



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.08.2018
DELIVERED ON : 30.08.2018

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THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.R.P(PD) (MD) No.1686 of 2018 and
C.M.P(MD) No.7327 of 2018

Ganesan : Petitioner/Appellant/Respondent/Tenant

Vs.

Nallappa Reddiyar : Respondent/Respondent/Petitioner/Landlord

PRAYER: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings [Lease and Rent Control] Act, 1960 against the fair and decretal order dated 21.09.2017 passed in R.C.A.No.1 of 2016 by the Appellate Authority under the Tamil Nadu Buildings [Lease and Rent Control] Act [Sub Court, Thuraiyur], confirming the fair and decretal order dated 07.12.2000 passed in R.C.O.P.No.3 of 2000 by the Rent Controller, Thuraiyur.

For Petitioner : Mr.V.Singan

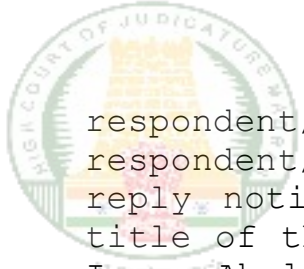
ORDER

This civil revision petition is directed against the concurrent findings of the Courts below in allowing the petition filed by the landlord for evicting the tenant, on the ground of willful default and denial of title.

2.For the sake of clarity, the parties are described as per the description found in the petition filed in R.C.O.P.No.3 of 2000, before the Rent Control Tribunal.

3.The brief facts stated in the petition for eviction filed under Sections 10(2)(i) and 10(2)(vii) of the Tamil Nadu Buildings [Lease and Rent Control] Act, 1960 are as follows:

(i)The petitioner, Nallappa Reddiyar on 20.09.1975, purchased a larger extent of land in Survey No.376/1, Mettu Street, Thuraiyur Town, Tiruchirappalli District, in which the petition schedule property forms part of it and got the same registered. The respondent was a tenant under him paying Rs.10/- per month. It was an oral agreement. Till July, 1985, the respondent/tenant was regular in paying the rent, but thereafter refused to pay the rent. Hence, notice for termination of tenancy and to hand over vacant possession, was issued to the



respondent/tenant. To the notice dated 04.01.1986, the respondent/tenant and the other tenants in the building issued, reply notice dated 23.01.1996 through their lawyer, denying the title of the petitioner/landlord and also claimed protection under Inam Abolition Act, Estate Abolition Act and City Tenants Protection Act.

(ii) The petitioner/landlord on receipt of the reply notice, had initially filed O.S.No.60 of 1987 on the file of District Munsif Court, Thuraiyur for declaration and possession against Ganesan, respondent/tenant. Written statement has also been filed by the respondent/tenant reiterating his contention raised in his reply notice, denying the title of the petitioner/landlord and claiming title by prescription. Before the suit could be taken up for trial, the petitioner/landlord has withdrawn the suit stating that as per the Judgment of the High Court, when the tenant denies title and the landlord-tenant relationship, the remedy for the landlord is to approach the Rent Control Tribunal under the Tamil Nadu Act 28/1960 and the suit is not maintainable. Therefore, in the light of the Judgment of the High Court, he has withdrawn the suit so as to pursue his remedy under the Tamil Nadu Buildings [Lease and Rent Control] Act as amended by Act 23/1973. Stating these facts, the petitioner/landlord has filed R.C.O.P.No.3 of 2000.

(iii) The respondent/tenant in his counter has denied the title of the landlord and claimed title for himself by prescription. He has also contended that after the Abolition of Estate Act, 1948, the property is under the enjoyment of his forefathers, he has put up the construction and is enjoying it continuously without any obstruction from time immemorial.

(iv) The Rent Control Tribunal after considering Ex.P.1 to Ex.P.12 and Ex.R.1 to Ex.R.3 has allowed the petition holding that the petitioner/landlord is the title holder of the property vide Ex.P.1, dated 20.09.1975. The suit filed by the petitioner/landlord for declaration and possession in O.S.No.57 of 1987 had been considered against the respondent/tenant one Natarajan, who was an occupant of a different portion of the same building. Referring this fact, the Trial Court has concluded that in the identical suit filed against co-tenant Natarajan, which was decided earlier, the High Court has observed that in case of denial of title, the party should agitate their cause only through the Tamil Nadu Buildings [Lease and Rent Control] Act and not by filing civil suit. On the assumption of the evidence pertaining to the title and the law settled by the Courts between the landlord and other tenant, namely, Natarjan, the Tribunal has rightly concluded that the earlier suit in O.S.No.60 of 1987 will not act as a *res judicata* for filing petition under the Tamil Nadu Buildings [Lease and Rent Control] Act. As far as the denial of the title and contra claim setting up title by prescription, the

Services, Courts, Govt. Services/ has accepted the evidence placed by the landlord/petitioner to show his title. Aggrieved by that the respondent/tenant has preferred appeal before the Rent Control

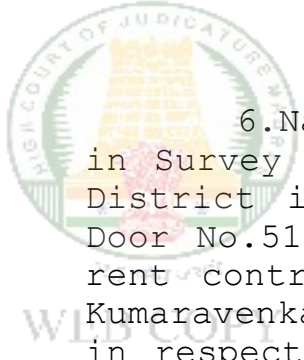
Appellate Tribunal in R.C.A.No.1 of 2016.

(v) Taking note of the grounds of appeal raised by the respondent/tenant, the Rent Control Appellate Tribunal has dealt with the facts of the case and the law governing estoppel and dismissed the appeal confirming the order passed by the Rent Control Tribunal. The civil proceedings initiated by the petitioner/landlord in respect of the other tenant by name Natarajan which has been marked as exhibits, were taken note by the Rent Control Appellate Tribunal and considering the facts and circumstances of the case and the ruling of the High Court in respect of the connected suit, the Rent Control Appellate Authority confirmed the order of the Rent Control Tribunal, holding that there is willful default on the part of the respondent/tenant and he has denied the title with mala-fide intention. The respondent/tenant has preferred the present revision petition, challenging the concurrent findings of the Courts below.

4. The learned counsel appearing for the revision petitioner would submit that after filing the suit in O.S.No.60 of 1987 before the District Munsif Court, Thuraiyur, for declaration and possession, the petitioner/ landlord ought to have pursued the remedy in the said suit. Instead, he has withdrawn the suit without leave of the Court and has filed Rent Control Original Petition before the Tribunal. Since leave was not granted to file fresh original petition while dismissing the suit, the petitioner/ landlord is estopped from filing the eviction petition under the Tamil Nadu Buildings [Lease and Rent Control] Act. The present original petition is barred under Order XXIII, Rule 1 of CPC and also the provision of *res judicata* acts against the petitioner/landlord. The denial of title is bona-fide one. When the title of the petitioner/landlord is not established and the respondent/tenant has taken a specific plea of title by prescription, the issue cannot be decided by the Rent Control Tribunal. However, both the Rent Control Tribunal as well as Rent Control Appellate Authority have erred by entertaining the petition and appeal. When the very fact the date on which the petitioner inducted the respondent as tenant being conspicuously absent, the averment that the tenancy was oral and rent was paid till February, 1986, ought not to have been believed by the Courts below. The Courts below failed to note that the respondent/tenant is in possession of the property *sui juris* in his own right and his possession, has no reference to the respondent/tenant. Being denial of the title being a bona-fide one, the Courts below without considering the plea of the respondent/tenant had held against the respondent/tenant. Therefore, the orders of the Courts below need interference.

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

"Whether the proceedings of the Courts below are correct, legal and proper?"



6. Nallappa Reddiyar had purchased a larger extent of land in Survey No.376/1, Mettu Street, Thuraiyur Town, Tiruchirappalli District including 12 feet x 15 feet land and building bearing Door No.51. The said piece of land is the subject matter of the rent control proceedings. Ex.P.1 is the sale deed executed by Kumaravenkatachaladurai and others in favour of Nallappa Reddiyar in respect of the petition mentioned property. On behalf of the respondent/tenant, no better title document has been produced in his favour. Apart from the respondent/tenant, who is the revision petitioner, there were other tenants in the said building, against whom, the respondent herein has initiated rent control proceedings and the same have ended in his favour. The decretal order of those proceedings are marked as Ex.P.2 to Ex.P.6. It is seen from the records that the respondent herein as the title holder of the property, has initiated civil suit in O.S.No.60 of 1987 against Ganesan, the revision petitioner herein and O.S.No.57 of 1987 against one Natarajan for declaration and possession of the property, which the respondent herein had purchased, vide sale deed dated 20.09.1975. The suit in O.S.No.57 of 1987 initiated against one of the tenants by name Natarajan culminated with a finding that for eviction, the landlord Nallappa Reddiyar has to resort to Tamil Nadu Buildings [Lease and Rent Control] Act. As far as the suit filed against the present revision petitioner in O.S.No.60 of 1987 has been withdrawn by the respondent herein, the memo dated 21.10.1999 filed by the respondent herein in O.S.No.60 of 1987 indicates that Nallappa Reddiyar, as a plaintiff filed the suit for declaration and possession, after issuing notice of eviction and receipt of the reply from the petitioner herein, denying the title. However, in a connected matter, since the Court has held that he has to resort Tamil Nadu Buildings [Lease and Rent Control] Act, he withdrew the suit O.S.No.60 of 1987 and initiated the proceedings under Tamil Nadu Buildings [Lease and Rent Control] Act as amended by Act 23/1973 for eviction. It is not the case of the revision petitioner that this fact was suppressed by the respondent and has filed petition for eviction. In fact, in the petition filed before the Rent Control Tribunal, the respondent herein has categorically pleaded about his earlier suit and reason for withdrawing the suit and for initiating proceedings before the Rent Control Tribunal. Neither the principle of estoppel nor res judicata gets attracted in the facts and circumstances of this case. Therefore, the point raised by the learned counsel on this score is unsustainable.

7. Nallappa Reddiyar as a title holder of the property and landlord of the property has stated that he is the owner of the property. The revision petitioner is a tenant under him along with few others. He defaulted in payment of rent and also denied the title. Therefore, he is liable to be evicted. In

<https://hccs.cerlis.gov.in/services/> the revision petitioner has contended that he is in occupation of the building time immemorial and he has prescribed title and Nallappa Reddiyar is not the owner of the building. The

petitioner/landlord has produced his title document and also to substantiate his ownership, the proceedings initiated by him against the other co-owners, which has ended in his favour, were placed before the Court for consideration. The revision petitioner herein except denying the title, taking advantage of the non-existence of any written agreement, had denied the title of the respondent.

8.As far as the legal position is concerned, when there is a dispute regarding landlord and tenant relationship, if the title of the landlord is disputed, after getting into possession recognising his title, such denial of title is hit by Section 116 of the Indian Evidence Act. If there is a bona-fide dispute regarding the title and if anybody intends to evict the person in possession based on the title, his remedy is to approach the civil Court, alleging the possession as illegal or unauthorised. When there is a semblance of landlord and tenant relationship, the title holder seeks eviction of the person in possession and if his title is denied without any bona-fide intention, that denial by itself becomes a ground for eviction besides other reasons. Hence, eviction petition has to be filed before the Rent Control Tribunal. In this regard, few provisions of law are essential to extract so as to understand the legal position. 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 a title to such possession at the time when such licence was given".

Section 10(2)(viii) of Tamil Nadu Buildings [Lease and Rent Control] Act Act reads as follows:

10(2)A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied-

... ..

(vii)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, the Controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application:

Provided that in any case falling under clause (i)



if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may, notwithstanding anything contained in section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected".

9.It is contended by the revision petitioner that to prove his title first, the landlord should approach the civil Court, establish his title and thereafter, file eviction petition under the Tamil Nadu Buildings [Lease and Rent Control] Act . If his submission is accepted and if the case in hand is to be taken as illustration, the present original petition for eviction filed in the year 2002 has crossed the stage of appeal only after 17 years. If the landlord is driven back to file a civil suit, get his title declared and thereafter file petition for eviction under the Tamil Nadu Buildings [Lease and Rent Control] Act, it will be an attempt to frustrate the landlord from getting possession of his land.

10.The point which has to be considered in the case in hand is whether the denial of the title by the tenant is bona-fide or not? In this regard, the Courts below have gone through the evidence and materials placed by the parties and concluded that the denial of title is not borne out of any bona-fide intention. As could be easily seen from the pleadings and evidence, nowhere the revision petitioner has traced his title except alleging that after Inam Abolition Act, Estate Abolition Act and City Tenants Protection Act, he has perfected title by prescription. Even to support that contention, he has not placed any material evidence. From the documents filed before the Courts below, which are relevant to the litigation between the respondent as landlord and his tenants in respect of the property in which the petition mentioned property is a portion, would go to show that there cannot be any possibility of the revision petitioner herein occupying the petition mentioned premises putting up construction of his own and enjoying it time immemorial.

11.The learned counsel appearing for the revision petitioner, to support his argument, has circulated a Judgment of this Court in **Jaganathan Rao and four others v. G.Vital Rao** reported in **1997(2) MLJ 461**. On reading of the facts of the case cited, it appears that when the landlord filed a suit for declaration of his title and recovery of possession against five defendants, the first defendant has claimed title over the property, whereas the defendants 2 to 5 have pleaded that they are tenants under the first defendant. In the said circumstances, the High Court has held as below:



case, the defendants 2 to 5 had set-up title in the first defendant and claimed to be the tenants under the first defendant. Having denied the title of the plaintiff, it is not open to them at this stage to contend that only the provisions of the Rent Control Act are applicable and the eviction proceedings have to be initiated only under the Tamil Nadu Buildings (Lease and Rent Control) Act. When the defendants 2 to 5 had specifically denied the title of the respondent herein the, there is no question of the existence of landlord and tenant relationship between the parties. To invoke the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act the first and foremost condition is the existence of the relationship of landlord and tenant. In the absence of the same, the plaintiff has filed the suit and established his title. So far as the title of the plaintiff is concerned, both the courts below have elaborately discussed the evidence available on record and factually found that the plaintiff has got title to the suit property and decreed the suit. Since the findings of the courts below are purely questions of fact, no substantial question of law is involved in the appeal and finally the second appeal is dismissed and the cross-objection is also dismissed".

The corollary of the above observation, only fortifies the findings of the Courts below. The revision petitioner herein has not set up title with him. Admittedly, he has no title. Contrarily, the respondent herein have a title deed. Further the petitioner herein is not the sole occupant of the building premises, but there were other occupants also, who have been evicted from the premises pursuant to the rent control proceedings initiated against them. When title is denied, it is open for the Rent Control Tribunal to test whether the denial of title is outcome of good faith or honesty or sincerity. When a statute provides that any denial or claim of title not bona-fide, the Controller shall make an order directing the tenant to put the landlord in possession and if the Controller is not so satisfied, he shall reject the application. It is meaningless to say that the Rent Controller under the Tamil Nadu Buildings [Lease and Rent Control] Act has no jurisdiction to hear the petition and only the civil Court can look into the dispute. The Tamil Nadu Buildings [Lease and Rent Control] Act being a special act and the Rent Controller being provided with the power to consider the denial of title whether bona-fide or not and take a decision, the contentions raised by the revision petitioner herein liable to be rejected as devoid of merits.

12. The Hon'ble High Court as early in 1991 in **Natesan Pillai v. Sethumani Ammal** reported in **(Vol. 110) 1992-2-L.W. Parts 15 & 16 - 565**, where the landlord initially filed original



petition for eviction on the ground of willful default, withdrew the original petition on denial of title and file a suit for recovery of possession, has held that suit for possession is not maintainable, the remedy is to seek eviction under Section 10 of the Tamil Nadu Buildings [Lease and Rent Control] Act and not by way of suit. If the Rent Controller holds that the denial of title is a bona-fide denial and reject the application, then only the right to file a suit will arise. This fact is converse to the facts of the case in hand. Here, the landlord has withdrawn his suit after being informed about the legal position and had initiated proceedings under the Tamil Nadu Buildings [Lease and Rent Control] Act, proved that the claim of the revision petitioner is not bona-fide.

13.O.S.No.60 of 1987 neither adjudicated nor heard and decided finally. It was withdrawn on a specific reason viz., to agitate before the appropriate forum under Special Act, namely, Tamil Nadu Buildings [Lease and Rent Control] Act. This will not fall under the principle of *res judicata*. In the said circumstances, there is no reason to interfere with the findings of the Courts below. Therefore, this Civil Revision Petition is dismissed without costs. The concurrent orders passed by the Courts below are confirmed. The revision petitioner is directed to vacate and hand over the vacant possession to the respondent/landlord within two months from the date of this order. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Subordinate Judge,
Rent Control Appellate Authority/
Sub Court, Thuraiyur.
2. The Rent Controller, Thuraiyur.

Copy To:-

The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

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TE/SKN/SAR-1 : 04/10/2018 : 8P/5C