

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.07.2019

PRONOUNCED ON : 25.08.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(NPD).No.858 of 2015

B.R.Srinivasa Rao

... Petitioner

vs.

1.Cauvery Trust Hospital,
Rep. by its Dr.P.MaruthiRao,
No.36, Ponnankinaru Street,
Villivakkam, Chennai 600 049.

2.B.R.Lakshmi
3.B.R.Shakunthala
4.P.MaruthiRao
5.B.R.Shankar
6.R.Padmavathi

सत्यमेव जयते ... Respondents

PRAYER.: Civil Revision petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended) to set aside the order dated passed in R.C.A.No.305 of 2011 on the file of VII Court of Small Causes, Chennai in R.C.O.P.No.2338 of 2009 on the file of XII Court of Small Causes, Chennai.

For Petitioner : Mr.V.S.Suresh

For R1 : No Appearance

For R2 to R5 : M/s.C.Jayachitra

ORDER

The petitioner is aggrieved by the impugned order dated 19.8.2014 passed by the VII Small Causes Court as the Rent Control Appellate Court in R.C.A.No. 305 of 2011 against the order dated 9.4.2011 passed by the Rent Controller in R.C.O.P.No. 2338 of 2009.

2. By an order dated 9.4.2011, the learned Rent Controller dismissed R.C.O.P.No.2338 of 2009 filed by the petitioner herein under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

3. The Rent Control Appellate Court dismissed R.C.A.No.305 of 2011 filed by the petitioner by the impugned order dated 19.8.2014.

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4. The petitioner and the 2nd, 3rd, 4th, 5th and 6th respondent belong to the same family. The petitioner and the 5th respondent are the brothers. 2nd and the 6th respondent their respective spouses. The 3rd the 4th are set to be

related to them. All these persons are partners of the 1st respondent hospital.

5. The petitioner's and the 5th respondent's father Rajaiah settled the case premises in favour of the petitioner by Ex.P.5 Settlement Deed dated 26.08.2008 where the 1st respondent hospital is operating.

6. Certain family disputes have arisen between the members of the family and therefore the petitioner made an attempt to evict the 1st respondent hospital from the premises.

7. In the proceedings before the Rent Controller, the issue was whether there was a landlord-tenant relationship between the petitioner and the 1st respondent in which was also a partner. The Rent Controller referred to the decision of this Court in **TNK Govindaraju Chetty versus P Urajlal Dulabdass and other** 1961-11 MLJ 465 and dismissed the R.C.O.P. In that it was held that when a firm purchases property, the purchase is really by its partners. It therefore follows that when a firm lets out a residential building belonging to it, in fact its partner becomes the landlord. The learned Rent Controller concluded that since the petitioner was still a partner of the 1st respondent/tenant and therefore it results in a merger of the status of both

the parties and hence the 1st respondent firm can no longer be called as a tenant in the petition premises when one of them is the landlord. The Rent Controller concluded that the 1st respondent was carrying on business from its own premises owned by one of its partners.

8. The Rent Control Appellate Court affirmed the above view on further appeal filed by the petitioner. The Rent Control Appellate Court referred to another decision rendered in **Sunku Subramanian Chetty & Bros vs. Vummundi Ramiah Chetty Guruswamy Chetty & Co., 1972 1 MLJ S.N. 372** wherein it was held that where the original tenancy was in favour of partnership firm, every partner has an interest in the tenancy and when the business was closed and handed over to one of the partners, who carried on the business, it will not be amounting to sub-letting. In the facts of the said case, the court found that all the 3 courts have consistently observed that the benefit of section 11 (17) of the Kerala Rent Buildings (Lease And Rent) Act, 1965 cannot be extended to the appellant tenant. The operative portion of the impugned order of Rent Control Appellate Court reads as under:-

“ 13.In discussion supra, it is found that settlement deed is genuinely executed. As such the petitioner has become owner of petition premises. As such, he has got all the rights of Rajaiah in the Petition premises. Rajaiah has not reserved any right to collect rent for the petition

premises till his life time. Hence the petitioner has become the landlord in reference to any tenants in the petitioner premises. Whether the land lord tenant relationship subsists between petitioner and first respondent firm specifically, is to be decided. The tenant is found to be the first respondent firm in which the petitioner is one of the partners. A partnership firm is an association of persons and not a separate legal entity. The learned counsel for the respondents 2 and 5 relies on the decision reported 1967-II M.L.J 465 T.N.K Govindarajau Chetty Vs. P.Urajlal Dulabdass and Company to contend that when the landlord is the firm, the partners of the firm will be the landlords and when a firm purchased property, the purchase is really by its partners. The learned counsel for the respondent 2 and 5 relies on the decision reported in 1972-I M.L.J. S.N.37 wherein it was held that where the original tenancy was in favour of partnership firm, every partner has an interest in the tenancy and when the business was closed and handed over to one of the partners, who carried on the business, it will not amount to subletting.

14. In this case, admittedly, the petitioner is still a partner in the first respondent's firm. As such the status of the first respondent as a tenant and the status of the petitioner (being one of its partner) as landlord results in merger of the status of both the parties and hence the first respondent's firm can no longer be called as a tenant in petition premises, when one of its partners is the landlord. Therefore the first respondent firm is in law, operating in its own premises, owned by one of its

partners. As such there can be no difference status of petitioner as landlord and first respondent firm as tenant. Hence there is no landlord tenant relationship between petitioner and first respondent firm. Hence there is no question of eviction of the first respondent firm on any ground under the rent control Act. Hence this RCOP is not maintainable. In the circumstances the petitioner is not entitled to the relief as prayed for.”

9. Heard the learned counsel for the petitioner and the 2nd and 5th respondents.

10. Learned counsel for the petitioner submits that the order passed by the Rent Controller and by the Rent Control Appellate Authority were contrary to well settled principles of law and reliance placed by the learned Rent Controller on the decision rendered in **Sunku Subramanian Chetty & Bros vs Vummundi Ramiah Chetty Guruswamy Chetty & Co.**, 1972 (1) MLJ S.N. 37 was out of context. It is submitted that the statutory right conferred on the petitioner as landlord pursuant to a settlement deed has been ignored by the Rent Controller and by the Rent Control Appellate Authority.

11 Per contra, the learned counsel for the 2nd and 5th respondents submits that the order passed by the Rent Control Appellate Court affirming the

order of the Rent Controller in R.C.O.P.No.2338 of 2009 was well reasoned and therefore requires no interference under section 25 of the Act.

12. Learned counsel for the respondent produced copies of the judgments in the following cases to defend the impugned orders of the Rent Controller and the Rent Control Appellate Court: -

- " i. Kalpataru vidya Samasthe (R) and another vs. S.B.Gupta and another (2005) 7 SCC 524
- ii. Sunku Subramanian Chetty & Bros vs Vummundi Ramiah Chetty Guruswamy Chetty & Co., 1972 (1) MLJ S.N. 37
- iii.T.N.K.Govindaraju Chetty By vs. P.Urajlal Dulabdass & Co., and Another (1967) 2 MLJ 465 "

13. I have considered the arguments and perused the records. This is a case where the premise was originally rented out by late Rajaiah in favour of the 1st respondent for a period of 99 years for a nominal rent vide lease deed dated 27.01.1998.

14. Late Rajaiah during his life later settled the premises in favour of the petitioner vide Ex.P5 dated 26.8.2008. It appears collateral disputes have arisen between the partners of the 1st respondent firm and a case for dissolution of the 1st respondent firm was pending in C.S No. 238 of 2009.

15. While dealing with Section 11 of the Kerala Rent Buildings (Lease And Rent) Act, 1965 evict a tenant under Section 11 (4) (i) and (ii) the court in **Sait Nagjee Purshotham and Co. Vs Vimala Bai Prabhulal and others** (2005) 8 SCC 252 the Hon'ble Supreme Court concluded, that if there is a voluntary transfer by the company to a newly incorporated company then in that case one has to plead and prove that all the members of the old firm continued the new firm and it was essentially the same.

16. The only exception is where there is a transfer of old company to a new company is under a statute or other law.

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17. In the above case, the members of joint family carried on business as partners. The building in question was let out to the partnership firm. The firm was the tenant and later on it was converted into a Private Limited company. In the partition, the major portion of the building was allotted to the group

represented by the landlords.

18. Gradually, the interest of the landlords and the company was taken over by the members of the family representing the tenant' s group. Major portion of the building which was admittedly set apart to the share of the branch of the family represented by the landlords.

19. The landlords filed a suit for eviction on the ground that the respondent had completed their education and was sitting idle and that they wanted to start a business of their own in the schedule building for their own occupation in Calicut.

20. Therefore, Section 11 (3) of the Kerala Rent Buildings (Lease And Rent) Act, 1965 was invoked. The Rent Controller held that the landlords were not entitled to an order of eviction either under Section 11 (3) of the act or under section 11 (4) (i) of the Act. The Appellate Court partly allowed the appeal filed by the landlord and ordered eviction. Revision was filed before the High Court both by the landlord and the tenant.

21. By a common order to the revision were disposed. The

appellant/tenant challenged the finding of the Appellate Court and that of the High Court with regard to the bonafide need of the landlord and secondly prayed for protection under section 11 (17) of the Act as the appellant/ tenant was in possession of the property since 1940. Though, the issue relating to merits of the case is not relevant, it is evident that the landlord was treated different from the firm which eventually became a limited company.

22. Section 4 of the Partnership Act, 1932 defines partnership as follows:

" 'Partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually 'partners' and collectively 'a firm' and the name under which their business is carried on is called the 'firm name'."

23. The Privy Council in *Senaji Kapurchand v. Pannaji Devichand* [AIR 1930 PC 300] and the Hon'ble Supreme Court in *Dulichand Laxminarayana v. CIT* [29 ITR 535] have held that an association of persons is not a person within the meaning of that expression in the Partnership Act.

24. Under section 14 of the Partnership Act, 1932 subject to contract

between the partners, the property of the firm includes all property rights and interests of the property brought into the stock of the firm, or acquired, by purchase or otherwise by or for the firm , or for the purpose and in the course of the business of the firm, and includes also the goodwill of the business. Unless a contrary intention appears, property and rights and interest in the property acquired and money belonging to the firm , are deemed to have been acquired by the firm.

25. Thus, unless the intention was to amalgamate premises with that of the 1st respondent partnership firm, it cannot be said that the petitioner cannot exercise an independent right over the property which has been settled to the petitioner him by his father to him. Therefore, it cannot be said that petitioner cannot demand rent or seek for eviction of the 1st respondent firm from the premises merely because he also happens to be a partner of the 1st respondent.

26. In fact, a partner can be sued by the partnership firm for the loss caused to it by an act of fraud by a partner in the conduct of business as per Section 10 of the Partnership Act, 1932. Thus, it is recognised that it is not incompetent to hold that the partner and partnership firm can litigate against each other.

27. Further, as per the definition of “partnership” in Section 4 of the Partnership Act, 1932 it is evident that persons who have entered into a partnership with one another are individually called “partners” and collectively called “firm”.

28. Partner and partnership firm are different from each other in the sense latter refers to the partners collectively and the name under which their businesses carried on is called the “partnership firm”.

29. In my view, reasoning of the Rent Controller as also of the Rent Control Appellate Court is not correct. The petitioner though the partner of the 1st respondent firm was entitled to initiate proceedings under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

30. To decide whether the petitioner was indeed entitled to invoke the provisions of Section 10 (3) (a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 on facts has to be decided based on the provisions of the partnership deed and the settlement deed.

31. Therefore, the case is restored back to the file of the Rent Controller in R.C.O.P.No. 2338 of 2009 for determination of the right of the

petitioner to have the 1st respondent evicted from the premises under Section 10 (3) (a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

32. The Rent Controller shall pass a speaking order within a period of six months from date of receipt of this order.

33. The present civil revision petition thus stands allowed by way of remand with the above observation. No cost.

.08.2019

Index :Yes/No

Internet :Yes/No

Speaking : Non Speaking order
kkd

To

1. VII Judge,

Court of Small Causes, Chennai

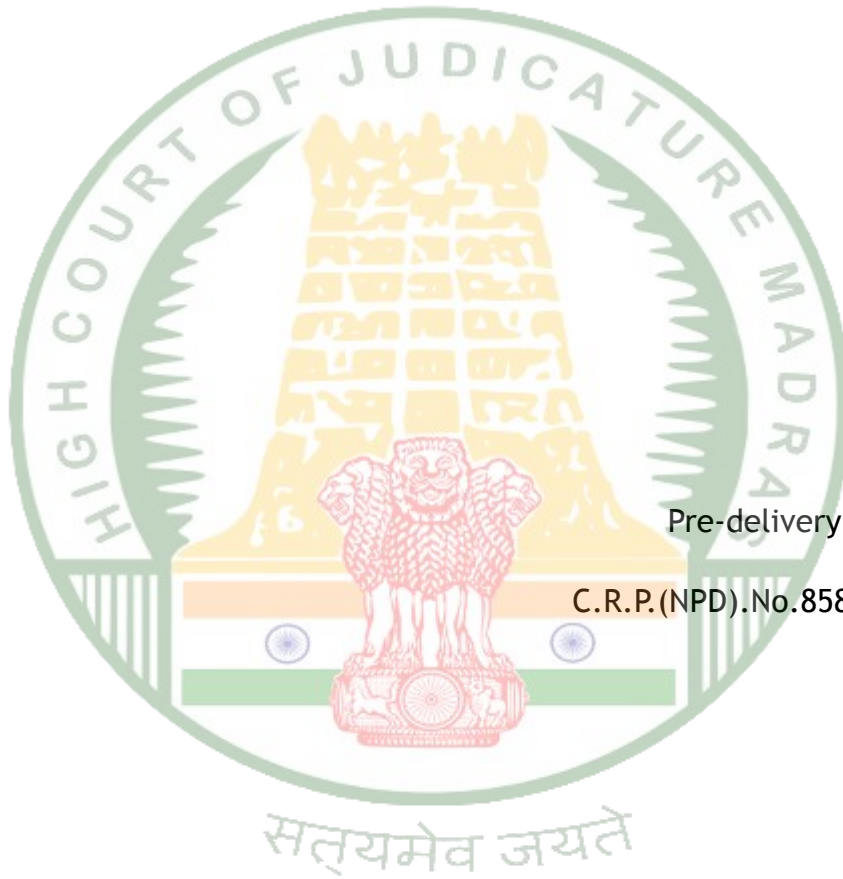
2. XII Judge,

Court of Small Causes, Chennai.

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C.SARAVANAN,J.

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Pre-delivery order in

C.R.P.(NPD).No.858 of 2015

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