



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.06.2018

Pronounced on : 30.07.2018

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1178 of 2018
and C.M.P. (MD) No.5001 of 2018

P.Chandrasekar ... Petitioner/Respondent/Respondent

-vs-

S.Ranganayaki ... Respondent/Petitioner/Petitioner

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order passed in R.C.A.No.36 of 2017 dated 06.03.2018 by the Rent Control Appellate Authority / Sub Judge, Tiruchendur by reversing the fair and decreetal order passed in R.C.O.P.No.6 of 2011 dated 27.03.2013 on the file of Rent Controller / District Munsif, Tiruchendur.

For Petitioner	: Mr.M.C.Swamy
For Respondent	: Mr.M.P.Senthil
	For Mr.D.Venkatesh

O R D E R

The revision petitioner herein (Tenant) has filed this petition against the respondent (Landlady), seeking to set aside the order dated 06.03.2018 made in R.C.A.No.36 of 2017 by the Rent Control Appellate Authority / Sub Judge, Tiruchendur, reversing the order dated 27.03.2013 made in R.C.O.P.No.6 of 2011 on the file of Rent Controller / District Munsif, Tiruchendur. R.C.O.P.No.6 of 2011 was filed by the Landlady for evicting the Tenant so as to give vacant possession of the property to the Landlady, which was dismissed by the learned Rent Controller. Aggrieved by the same, the Landlady filed appeal in R.C.A.No.36 of 2017 for setting aside the order in R.C.O.P.No.6 of 2011, which was allowed by the Rent Control Appellate Authority / Sub Judge, Tiruchendur. Challenging the said appeal, revision petitioner / Respondent is before this Court.

<https://hccourtsonline.gov.in/revise>

2. For the sake of brevity, the parties would be referred



to as "Tenant" and "Landlady".

3. It was the case of the Tenant that there is no Landlady and tenant relationship in existence between them and the Tenant borrowed a sum of Rs.1,50,000/- from the husband of the petitioner and on the basis of his request, he had executed a Power of Attorney in his favour in respect of the petition mentioned property. However, the husband of the Landlady had executed a sale deed in favour of his wife without any valid consideration.

4. It was the further case of the Tenant that the husband of the Landlady, despite sending repeated letter admitting his liability, had transferred the property in his wife's name without his knowledge. The Landlady, having failed to establish the relationship of owner and tenant, has no locus standi to seek his eviction from the subject property. For the sake of argument, even if it is agreed that he is a tenant under the respondent, the Landlady had neither produced any lease agreement nor any receipt of the payment of rent and therefore, there is no question of non payment of rent arisen in this case.

5. The Tenant has stated that the alleged Power of Attorney itself was not genuine and therefore, the transfer effected in respect of the property in Landlady's name by her husband cannot give title to the property, as the legal necessity, the compelling circumstances and the terms and conditions under which the Power Agent acted upon in creating sale deed in favour of his wife are quite essential to be proved, which are all absolutely lacking in the case.

6. To withstand the stand of the Tenant, learned counsel for the Tenant has relied upon the following decisions:

i) **A.V.G.P.Chettiar & Sons and others vs. T.Palanisamy Gounder**, reported in **(2003) 2 MLJ 67**;

"While this application was pending the respondent filed a petition in the Court of the Rent Controller for eviction of the appellants from the suit premises on four separate grounds under Sections 10 (2) (i), 10 (2) (vii), 10 (3) (iii), and 14 (1) (b) (2) (b) of the Act. Section 10(2)(i) provides for eviction on the ground of default in payment of rent. The proviso to Section 10(2) allows the Controller, if he is satisfied that the tenant's default is not wilful, to give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the up to date rent due by him to the landlord. If the tenant avails of this opportunity the application of the landlord "shall be rejected". The Explanation to the sub section defines wilful default as default which continues after the issue of two months' notice by the landlord claiming rent.



Section 10(2) (vii) allows the landlord to ask for eviction of the tenant on the ground:

"that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bona fide."

Under the second proviso to Section 10(1) if the Controller decides that the tenant's denial of the title of the landlord or the claim to permanent tenancy is bona fide, then the landlord is entitled to sue for eviction of the tenant in a Civil Court which would have the jurisdiction to pass a decree for eviction on any of the grounds mentioned in Section 10, 14, 15 and 16 of the Act, "notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded". It is clear from the language of this proviso, that the Rent Controller has only to decide whether there is a bona fide dispute as to the landlord's title and has no jurisdiction to decide the issue of title himself. That would be within the exclusive jurisdiction of the Civil Court.

To sum up: we hold that there was a bona fide dispute as to title raised by the appellants and, therefore, the Rent Controller did not have jurisdiction to hear and finally adjudicate upon the application filed by the respondent before it. However we clarify that this finding is limited to the issue of the Rent Controller's jurisdiction and shall not preclude the respondent from approaching a competent Civil Court for determination of the issue finally and no observations made in this judgment will prejudice the trial of this or any other issue that the respondent may raise on merits. Subject to this observation, for all the reasons stated earlier, we set aside the impugned decision of the High Court and allow the appeal. There will be no order as to costs."

ii) **Samba Sivam and others vs. Gunasekaran and others,**
reported in **(2003) 2 MLJ 67;**

"23. The surrounding circumstances under which Ex.A.1 has come into existence is sufficient to prove the totality of circumstances, and therefore, Ex.A.1 cannot at all be treated to have come into being to the legal expectations, and therefore, just for the simple reason that technically, the power of attorney was in favour of the said Venkatraman, it does not mean that he could do anything much less acting quite against the agreed norms and the letter and spirit of law. Absolutely no valid or tangible reason has been assigned either on the part of the purchaser or by the said



Venkataraman, the power of attorney agent, to have created the sale deed in favour of the plaintiff in the first suit, particularly when it is vehemently opposed by the owner of the property for whose benefits and to make things easy for him, the very purpose of executing the power of attorney has been done, and therefore, this court is of the view that it is an open case in which it is not even relevant as to who is in possession or enjoyment of the suit property, on the date of the execution of the sale deed and this question should have been considered uppermost for answer by the lower courts which they have miserably failed.

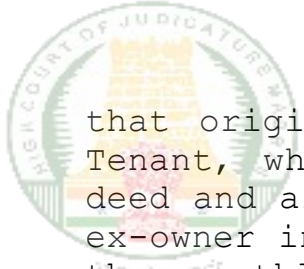
24. Further, from the very evidence of the plaintiff's witnesses, P.Ws.2 to 4, it has been very clearly and tellingly spoken about by them that only for the purpose of exchange of properties, the power of attorney has been executed by the original owner in favour of Venkataraman, his brother, but it is the sale that has been taken place under Ex.A.1 sale deed in favour of a third party, who is the plaintiff in the first suit, and therefore, whether it is the exchange or the sale, which is meant by the power of attorney, the courts below cannot be said to have arrived at the correct conclusions in giving the decision in favour of the purchaser justifying the manner in which the power of attorney has acted particularly doing everything against the owner, which cannot, under any circumstance, be held to be correct, since the underlying factor of giving the power of attorney is only to make things easy and beneficial and to avoid hardship to the owner, but in the cases in hand, it is quite contrary since the said Venkataraman, the power of attorney, has acted against the interest of the owner and has sold the property without his approval, and therefore, the transaction held under Ex.A.1 cannot be genuine.

25. At the same time, since the defendant in the first suit and the plaintiff in the second suit has not come up to plead and pray for declaring Ex.A.1 to be null and void or unenforceable instrument, this Court is not able to give that relief in his favour and at this juncture, this Court could only set aside the decisions of both the courts below allowing both the above appeals."

Contending that the order of eviction passed by the Rent Control Appellate Authority is erroneous and contrary to law, it is prayed that the said order reversing the order of the Rent Controller needs interference by this Court.

<https://hcservices.ecourts.gov.in/hcservices/>

7. Per contra, learned counsel for the Landlady has stated



that originally, the petition mentioned property belonged to the Tenant, which was subsequently purchased by her by a valid sale deed and after purchase, the very same property was let out to the ex-owner in the capacity of Tenant by way of oral lease, by fixing the monthly rent at Rs.700/-, which the Tenant did not pay regularly, thereby defaulted in payment of rent. It was further stated that since the building is in a dilapidated condition, it is absolutely necessary for carrying out renovation work.

8. Learned counsel for the Landlady, in support of his submission that denial of title is not bonafide, when the plea of wilful default was clearly made out, has cited the judgment of this Court in the case of S.Sugumaran vs. Seenu @ Natarajan, reported in 2000-1-L.W.897, wherein it has been held as under:

"...that a mere denial will not oust the jurisdiction of the Rent Controller. Court will have to scrutinise the evidence and conclusion will have to be arrived. While arriving at the conclusion, the Court will have to find out whether there are materials in support of the plea being upheld by the Civil Court and if the case is tried by the Civil Court, there is higher chance of success. In this case, Rent Controller has not entered such a finding. Mere production of Ex.R1 and evidence of RW2 were held as sufficient to oust the jurisdiction. Even evidence of RW2 was not fully considered by the Rent Controller.

14. If this is the scope of enquiry, to consider the question of bona fide denial of title, I do not think that Appellate Authority went wrong in reappreciating evidence rendered by Rent Controller and entered his finding as to scope of bona fides....

19...that merely because he happened to be in possession he cannot claim protection of Section 53-A unless he is also ready to take sale deed in his favour. Even for the purpose of defence, he has to prove the ingredients of Section 16 of Specific Relief Act. Once it is found that the agreement is not proved to be prima facie genuine and also he is not entitled to the benefit of Section 53-A of Transfer of Property Act, it can only be held that denial of title is not bona fide..."

Therefore, it was contended that the Rent Control Appellate Authority has considered all the factors and passed a well considered order, thereby reversing the order of the Rent Controller and also directing the Tenant to vacate the premise and the said order does not call for any interference by this Court.



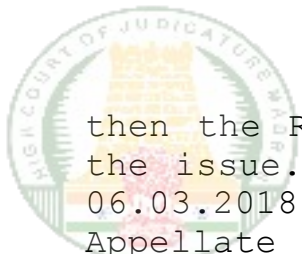
9. Heard the learned counsel on either side and also perused the material documents available on record.

10. It is seen that in the eviction petition, it was alleged by the Landlady that the rent was not paid properly by the Tenant and in addition, the building is required for her usage after renovation. Learned Rent Controller, finding existence of dispute on the title, had dismissed the petition filed by the Landlady, against which, she was constrained to file an appeal before the Rent Control Appellate Authority and the said authority was pleased to reverse the order, holding that the Landlady duly proved her case with respect to non payment of rent by the Tenant. The Appellate Authority, in support of its finding, had relied upon the depositions of Tenant and Landlady. The Tenant as D.W.1 had deposed that he had been paying a sum of Rs.700/- towards interest for the amount borrowed from her, whereas the Landlady as P.W.1 had stated that the said amount was paid towards rent for the petition mentioned property. Leaving aside the deposition of D.W.1, the Appellate Authority has mainly taken into account the deposition of P.W.1 and directed him to vacate the premises.

11. A circumspection of the entire facts and circumstance of the case would unravel that both are claiming rights over the property and preliminarily, there is a dispute over the title of the property and when there is a cloud over the property with regard to its ownership, then the Rent Controller has no jurisdiction to hear and adjudicate the matter. It has been reiterated by the Tenant that he had borrowed money from the husband of the Landlady and had executed a Power of Attorney in his name without specifying any clause in respect of the property in question and as such, the husband of the Landlady had fraudulently transferred the property in his wife's name, which has no legal sanctity.

12. The Power of Attorney dated 01.08.2007 was executed in order to avoid hardship to the lender of the amount, but in the case on hand, it is quite contrary, since the Power of Attorney was taken as a permission by the husband of the landlady for transfer of the property in his wife's name without any approval or consent of the executor. It is pertinent to mention here that on one hand, there is no owner and landlady relationship in existence and on the other hand, the alleged transaction of sale is not genuine and as such, it is quite astonishing as to how the landlady could file a petition for eviction of the tenant without duly proving her title to the property.

13. The parties to the lis could have very well approached the Civil Forum for redressal of their grievances and ~~determination of~~ the issue in question and since the denial of the Landlady's title to the property by the Tenant has not been duly assailed by her by production of suitable documentary evidences,



then the Rent Controller has no jurisdiction to try or determine the issue. Hence, this Court is of the view that the order dated 06.03.2018 passed in R.C.A.No.36 of 2017 by the Rent Control Appellate Authority / Sub Judge, Tiruchendur is liable to be set aside.

WEB COPY

14. In the result,

a) this Civil Revision Petition is allowed and the order dated 06.03.2018 passed in R.C.A.No.36 of 2017 by the Rent Control Appellate Authority / Sub Judge, Tiruchendur, is hereby set aside and the order in R.C.O.P.No.6 of 2011 dated 27.03.2013 on the file of the learned Rent Controller/District Munsif, Tiruchendur is confirmed.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-II)

To:

1. The Subordinate Judge,
Rent Control Appellate Authority,
Tiruchendur
2. The District Munsif,
(Rent Controller)
Tiruchendur.
3. The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.D.VENKATESH, ADVOCATE IN SR No. 76005

+ 1 CC TO Mr.M.C.SWAMY, ADVOCATE IN SR No. 75687

AR

TE/RSK/SAR-2 : 04/10/2018 : 7P/7C

ORDER IN
CRP (PD) (MD) .No.1178 of 2018
30.07.2018