



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.02.2020
CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

Review Application Nos.198 & 199 of 2019
&
C.M.P.Nos.20962 & 21011 of 2019
in
C.R.P.Nos.2512 & 2511 of 2010

Review Application Nos.198 & 199 of 2019:

A.M.Vadivelu Mudaliar (Deceased)

1.V.Shanthi

2.V.Kamesh

3.V.Sathish ... Petitioners in both Review Petitions

Vs.

Pattammal (Died)

1.Usha

2.Kavitha

3.Yogeswaran

4.Manugandhi ammal ... Respondents in both Review petitions

Prayer in Review Application No.198 of 2019 : Review Application filed under Section 114 of Civil Procedure Code r/w Order 47 Rule 1 praying to review the order dated 10.08.2018 made in C.R.P.NPD. No.2512 of 2010.

Prayer in Review Application No.199 of 2019 : Review Application filed under Section 114 of Civil Procedure Code r/w Order 47 Rule 1 praying to review the order dated 10.08.2018 made in C.R.P.NPD. No.2511 of 2010.



Prayer in CMP.No.21011of 2019:Petition filed under Section 151 of CPC to stay the operation of the fair and decreetal order dated 20.01.2005 made in RCOP No.3 of 2001 on the file of the Rent Controller / District Munsif Kanchipuram modified in the fair and decreetal order dated 19.02.2010 made in RCA No.7 of 2005 on the file of the Rent Control Appellate Authority Subordinate Judge Kanchipuram pending disposal of the above Review Petition.

Prayer in CMP.No.20962 of 2019:Petition filed under Section 151 of CPC to stay the operation of the fair and decreetal order dated 20.01.2005 made in RCOP No.3 of 2001 on the file of the Rent Controller / District Munsif Kanchipuram modified in the fair and decreetal order dated 19.02.2010 made in RCA No.7 of 2005 on the file of the Rent Control Appellate Authority Subordinate Judge Kanchipuram pending disposal of the above Review Petition.

Prayer in CRP.No.2512 of 2020:Civil Revision Petition filed under section 25 of the Tamil Nadu Building (Lease and Rent Control) Regulation Act, 1959)against the fair and decreetal order of the learned Rent Control Appellate Authority(Sub Judge) Judge Kanchipuram in RCA.No.8 of 2005 dated 19.02.2010 confirming the Order passed by the Learned Rent Controller District Munsif Kanchipuram in RCOP.No.4/2001, dated 20.01.2005.

Prayer in CRP.No.2511 of 2019:Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Regulation Act 1959 to allow this Civil Revision Petition by setting aside the fair and decreetal order in RCA.No.7/2005 dated 19.02.2010 by the learned Rent Control Appellate Authority Sub Judge, Kancheepuram modifying the fair and decreetal order of the learned Rent Controller/District Munsif, Kancheepuram in RCOP.No.3/2001 dated 20.01.2005 with costs.

Review Application Nos.198 & 199 of 2019:

For Petitioners	:	Mr.Ravichandran A.E. in both Review Petitions
For Respondent 4	:	Mr.M.Sriram in both Review petitions



COMMON ORDER

The above review petitions are filed by the tenants / third parties to the revision petition. The ground for review is that the Judgement has been passed against the dead person and therefore a nullity. It is necessary to briefly narrate the facts that has resulted in the filing of the instant reviews in order to highlight the conduct of the petitioners. The parties in the reviews are referred to as Landlady and Tenants. The landlady / 4th respondent herein who is the owner of the demised premises had filed R.C.O.P.No.3 of 2001 against one A.M.Vadivelu Mudaliar and his brother A.M.Kumaravelu Mudaliar.

2. The said petition was filed for evicting the tenants from the demised premises on the ground of demolition and re-construction and on the ground of owner's occupation. In the said Rent Control Petition the land lady has stated that she had purchased the property under a registered sale deed on 07.06.1979 and has been in exclusive possession and enjoyment of the same.

3. The Tenants, namely, A.M.Vadivelu Mudaliar and A.M.Kumaravelu Mudaliar were carrying on wholesale business in paddy in the said premises for a monthly rental of Rs.575/-. The Landlady would submit that since the premises had become very dilapidated, the same was required for immediate demolition and re-construction. She had further submitted that her son is doing the same business along with his father and that he wanted to set up a separate business and the petition premises was required for their own use and occupation.

4. The tenants had filed a counter inter alia denying the averments contained in the eviction petition and stating that they were none other than the brother of the land lady's husband A.M.Shanmughavel Mudaliar . They had set up a case that the demised property was purchased in the name of the Landlady, Benami on the specific understanding that it would be treated as a family property. The rents were never paid and the parties were enjoying the property as their own. They would submit that they have been carrying business since their father's death. They had refuted the statement of the Landlady that the building was in a highly dilapidated condition and that it required immediate demolition. They had stated that the landlady did not have the wherewithal to start a business and therefore claim for owner's occupation was totally misdirected and made only with an intent to take over the property.



5. In addition to the said Rent Control Proceedings, the landlady had also filed another Rent Control Petition in R.C.O.P.No.4 of 2001 for fixing fair rent of the property at a sum of Rs.12,200.50/- per month till such time as the tenants have vacated the property. In the counter which has been filed to this case, the tenants once again reiterated that the landlady was not the owner of the property and was only a mere name lender and that there were no landlady - tenants relationship existing between the parties.

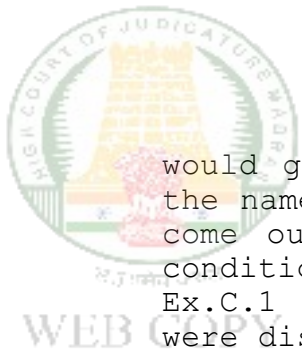
6. The learned Rent Controller after elaborately considering the evidence on record as well as the arguments advanced from both the sides had proceeded to allow R.C.O.P.No.3 of 2001 by order dated 20.01.2005. Likewise, in R.C.O.P.No.4 of 2001, the rent controller had also fixed the fair rent at a sum of Rs.10,754/- as against the demand of Rs.12,200.50/- made by the Landlady.

7. Challenging the eviction order the said A.M.Vadivelu Mudaliar and A.M.Kumaravelu Mudaliar had filed R.C.A.No.7 of 2005 and against the order in R.C.O.P.No.4 of 2001, R.C.A.No.8 of 2005 was filed. The tenant, A.M.Kumaravelu Mudaliar had died and his Legal Representatives were brought on record.

8. The learned Rent Control Authority confirmed the orders passed by the learned Rent Controller in R.C.O.P.No.3 of 2001 and R.C.O.P.No.4 of 2001. The said order was taken up on revisions to this Court.

9. When the revisions were taken up for final hearing a statement was made that the tenant, A.M.Vadivelu Mudaliar had also died as early as in the year 2013 and despite sufficient time being granted to the learned counsel appearing for the petitioner to bring on record the Legal Representatives no steps were taken to bring on record. Therefore, Civil Revision Petitions stood abated as against the said A.M.Vadivelu Mudaliar. However, this Court has noted that A.M.Vadivelu Mudaliar and A.M.Kumaravelu Mudaliar were jointly running the business and the legal heirs of A.M.Kumaravelu Mudaliar were already brought on record and in the interest of the parties, after considering the entire gamut of the case on hand this Court had dismissed the Civil Revision Petitions.

10. This Court while passing the orders in the two Civil Revision Petitions had taken note of the fact that the Tenants have not made out any case to challenge the order passed by the learned Rent Controller and the learned Rent Control Appellate Authority. The evidence that had been let was perused which



would go to show that the property was not purchased Benami in the name of the Landlady but was purchased after her husband had come out of the family and they were living separately. The condition of the building was also evident from a perusal of Ex.C.1 and Ex.C.2. Therefore both the Civil Revision Petitions were dismissed.

11. The reviews have been filed only on the ground that the order has been passed against a dead person and therefore the order in the Civil Revision Petitions require to be reviewed. The tenants were jointly carrying on business in the demised premises and on the death of one of his legal representatives were brought on record. The other brother had died in the year 2013 pending the Civil Revision Petitions and despite sufficient time being given the petitioners / tenants did not choose to bring his representatives on record for over 5 years. Therefore the revisions stood abated as against the said A.M.Vadivelu Mudaliar and the Court had proceeded to hear the counsel and pass orders.

12. Therefore, the contention that the order has to be reviewed on the ground that the Legal Representatives had not brought on record cannot be countenanced especially when the parties has chosen not to enter appearance when the revisions was pending after their father's death in the year 2013 till the dismissal of the revision in 10.08.2018 i.e., for over five years no steps have been taken.

13. These review petitions would clearly expose that the tenants / petitioners herein are trying to use the avenues available to them under law to squat on the property. When the matter had come up on 14.02.2020, the learned counsel for the tenants / petitioners herein had originally submitted that he would handover the keys of the property to the landlady and this Court had directed the learned counsel to get in touch with the counsel who appeared for the landlady. However, when the matter come up today the learned counsel would submit that he would handover the keys only after negotiating the decree with reference to fair rent between the parties. This Court deprecates the conduct of both the party as well as the learned counsel. Having undertaken to unconditionally return the key on 14.02.2020 the tenants have decided to use the key as a bargaining chip to wriggle out of their liability under the order fixing fair rent. Since the order in the revisions has been passed after the same has abated as against the 1st petitioner it is not a case of an order being passed against a dead person. Therefore, nothing survives for consideration in the above Review Applications and the same are dismissed.



14. Considering the conduct of the parties after giving a solemn undertaking this Court is imposing a cost of Rs.10,000/- on the petitioners / tenants to be paid to the respondents. The Review Applications are dismissed with costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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+1 cc to Mr.A.E.Ravichandran Advocate sr14571

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