

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.11.2019

PRONOUNCED ON : 03.12.2019

CORAM

THE HONOURABLE Mr. JUSTICE **R.PONGIAPPAN**

C.R.P.NPD.No.2727 of 2012

P.Nithyanandham @ Babu

... Petitioner

Vs.

1. P.Subramaniam

2. Manikandan

... Respondents

PRAYER : Civil Revision Petition is filed under Section 25 of Tamil Nadu Building (Lease and Rent control) Act, to set aside the fair and decreetal order dated 28.06.2011 passed by the learned Rent Control Appellate Authority/Principal Subordinate Judge, Coimbatore in R.C.A.No.22 of 2010 reversing the fair and decreetal order dated 22.01.2010 passed by the learned Rent Controller/1st Additional District Munsif, Coimbatore in R.C.O.P.No.2 of 2008.

For Petitioner

: Mr.L.Mouli

For Respondents

For R1

: Ms.P.Priyanka

For Ms.R.Gouri

For R2

: Mr.D.Krishnamoorthy

For Mr.N.Anandan

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ORDER

Aggrieved over the judgment and decree dated 28.06.2011 made in R.C.A.No.22 of 2010, passed by the learned Rent Control Appellate Authority/Principal Subordinate Judge, Coimbatore, reversing the fair and decreetal order dated 22.01.2010 made in R.C.O.P.No.2 of 2008, passed by the learned Rent Controller/1st Additional District Munsif, Coimbatore, the petitioner, who is the landlord in the above referred original petition, filed this Civil Revision Petition.

2. Before the trial Court, the petitioner herein filed the above referred Rent Control Original Petition as against the respondents herein and prayed to pass an order of eviction of the respondents from the petition mentioned property and also to direct them to vacate the premises and hand over the vacant peaceful possession of the same to the petitioner herein. The learned Rent Controller/I Additional District Munsif, Coimbatore, by an order dated 21.01.2010, allowed the petition filed by the petitioner and directed the respondents to evict and hand over the possession to the petitioner.

3. Challenging the said order, the first respondent herein filed an appeal in R.C.A.No.22 of 2010 before the learned Rent Control Appellate Authority, Coimbatore and the same was allowed. By judgment and decree dated 28.06.2011, the order passed by the learned Rent Controller, Coimbatore, was set aside. Aggrieved over the said findings, the petitioner is before this court with this present Civil Revision Petition.

4. The avernments made in the petition filed by the petitioner before the learned Rent Controller, Coimbatore, are as follows :-

On 01.07.2003, the first respondent and the petitioner had entered into a lease agreement in respect of the petition mentioned property and as per the recitals found in the lease agreement, the schedule mentioned property, which was the family property, was partitioned between the first respondent and the petitioner on 28.05.2003. As per a family arrangement, the petitioner had become the owner of the property. As per the lease agreement, the first respondent become tenant under the petitioner and the lease amount has been fixed as Rs.1000/- and there is no advance for the same.

4.1. As per the clear recital, the first respondent is not supposed to run any other business except the agreed one in the shop and the first respondent should not sub-lease the property to any one. The petition mentioned property is a non-residential one. As per the family arrangement deed dated 28.05.2003, the Door No.890 A was allotted to the first respondent. The petitioner became a tenant under the first respondent and there is a separate lease agreement also between them. As such, the petitioner is a tenant under the first respondent in respect of the first respondent's premises and the first respondent is a tenant in respect of the petitioner's premises. The rental amount was adjusted periodically.

4.2. The first respondent initially started to use the lease hold premises to run a bakery in the name and style of "Sudha Bakery" and he was physically there and was running the business. Till the month of June, 2007, the petitioner was under the impression that the first respondent has been running the shop by employing persons for the teashop business. In June 2007, the petitioner reliably learnt that the first respondent has sub-let the property to the second respondent for Rs.250/- per day. The above said act of the first respondent is highly illegal and he has no right to sub-lease the property. On the said

ground alone, the first respondent is liable to be evicted from the petition mentioned premises. The first respondent has also started to use the premises other than that, for which it was leased out and he installed a public telephone booth in the premises. For the said reasons also the first respondent is liable to be evicted.

5. The avernments made in the counter affidavit filed by the first respondent and adopted by the second respondent are as follows :-

As a family property, both the first respondent and the petitioner commonly enjoyed the petition mentioned property, till they entered into a family arrangement. The petition mentioned property viz., D.No.958 was allotted to the petitioner but the petitioner was in occupation of the property, which was allotted to the first respondent. For the sake of convenient usage, they had executed a mutual lease agreement. But the petitioner did not adhered the family arrangement deed and he adopted hostile attitude and he wanted to grab the entire properties belonged to their father by crook methods.

5.1. Having came to know about the said act of the petitioner, the first respondent was forced to file a suit for partition and the same is pending before the Principal District Munsif Court, Coimbatore. In the

above circumstances, the petitioner is not at all the absolute owner of the petition mentioned property, since the first respondent is also a co-sharer. The first respondent has never sub-let the petition mentioned property to the second respondent or any one. The question of sub-letting does not arise at all. The petition mentioned property is a joint family property and the partition suit is also pending between the petitioner and the first respondent. As such, installation of a public telephone in the petition mentioned property by the first respondent cannot be construed as if the first respondent is using the premises for other purposes. The petitioner does not know even the new door number of the petition mentioned property. In a nutshell, out of greediness to grab the entire property, this petition has been filed by the petitioner.

6. Before the learned Rent Controller, Coimbatore, the petitioner was examined himself as P.W.1 and marked six documents as Ex.P.1 to Ex.P6. On the side of the respondents, the first respondent was examined as R.W.1 and five documents were marked as Ex.R.1 to Ex.R.5. After going through the materials placed before him, the learned Rent Controller, Coimbatore, passed an order of eviction.

7. The appeal filed by the first respondent was allowed by the learned Rent Control Appellate Authority, Coimbatore, by observing as though in respect of the petition mentioned property, the petitioner and the first respondent were co-owners, due to the lease agreement made between them (Ex.P.1), the contention of the first respondent/appellant that the first respondent is a co-owner, does not amount to denial of his title. Further the order passed by the Rent Controller by exercising suo motu eviction on the ground of denial of title which was not pleaded in the petition filed by the petitioner/landlord. The Rent Controller, Coimbatore, have no legal basis, nor any valid or tangible reasons prevail on such conclusion arrived at passed eviction order.

8. In this regard, the learned counsel appearing for the petitioner would contend that there was an admission of either side that suit for partition is pending before the competent authority, in which both the petitioner and the first respondent are claiming title of the petition mentioned property as his own, it amounts to denial of title. In this occasion, there is no necessity for the landlord to plead as a tenant denied the title. The learned counsel appearing for the petitioner relied upon the judgment dated **09.10.1995** made in **C.R.P.No.1775 of 1995** in the case of **M.Narayanaswami Vs. Royla Poullc Amala,**

wherein this Court has held as follows :-

"The Rent Controller and the Appellate Authority in the instant case have, in my view, statisfied themselves that the person seeking eviction is a landlady, who has prima facie right to receive the rent of the property in question. In order to decide whether the denial of the landlady's title byt he tenant is bonafide, the Rent Controller necessairly has to go into the tenant's contention on the issue. As pointed out by the Supreme Court, the Rent Controller has only to see whether the tenant's denial of the landlady's title is bonafide in the circumstances of the case. In this case, the Rent Controller and the Appellate Authority have reached a conclusion on merits that the landlady has title. They also held that the denial of title was not bonafide. For deciding these issues both the authorities below have, no doubt, also to consider the oral and documentary evidence adduced by the parties. In my view, the authorities below have on an application of the evidence, both oral and documentary, come to the right conclusion that the landlady is entitled to an order of eviction."

9. Similarly, in the judgment reported in **AIR 1989 SC 2187** in the case of **Majati Subbarao Vs. P.V.K.Krishna Rao (died) by Lrs.,** our Hon'ble Apex Court has held for evicting the tenant on the ground of denial of title, separate proceeding not necessary. Further, while at the time of deciding the case in **C.R.P.Nos. 3137, 3145 and 3577 of 1993,** in the case of **R.Surendirakumar Vs. C. Balaji Singh and others,** by an order dated **27.02.1998,** this Court has held as follows :-

"10..... If a tenant want to have the benefit of the protection afforded to him under the Tamil Nadu Bildings (Lease and Rent Control) Act, then he must submit himself under th Act and to the jurisdiction of the Rent Controller. However, in this case, by denying the landlord - tenant relationship, which I found to be not bonafide, I am of the opinion that each of the tenant have lost his rights to be protected under the Act....."

10. Applying the guide lines given by our Hon'ble Apex Court as well as by this Court in the case in our hands, both the petitioner and the first respondent are brothers and they have entered into a family arrangement. However, with regard to the petition mentioned property,

they did not arrive at finality. Both the parties are agreed that the partition suit is pending before the Court of law. In this circumstances, until the specific share was allotted to either of them, it cannot be said that the tenant is also having right over the petition mentioned property. Till date the said finding has not been arrived by the Court of law.

11. As per the agreement entered between the landlord and the tenant with regard to the disputed property, it was admitted by the tenant that the petition mentioned property is the property of the landlord. After entering into the contract as above, filing the suit for partition in respect to the petition mentioned property by the tenant is amounts to denial of title. As already observed, there is no separate proceedings is necessary for proving the same. The learned Rent Control Appellate Authority, Coimbatore, only because of the reason that no issue of denial of title was framed, the findings arrived by the learned Rent Controller, Coimbatore, cannot be stood as good. In fact, I am of the considered view that the said approach made by the Rent Control Appellate Authority, Coimbatore is not within the parameter of the rent control original proceedings.

12. In the light of the above discussions, this Civil Revision Petition is allowed and the impugned order dated 28.06.2011 made in R.C.A.No.22 of 2010, by the learned Rent Control Appellate Authority/Principal Subordinate Judge, Coimbatore, is hereby set aside and the order dated 22.01.2010 made in R.C.O.P.No.2 of 2008 by the learned Rent Controller/1st Additional District Munsif, Coimbatore, is hereby restored. The respondents are directed to evict and hand over the possession of the petition mentioned property to the petitioner within a period of two months from the date of the receipt of a copy of this Order. No cost.

03.12.2019

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order

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To

1. The Rent Control Appellate Authority
Principal Subordinate Court,
Coimbatore
2. The Rent Controller/
I Additional District Munsif Court,
Coimbatore.

R.PONGIAPPAN, J

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