Court, regarding the requirement of the petition mentioned property for owner occupation is bona fide, being well considered and well merited, does not suffer from any infirmity or impropriety, warranting interference by this Court.

13. In this view of the matter, I find no grounds to interfere with the well considered order dated 03.03.2018, passed by the Rent Control Appellate Authority / Sub Judge, Ponneri in R.C.A.No.3 of 2015.



14. Accordingly, this Civil Revision Petition is dismissed. Time for vacating the petition premises is one month from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Myr

To

1. The Subordinate Judge/The Rent Control Appellate Authority,
Ponneri.
2. The Rent Controller/The District Munsif,
Ponneri.
3. The Record Keeper,
V.R. Section,
Madras High Court.

+1cc to Mr.R.Munuswamy, Advocate Sr.87527

C.R.P.No.2988 of 2018

ssd[co]
srg 01/02/2019