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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.02.2018

DELIVERED ON : 09.03.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) (MD) No.818 of 2014

Paramasivan : Revision Petitioner / Respondent / Petitioner

vs.

Murugesan : Respondent / Appellant / Respondent

PRAYER : Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, praying to set aside the order and decreetal order passed in R.C.A.No.1 of 2013, dated 19.02.2014, on the file of the Rent Control Appellate Authority (Subordinate Court), Ambasamudram, reversing the order and decreetal order passed in R.C.O.P.No.5 of 2010, dated 19.11.2012, on the file of the Rent Control Tribunal (Principal District Munsif Court), Ambasamudram.

For Petitioner : Mr.D.Nallathambi
For Respondent : Mr.S.Meenakshi Sundaram,
Senior Counsel
for Mr.N.Ganagasapapathy

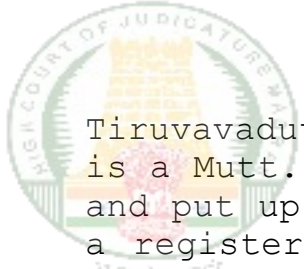
ORDER

This Civil Revision Petition has been filed by the revision petitioner / petitioner / landlord to set aside the judgment passed by the Rent Control Appellate Authority (Subordinate Court), Ambasamudram in R.C.A.No.1 of 2013 dated 19.02.2014, reversing the fair and decreetal order passed by the Rent Control Tribunal (Principal District Munsif Court), Ambasamudram in R.C.O.P.No.5 of 2010, dated 19.11.2012.

2. For better appreciation, the parties are referred as per their rank in the lower Court.

3. The brief facts, which are necessary to decide the present civil revision petition, are as follows:

(a) The land of the petition mentioned property belongs to



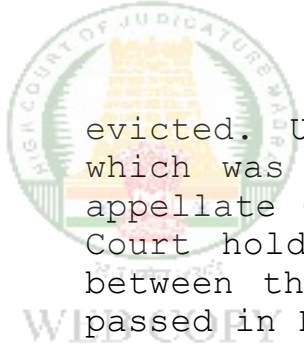
Tiruvavaduthurai Aathenam, Pabanasam Swamy Pichaikattalai, which is a Mutt. One Madasamy Pillai got lease of the land from the Mutt and put up a superstructure. The said Madasamy Pillai had executed a registered Will, dated 06.11.1987, in favour of his son, viz., Shanmugam Pillai, in respect of the superstructure made in the petition mentioned property. After the death of Madasamy Pillai, Shanmugam Pillai derived the petition mentioned property and he, in turn, let out the said property to the respondent herein for non residential purpose from the year 2005 onwards and the respondent has been running utensils shop in the said place.

(b) In the meantime, the said Shanmugam Pillai sold the superstructure of the disputed property to the petitioner herein by way of unregistered sale deed, dated 29.01.2010. The mutt has also transferred ground land lease agreement with regard to the disputed property in favour of the petitioner. Despite the same was duly intimated to the respondent herein, the respondent has not remitted the rent to the petitioner and therefore, R.C.O.P.No.5 of 2010 came to be filed seeking eviction on the grounds of wilful default, denial of title and for own occupation.

(c) According to the respondent, the owner of the land is Mutt and not the petitioner and therefore, he is not liable to pay rent to the petitioner. Before selling the property mentioned in the petition, on 15.11.2009 itself the said Shanmugam Pillai extended the rent agreement for a further period of five years ie., from 01.10.2010 to 31.01.2015 and since the petitioner attempted the evict the respondent, he has filed a suit in O.S.No.269 of 2009 for bare injunction not to evict him from the disputed property except under due process of law.

(d) After due contest, the said R.C.O.P., was allowed as prayed for and eviction was ordered and challenging the same, the respondent has filed R.C.A.No.1 of 2013, which was allowed on the ground that there is no landlord and tenant relationship between the petitioner and the respondent and the petitioner has no right to sub-let the premises, thereby, the order passed in R.C.O.P., was reversed. Aggrieved by the said judgment, the present revision petition came to be filed by the petitioner.

4. The learned Counsel for the petitioner would submit that the petitioner had purchased the property from Shanmugam Pillai by virtue of a sale deed, dated 29.01.2010. Since the land of the disputed property belongs to the Mutt, registration of the sale deed was not effected. The vendor / Shanmugam Pillai has also admitted the said transaction in his evidence and the Mutt has also entered into a rental agreement with the petitioner. Having known these developments, the respondent, with a *mala fide* intention, denied the very title of the petitioner and wilfully omitted to pay the monthly rent and therefore, he is liable to be



evicted. Under such circumstances, R.C.O.P., came to be filed, which was allowed, after a detailed discussions. But, the first appellate Court has erroneously reversed the finding of the lower Court holding that there is no landlord and tenant relationship between the parties and the same may be set aside and the order passed in RCOP may be restored.

5. The learned senior counsel appearing for the respondent would submit that admittedly, the land of the petition mentioned property belongs to Thiruvavaduthurai Aatheenam Mutt and the petitioner has filed the present petition without impleading the said Mutt. Therefore, the present petition itself is bad for non-joinder of necessary party. The learned senior counsel would further submit that the said Shanmugam Pillai has no right to sell the petition mentioned property to the petitioner herein and the petitioner cannot be a landlord, since the land of the petition mentioned property belongs to the Mutt. Moreover, the so called sale deed entered into between the petitioner and the said Shanmugam Pillai is only an unregistered document, which has no legal sanctity. The learned senior counsel would further contend that in the lease deed entered into between the petitioner herein and the Mutt, it is specifically stated that the petitioner has no right either to lease out or to create encumbrance over the petition mentioned property and hence, as per Section 2 of Tamil Nadu Buildings (Lease and Rent Control) Act, the petitioner will not come under the purview of landlord.

6. The learned senior counsel for the respondent would further submit that the suit filed by the respondent in O.S.No.269 of 2009 for bare injunction not to evict him from the disputed property except under due process of law, was dismissed, against which A.S.No.28 of 2013 was filed by the respondent and as per the direction of the first appellate Court in A.S.No.28 of 2013, the respondent has filed R.C.O.P., before the Tribunal and started to deposit the rent amount. Prior to that, he was regular in paying the rent to Madasamy, son of Shanmugam Pillai. Therefore, there is no wilful default. Despite these facts were very well explained, the Rent Control Tribunal has ordered eviction, which was rightly reversed by the Rent Control Appellate Authority and therefore, he prays for dismissal of the present civil revision petition.

7. Heard the learned counsel appearing on both sides and perused the documents placed on record.

8. A perusal of the record would go to show that there is no dispute between the parties with regard to the following facts:

a) The land of the disputed property belongs to Pabanasam Arulmigu Pabanasa Swamy Pichaikattalai;

b) The superstructure in the disputed property was put up by Madasami Pillai and it was subsequently transferred to Shanmugam Pillai;

<https://hservices.courts.gov.in/hservices/>



c) The tenancy agreement entered into between the said Shanmugam Pillai / landlord and the respondent herein / tenant; and

d) The legal notice issued by the said Shanmugam Pillai to the respondent, whereby and whereunder, the respondent was directed to pay the monthly rent to the petitioner.

9. The respondent mainly disputing the ownership of the petitioner had not paid the rent from 2009 onwards. In order to show the ownership over the superstructure of the property, the petitioner has produced Ex.P21 - unregistered sale deed executed by the said Shanmugam Pillai in his favour. The petitioner has also produced Ex.P18 - groundland rent agreement deed entered between Mutt and the petitioner, and Ex.P1 - receipts for payment of rent to the Mutt. As stated earlier, the respondent was inducted into tenancy by the previous landlord viz., Shanmugam Pillai and the respondent had been paying rent to the previous landlord. When the said Shanmugam Pillai himself sent a legal notice, dated 31.01.2010 (Ex.P7), directing the respondent to pay rent to the petitioner, the respondent ought to have given rent to the petitioner. It is seen that the respondent has purposefully refused to pay rent to the petitioner and even to his previous landlord.

10. It is contended by the respondent that the land of the property belongs to the Mutt and therefore, the petitioner cannot be stated as a landlord. At this juncture, this Court is inclined to refer to Section 2(6) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, which reads as follows:

"Section 2(6) "landlord" includes the person who is receiving or is entitled to receive the rent of a building 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 or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent if the building were let to a tenant.

Explanation : a tenant who sub-lets shall be deemed to be a landlord within the meaning of this Act in relation to sub-tenant"

Section 2(6) of the Act clearly says that a person, who is receiving or entitled to receive the rent of a building has to be construed as a landlord and such person need not be the owner of the premises. The explanation includes even a tenant to be landlord under this Act. When that be so, the petitioner can very well be stated as a 'landlord'. As the petitioner comes under the definition of 'landlord' mentioned in Section 2(6) of the Act, the ~~RCR~~ filed by the petitioner for eviction is maintainable without impleadment of Mutt.



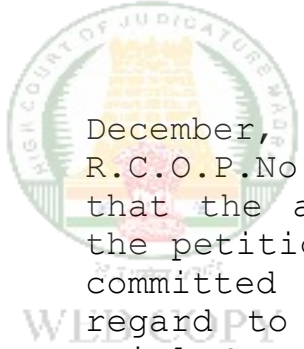
11. The first appellate Court has held that as per Ex.P18 - ground-land agreement entered between the petitioner and Mutt, the petitioner is not entitled to sublet the property and therefore, he does not come under the definition of 'landlord'. This Court is of the view that the said approach is patently illegal and the first appellate Court has not taken into consideration the definition of the landlord and tenant under the Rent Control Act. As stated earlier, a person who is entitled to receive rent is a landlord and it has nothing to do with ownership. The tenant is defined only as a person who is liable to pay rent. The Act does not say that the person in occupation must be a person, who came into possession from an absolute owner. Admittedly, the respondent was inducted into tenancy only by the previous landlord viz., Shanmugam Pillai and not by the petitioner. The petitioner has not violated the condition. He had filed RCOP for eviction of the respondent and for his own occupation. When that be so, the petitioner cannot be found fault with. Even assuming that the petitioner has violated the agreement, the proper person to raise an objection, in that regard, would be the Mutt and not the respondent, who is the tenant.

12. Section 116 of the Indian Evidence Act reads as follows:

"116. Estoppel of tenant and of licensee of person in possession, - No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had title to such possession at the time when such licence was given."

From the above provision, it is clear that a tenant once inducted as a tenant by a landlord later cannot deny his landlord's title. Here, in this case, the respondent had been paying rent to his previous landlord viz., Shanmugam Pillai and when the said Shanmugam Pillai himself asked to pay rent to the petitioner, the respondent refused to pay rent disputing the ownership, even to the said Shanmugam Pillai. Though it is contended by the respondent that he has paid rent to the son of Shanmugam Pillai, he has not produced any document to substantiate the same. Under these circumstances, the denial of title of the petitioner by the respondent totally lacks *bona fide*. Therefore, he is barred from raising so under Section 116 of the Indian Evidence Act.

13. It is also seen from the record that only after <https://hcservices.ecourts.gov.in/hcservices/> displeasure expressed by the learned Subordinate Judge in A.S.No.28 of 2013 about the non-payment of rent right from



December, 2009, the respondent has started to pay rent by filing R.C.O.P.No.2 of 2016 before the Court below. Since it is found that the allegation of the respondent in disputing the title of the petitioner is *mala fide* and motivated, I hold that the default committed by the respondent in payment of rent is wilful. With regard to own occupation is concerned, as rightly held by the trial Court, it is seen from the record, the respondent has not specifically denied that the petitioner is not having any requirement of the petition mentioned property for his own use and therefore, the same can be decided in favour of the petitioner.

14. As stated above, the Rent Control Appellate Tribunal has erroneously reversed the order passed by the Rent Control Tribunal under misconception. The Rent Control Tribunal has rightly held that the respondent is liable to be vacated from the petition mentioned property on the ground of wilful default, *mala fide* denial of title and own occupation.

15. In view of the above, this civil revision petition is allowed and the judgment passed by the Rent Control Appellate Tribunal in R.C.A.No.1 of 2013 is set aside and the order passed in R.C.O.P.No.5 of 2010 is restored. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Rent Control Appellate Authority,
Ambasamudram.

2.The Principal District Munsif,
Rent Control Tribunal,
Ambasamudram.

Copy to:

The Record Keeper,VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.N.Ganagasapapathy , Advocate in SR No. 54618
+ 1 cc TO Mr.D.Nallathambi , Advocate in SR No. 54352

gcg

AE/JC/SAR2/27.03.2018/6P/7C