

Reserved on : 28.03.2019

Pronounced on :05.04.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.2682 of 2011

Arulmighu Vengeeswarar Alagarperumal
& Nagathamman Devasthanam,
Represented by its Hereditary Trustee,
Mr.G.Prem Anand,
Saidapet Road, Vadapalani,
Madras – 26.

.. Petitioner

Vs.

Mrs.K.Malathy

.. Respondent

PRAYER: Civil Revision Petition filed under section 115 of Code of Civil Procedure against the decree and judgment passed in Ejectment Suit No.7 of 1995 dated 03.01.2011 on the file of the II Judge, Court of Small Causes, Madras – 104.

For Petitioner : Mr.K.Vignesh Kumar
for Mr.PL.Narayanan

For Respondent : Mr.Ram Ganeshan

ORDER

Aggrieved over the dismissal of the suit filed by the plaintiff for eviction of the defendant from the suit property under Section 41 of the Presidency Small Causes Court Act, the present revision has been filed by the plaintiff.

2. The parties arrayed as per their own ranking before the trial Court.

3. The plaintiff filed a suit against the defendant for eviction of the defendant. It is the contention of the temple that the suit property originally leased out to one Appukutty Menon. Thereafter, the lease hold right was transferred in favour of the defendant on 22.09.1979. The defendant agreed to pay rent at the rate of Rs.120/-. Till March 1994, the defendant paid the rent. Thereafter, the defendant failed to pay the rent. Hence, the plaintiff issued a legal notice on 05.06.1994 terminating the tenancy. Hence, the suit.

4. In the written statement originally filed by the defendant, the defendant admitted the tenancy and the monthly rent. It is contended by the defendant that she is not a chronic defaulter in payment of rent. There is no arrears as alleged. She has also sought protection under Section 9 of the City Tenants Protection Act. In the additional written statement filed by the defendant in the year 2009, it is her contention that the lease was only in respect of 1250 sq.ft. as per the registered lease deed. Whereas, the suit has been filed for larger extent. It is

her contention that she is in occupation of 4279 sq.ft. village site in Survey No.37/7 in Kodambakkam village prior to the lease with the plaintiff devasthanam and the revenue records stands in her name. Lease was entered only for the purpose of egress and ingress to the existing area. She has also filed a Writ Petition in W.P.No.6519 of 2008 in respect of the same property. The plaintiff is also in the habit of receiving the lease amount in intervals and issuing receipts for lumpsum amount. Since, she has filed an application under section 9 of the City Tenants Protection Act to purchase the said land, there are some arrears in payment of rent. Hence, prayed for dismissal of the suit.

5. The trial Court has framed the following issues :

1. Whether the plaintiff is entitled for vacant possession of the suit property?
2. Whether the plaintiff is entitled for relief as prayed for?
3. To what relief the plaintiff is entitled?

6. On the side of the plaintiff P.W.1 was examined and Ex.A.1 to A.3 were marked. On the side of the defendant D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.5 were marked.

7. The trial Court has dismissed the suit on the ground that original lease

was only for 1250 sqft. and further Ex.B.2 receipts dated 13.06.97, 04.10.2001, 12.09.2003 and 03.04.2004 show that the plaintiff is in the habit of receiving the rent in lumpsum and dismissed the suit.

8. The learned Senior Counsel appearing for the revision petitioner submitted that though under the lease deed, smaller extent was originally leased, in fact the other area also belong to the temple, which has been leased out and for the entire area the respondent is paying the rent. Even in the written statement it has been admitted by the tenant that she is a tenant in respect of the entire suit property and paying rents. Once, she has admitted tenancy, she is estopped from denying the title of the landlord. Such a denial is not bonafide and it is one of the ground to evict her. Having paid the rent for the entire area, now she is estopped from denying the title of the landlord. Hence, submitted that the Courts below have not considered these aspect and prayed for allowing this revision.

9. The learned counsel appearing for the respondent submitted that the suit has been filed for ejectment. The lease deed has been suppressed by the plaintiff. The area leased out to the respondent is only 1250 sq.ft. Whereas, ejectment has been sought for 5529 sq.ft. Further, no document has been filed to prove their title in respect of entire area and they have no right to seek for ejectment. When the plaintiff case is based on falsehood, the same should be

thrown out at any stage. Whereas, the defendant has clearly pleaded her right by way of additional written statement. She never denied the right of the extent leased as per the document. She has denied only in respect of the entire extent. That cannot be construed as denial of title of landlord. Further, it is the contention of the learned counsel that revisional jurisdiction is always limited and the facts cannot be re-appreciated. In support of his contentions, he relied upon the judgments in **S.P.Chengalvaraya Naidu (Dead) by LRs Vs Jagannath (Dead) by LRs. and others** reported in **AIR 1994 SC 853**, **Sheela and others Vs. Firm Prahlad Rai Prem Prakash** reported in **AIR 2002 Supreme Court 1264** and **Hindustan Petroleum Corporation Ltd., Vs. Dilbahar Singh** reported in **2014 (5) CTC 217**.

10. Heard the learned counsel appearing revision petitioner and the respondent and perused the entire materials available on record.

11. In the Constitution Bench judgment in **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh** reported in **2014 (5) CTC 217**, the Honourable Supreme Court has held that High Court not to interfere with the findings of the facts recorded by the Court or authority by way of reappreciation of evidence. However, when the facts recorded by the Court or authority is perverse or arrived at without consideration of the material evidence or such findings is based on no evidence or misreading of evidence, which resulted in

miscarriage of justice, the same is open to correction. Therefore, the contention of the respondent that this Court cannot go into the facts cannot be sustained.

12. The trial Court has non suited the plaintiff on the ground that they sought ejectment for the larger extent though not covered under Ex.B.1. No doubt under Ex.B.1, only 1250 sq.ft. was originally leased out in the year 1979. There is no dispute in this regard. But it is the specific case of the plaintiff that the entire property was in occupation of the respondent as a tenant and she is paying rent regularly. Ex.A.1 rent receipt when carefully seen, without any demur she has paid the rent for the entire survey number.

13. It is curious to note that in the written statement filed in the year 1995, the tenancy in respect of the entire extent claimed by the plaintiff has been admitted. Only at the later stage, in the year 2009, in the additional written statement taking advantage of Ex.B.1, she had denied the tile of the temple in respect of the other extent. It is also curious to note that when the positive admission made in the pleadings, the same cannot be erased at a later point of time. Though admissions are capable of explanation, when categorical admission has made in the year 1995, subsequent pleadings removing such admission, that too made after a gap of 14 years, cannot be given much importance.

14. The respondent, squatting over the property, had made such a plea

only after she had failed in her attempt to get some Order in the Writ Petition filed by her in W.P.No.6519 of 2008 against the Government officials. Till such time, there was no whisper whatsoever has been made. The rental receipts Ex.A.1 clearly show that she has paid rent for the site in survey No.37/7. The above rent was paid on 13.06.1997. Similarly on 04.10.2001 under Ex.B.2, she has paid rent for the site in Survey No.37/7. Ex.B.3 series also makes it clear that rent has been paid for the Survey No.37/7. Admitting the temple as the owner of the land and paid the rent and also admitted the same in her written statement, now by way of additional written statement filed in the year 2009, she cannot contend that temple has no title to the property. Further, though rent receipts filed clearly indicate that even after the suit, the temple has received the rent, the rents have not been regularly paid and only in intervals, the defendant has paid the rent. It is the obligation on the part of the tenant to pay the rents without any default. Even during the pendency of this revision and the proceedings before the Court below, it appears that the respondent has not paid or deposited the rent. Such conduct of the respondent is also not bonafide.

15. D.W.1 evidence, when seen, she has admitted in the cross examination that in and around the leased property all other properties belong to the temple. She has constructed 5 portions and she is collecting Rs.20,000/- as rent by letting out to shops. She has also admitted that she has given an undertaking to the temple to pay rent on 26.07.2008. Ex.B.2 also shows that

there is arrears of rent. When the admission clearly indicate that the entire area belong to the temple and she has also admitted the same in her written statement and paid rent in regular intervals, she is totally estopped from denying the title, merely because the lease deed Ex.B.1 pertaining 1250 sq.ft. That cannot be taken advantage by the tenant. Having paid the rent for the entire area all these years, having admitted in her written statement that the entire property belong to the temple, she is estopped from denying the title of the landlord under section 116 of the Indian Evidence Act. Further such denial itself is not a bonafide. In this regard, the judgment of this Court in **Boolaganathan Vs. P.Govindarajan and others** reported in **1992 LW 273**, this Court has held as follows

“3. If once a tenant openly denies the title of lessor or pleads jus tertii, then it automatically follows that he would not be considered as a tenant for any purpose whatsoever, as under [Section 111\(g\)](#) of the Transfer of Property Act, by such open denial of title or by pleading jus tertii there is a forfeiture of the tenancy and the relationship of landlord and tenant is snapped thereby. The fact that he remains in possession of the premises and pays, what according to him, is rent or is prepared or willing to pay such rent, could only, in the circumstances, be understood as money paid towards damages for use and occupation. Juridical possession, therefore, is the essence for the creation of the

relationship of landlord and tenant. Once there is a snapping of the relationship by a voluntary Act of omission or commission on the part of the person in occupation as tenant then, he cannot inconsistently claim such a legal status under any provision of law.

A Division Bench of this Court in *Veerasami Naicker v. Alamelu Ammal*, held that where a person, who continues to be in possession after the termination of the tenancy, claims that he does so, as he is entitled to the property as his own, it is obvious that there is hardly any room for such an owner to seek protection of his possession under the provisions of the Act. Clearly the Act is not intended to protect such owners, for, there is no need for it. The argument of the learned Counsel for the petitioner, however, is that he satisfied the definition of 'tenant' within the meaning of [Section 2\(4\)\(i\)](#) of the Act. That sub-Clause reads as under-

“Tenant in relation to any land means a person liable to pay rent in respect of such land under a tenancy agreement, express or implied.”

Admittedly, there is no express agreement in this case; nor it set up by the petitioner who is only a legatee of the quondam tenant. But, what is urged is that there is an implied tenancy because he is ready and willing to pay the rent to the respondents. It is said that such a gesture on his part would create the legal relationship

of landlord and tenant as between the respondents and himself. This would be begging the question for the simple reason that a person cannot approbate and reprobate. Once the quondam tenant took up the position that the respondents are not the true owners of the property and this necessitated the respondents to file an independent suit as has been the position in this case and during the course of the proceedings the petitioner substitutes himself in the place of the quondam tenant as the legatee of him under the Will Exhibit A-2, he cannot be heard to say that there is an implied tenancy created by his having acquired the status of a legatee. Only if there is such a status it would be an indicia to decide as to his statutory entitlement under the Act. It is in this respect, I characterised the contention as begging the question. Once it is established that the tenant and in this case the petitioner or the quondam tenant did take up the stand that the respondents are not the real owners of the property, then there is a denial of title. Once there is such a denial of title, any relationship of landlord and tenant automatically gets severed. This severance is caused because of the presumption which arises under [Section 111\(g\)](#) of the Transfer of Property Act, which forfeits the lease by reason of such denial of title. Forfeiture of lease, therefore (sic) does not buttress any such relationship of

landlord and tenant even if it existed. Whilst not agreeing with the learned Counsel for the petitioner that there is implied tenancy in the instant case, I hold that even if such an implied tenancy were there, he cannot take advantage of the statutory benefits under the Act, since he or the quondam tenant persisted in denying the title of the landlord and thereby caused the attraction of the principle contained in [Section 111\(g\)](#) of the Transfer of Property Act. The lower Court was, therefore, right in having denied the statutory entitlement to the petitioner on the ground that he denied the landlord's title and that Division Bench judgment compelled it to dismiss his application under [Section 9](#). I agree with the conclusion as I am obliged to follow the decision of the Division Bench also.

16. In this case also, the tenant having admitted the tenancy from the inception, now cannot deny the title of the landlord. No doubt in a judgment cited by the respondent in **S.P.Chengalvaraya Naidu (Dead) by LRs Vs Jagannath (Dead) by LRs. and others** reported in **AIR 1994 SC 853** deals with the decree obtained by the plaintiff by non disclosing of the material documents amount to fraud, the same is not applicable to the facts of this case. Though the Ex.B1 deed relate to the lesser extent, the plaintiff in their pleadings has pleaded that the entire extent is under the occupation of the tenant and she is paying rent.

But the respondent has suppressed the same. The respondent having paid the rent for the entire extent occupied by her, subsequently denied the title of the landlord. Once she had admitted the relationship from the inception and paid rents regularly in intervals, now she is certainly estopped from denying the title of the land lord.

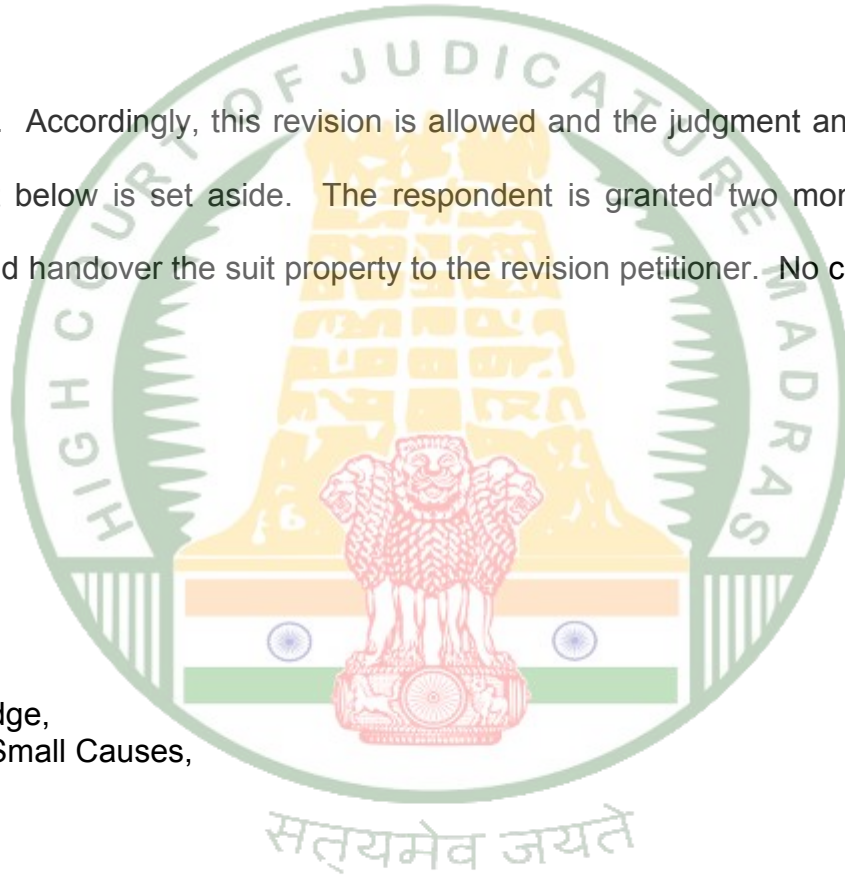
17. Accordingly, this revision is allowed and the judgment and decree of the Court below is set aside. The respondent is granted two months time to vacate and handover the suit property to the revision petitioner. No cost.

05.04.2019

vrc

To

The II Judge,
Court of Small Causes,
Chennai.



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N.SATHISH KUMAR, J.

VRC



Pre-delivery Order in
CRP.(NPD) No.2682 of 2011

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