

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 22.10.2018****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CRP (NPD) (MD) No.1092 of 2017**

1.Saroja
2.Indira
3.Santhi

... Petitioners

Vs.

1.Palaniammal (died)
2.Balakrishnan
3.Sekar
4.Sridhar

... Respondents

(Memo in USR No.937/2017, dated 17.02.2017 filed to the effect that R1 died R2 to R4 are LRs of the deceased R1 is recorded vide court order dated 21.12.2017 made in MP(MD)No.1/2014 in CRP SR.19906/2010)

Prayer : This Civil Revision Petition is filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960, to set aside the fair and decreetal order dated 10.12.2009 made in RCA.No.75 of 2007 on the file of the court of Rent Control Appellate Authority (Principal Subordinate Judge), Tiruchirappalli confirming the fair and decreetal order dated 26.07.2006 made in RCOP No.86 of 2002 on the file of the Rent Controller, District Munsif Court (I Additional District Munsif/Rent Controller), Tiruchirappalli.

For Petitioners : Mrs.J.Maria Roseline
For Respondents : Mr.H.Lakshmi Shankar for R2 to R4

ORDER

Heard the learned counsel on either side.

2.RCOP No.86 of 2002 on the file of the Rent Controller/First Additional District Munsif Court, Tiruchirappalli was filed by the revision petitioners herein seeking the eviction of the respondents herein under Section 10(3)(c) of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960. The respondents herein filed their counter opposing the said request. The petitioners examined themselves as P.W 1 to P.W 3. On the side of the respondents, Balakrishnan, the second respondent herein was examined as R.W 1. Exs.A1 to A5 and Exs.B1 to B8 were marked. The learned Rent Controller by order dated 26.07.2006 dismissed the RCOP. It was confirmed by the Appellate Authority also by order dated 10.12.2009 in RCA No.75 of 2007. Challenging the same, this Civil Revision Petition has been filed.

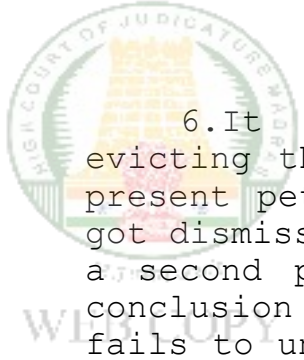
3.The house property bearing Dr.No.45, Adayavalanjan Street, Srirangam, Tiruchirappalli was owned by one Dharmalingam. Following his demise, the property devolved on the revision petitioners herein who are wife and daughters of the late Dharmalingam. A portion of



the property was let out in favour of one Natesan. He also passed away. However, his family namely, wife Palaniammal and her three sons have been continuing to occupy a portion of the suit house as tenants for a monthly rent of Rs.250/-.

4. It is not in dispute that all the sons of Thiru. Natesan have got married and the size of the family had considerably grown. Likewise, the two daughters of the said Dharmalingam have also got married. The petitioners herein wanted eviction of the respondents on the ground of additional accommodation. The case projected in the RCOP is that the petitioners are residing in the house in question and that on account of the increasing size of the family of the respondents, they are completely occupying the pial in the front portion as well as the entire main hall. Likewise, the use of the common well and the place of taking bath are also causing certain embarrassment. That is why, the petitioners herein want the portion now occupied by the respondents for their own additional accommodation. The authorities below however negatived the said plea. It was found that the married daughters have their separate residence. It was further found that the requirement of the petition mentioned premises for their additional accommodation is not bonafide. The authorities below also took note of the fact that the said Dharmalingam filed RCOP No.106 of 1994 for the purpose of evicting the respondents on the ground of own use and accommodation and that following his demise, the matter was not pursued subsequently. The failure to pursue the RCOP filed by the said Dharmalingam was found to have some bearing on the real intention of the revision petitioners herein in seeking additional accommodation. The learned counsel appearing for the respondents wanted this court to sustain the orders passed by the authorities below.

5. It is true that both the Rent Controller as well as the appellate authority have concurrently found that the plea of the land ladies in asking for additional accommodation as not bonafide. However, I am of the view that the said findings are patently incorrect. It is not in dispute that the respondents have been in occupation of the portion in question for more than half a century. It is again not in dispute that a paltry amount is being paid as rent. Late Natesan as well as his wife Palaniammal have passed away. But, their three children got married and have their own families. Now, in the place of one family, there are three families in occupation. The landlords have categorically pleaded in their RCOP that on account of the increase in the size of the tenants' family, the common space available to the landlords has practically shrunk to nothing. The landlords have specifically pleaded that the pial in the front is being totally occupied by the members of the tenants' family during the night. There is a common well and a bathing area. It is also being over used by the tenants causing considerable embarrassment to the families of the landlords.



6.It is true that Dharmalingam originally filed RCOP for evicting the tenants. He passed away after filing the same. The present petitioners did not pursue the eviction proceedings and it got dismissed for default. That does not mean that they cannot file a second petition. The appellate authority rightly came to the conclusion that it would not constitute res judicata. This Court fails to understand as to how failure to pursue an earlier eviction petition would show lack of bonafides on the part of the landlords in filing a subsequent RCOP. Admittedly, both the daughters of Dharmalingam and the first petitioner herein have got married. It may be true that they are residing separately and not with their mother. But then, when the daughters visit the house with the son-in-laws, it would definitely be a big embarrassment for the first petitioner if she is unable to accommodate them.

7.The tenants family has been in occupation for more than half a century. Therefore, they will have to necessarily find an alternate place to reside and live. The hardship that would be caused to the landlady would certainly be higher if the plea of the eviction is negatived. This Court finds that the relative hardship that would be suffered by the landlady on account of dismissal of the eviction petition is certainly more than the hardship that would be suffered by the tenants if eviction is ordered.

8.In this view of the matter, the orders passed by the courts below are set aside and this civil revision petition is allowed. However, considering the special facts and circumstances obtaining in this case, the tenants are given six more months to vacate the premises in question. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar(CS-I)

To

- 1.The Rent Control Appellate Authority
(Principal Subordinate Judge),
Tiruchirappalli.
2. The Rent Controller, District Munsif,
(I Additional District Munsif/Rent Controller),
Tiruchirappalli.

+1cc to Mrs.J.Maria Roseline, Advocate Sr.No.91093
+1cc to Mr.H.Lakshmi Shankar, Advocate Sr.No.91082

SKM

VB/SV/SAR1/20.12.2018/3P/5C

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