

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (NPD) No.4392 of 2013

Arunmozhi, R.K. ... Petitioner

Vs.

C.T.Vinayagam ... Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 against the orders dated 27.09.2013 passed in RCA No.658 of 2012 by the VIII Judge, Court of Small Causes, Chennai reversing the orders dated 16.08.2012 passed in RCOP No.356 of 2009 by the XVI Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.G.Karthikeyan

For Respondent : Mr.T.Antony Jesuraja

ORDER

This revision petition is against the decree and judgment in the appeal in RCA No.658 of 2012. The revision petitioner is the landlord of the petition premises. He filed RCOP 356 of 2009 before the XVI Judge, Court of Small Causes, Chennai seeking eviction of the respondent/tenant

on the grounds that

(i) the respondent/tenant committed willful default in payment of rents under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960.

(ii) for his own occupation under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 and

(iii) the tenant has committed nuisance under Section 10(2)(v) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960.

While the Rent Controller allowed the RCOP, the appellate authority reversed the findings of the Rent Controller in RCA No.658 of 2012.

2. Briefly the facts are narrated below. The appellant is the landlord of the premises and the respondent is a tenant since 1994 in respect of one shop portion measuring 150 sq.ft. The rent which was Rs.1800/- per month initially was Rs.500/- when the tenant committed default in payment of rent since April 2009 and moreover the shop occupied by the tenant if vacated would prove beneficial for the appellant's Pharma business, which he is running in the adjacent shop premises. The respondent/tenant was also causing nuisance in the form of a bike repair shop and parking of vehicles caused blocking the pathway to other shops. The appellant sought eviction of the premises by the tenant on the grounds

stated above.

3. The respondent/ tenant countered the case of the appellant/ landlord by contending that the actual rent was Rs.1500/- and advance was Rs.20,000/- and that there was no default in payment of rent much less willful default and therefore, the petition is liable to be dismissed. It was also contended that there was no landlord-tenant relationship since the rented petition premises was surrendered to the landlord on 13.06.2008 and now the shop was his own premises.

4. The trial court had ordered eviction on the ground of willful default in payment of rent and additional accommodation. However, the petition was dismissed on the ground of nuisance caused.

5. The aggrieved respondent/tenant approached the appellate court with the plea that he was a tenant under the appellant/landlord from 1994 to June 2008. The respondent/tenant tendered the rent amount, but was declined to be accepted by the landlord from April 2008 causing a legal notice to be issued on 22.05.2008 requesting for the bank account details for crediting the rent. However, on 13.06.2008, the rented portion was handed over to the landlord. The is in possession of the present premises

and is no more a tenant under the landlord and is carrying his two wheeler workshop in his own property at No.3, 1st cross street, Anna Garden, Velachery Main Road, Velachery.

6. The landlord as the respondent in the appeal had countered the appeal by contending that there was no such handing over of the shop back to him by the tenant and that the tenant has illegally occupied the premises claiming ownership, which is absolutely false. The appellate court concluded that there are contradictions in the contents of the Advocate Commissioner's report and the RCOP averments and therefore with vague and insufficient description of the schedule mentioned property it could be concluded that there was jural relationship between the parties. The order and decree of the trial court in RCOP No.356 of 2009 was therefore set aside and the appeal was allowed. Aggrieved over the same, the civil revision petition is filed.

7. The RCOP No.356 of 2009 rested on the premise that the appellant was the landlord and the respondent, the tenant. The tenant himself had admitted in his counter in the said RCOP that he was indeed a tenant under the appellant/landlord. His contention is that he had handed over the vacant possession of the premises to the appellant/landlord on

13.06.2008 itself and that he is carrying out the business in his own premises bearing door No.3, 1st Cross Street, Anna Garden, Velachery Main Road, Velachery. In his deposition as RW1, the respondent/tenant had deposed that there was no documentary evidence to show that he had handed over the possession of the rented premises after vacating it. He has further deposed that the portion behind the suit premises belonged to him for which also he had no documentary evidence. He also deposed that the finding of the Advocate Commissioner that the name board of his shop No.7 was altered to No.3 is correct. The respondent/tenant in his counter in RCOP had mentioned his shop address as door No.3, Anna Garden Street, Velchery for which was the above explanation.

8. The Advocate Commissioner's report has thrown certain clarity on the property. It clarified that the Door No.7, Anna Garden, Velachery Main Road, Chennai is a complex with 5 shops in the ground floor and a room like structure in the 1st floor. It is also mentioned that the disputed property namely the shop is in the extreme north side of the complex with a name board "Bicare Automobiles" and the name board read as No.3, Anna Garden and the same seemed to have been corrected recently. The Advocate Commissioner's report also threw light on two more important aspects. One was regarding the rear end of the shop having no

wall and opening into a large hall said to be the extension area of the mechanic shop maintained by the tenant. Second was the concrete ceiling of the shop is continuous running with other shops in the complex.

9. The appellate court has raised doubts on

(i) Whether the tenant was occupying No.7, Anna Garden, Velachery Main Road or No.7E, Anna Garden.

(ii) How a civil dispute be settled by the trial court in a RCOP case especially when the boundaries of the schedule property mentions that on the east is the respondent's property viz, No.3, Anna Garden, First Cross Street, Velachery Main Road.

The appellate court therefore, shifted the onus on the landlord to substantiate his case and with no clear documentary evidence for this, it contended that there is no jural relationship between the parties.

10. In my opinion, the matter could have been remanded back to the trial court by the first appellate authority for clarity on the property which was to be vacated by the respondent/tenant. This was purely a technical point and there is no way to conclude that jural relationship does not exist.

11. Strictly speaking, the respondent/tenant ought to have adduced proper documentary evidence to claim his right over the property which was rented out to him. Moreover, the admission of the respondent/tenant that his shop has a shutter which leads to the appellant/ landlord's portion itself is a proof that he has not handed over the tenanted portion back to the appellant/ landlord. The trial court had rightly observed that there was a landlord-tenant relationship between the appellant and the respondent and took cognizance of the telephone bill addressed to the respondent's shop to ascertain the correctness of the address.

12. That the respondent/tenant utilized the existence of his own property right behind the suit shop premises and made it easy to claim the ownership for the shop also, is apparent. With the respondent/tenant claiming the ownership of the shop premises, the appellate court ought to have exercised caution before concluding that the trial court had erred and that there was no jural relationship. The fact that there are five shops in the premises bearing No.7, Anna Garden Street, Velachery Main Road and that the suit shop was on the extreme north justifies the 7E number which it bears. The telephone bill of the shop was a conclusive evidence. Instead, the appellate court took an extreme step of declaring the absence

of jural relationship. The jurisdiction of a civil court in dealing the ownership or otherwise is much different from the jurisdiction of the rent controller.

13. As regards the eviction grounds relied upon by the landlord, the trial court was right in holding that there was a willful default in payment of rent. The tenant did not remit the rent since April 2008. This is admitted by the tenant himself and in fact he has claimed that he had handed over the petition premises on 13.06.2008, which was not substantiated. Similarly, the requirement of additional accommodation has also been substantiated by the landlord by showing that his wife is running a Pharma business in the adjoining shop. Moreover, this rented premises and the adjoining shop were interconnected by the shutter again admitted by the tenant and found in the Advocate Commissioner's report.

14. As regards the ground under Section 10(2)(v) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, the learned Rent Controller has observed that the tenant has not committed nuisance as alleged by the landlord. The learned Rent Controller has dealt with the aspects of willful default in payment of rents and the requirement of the landlord for additional accommodation in detail and the same need not be

repeated again in this civil revision petition. Suffice to say that all the observations made by the learned Rent Controller are perfect in order and I do not see any reason to interfere with the findings recorded by the learned Rent Controller.

15. As a result,

(i) The civil revision petition is allowed. No costs.

(ii) The orders dated 27.09.2013 passed by the Rent Control Appellate Authority/VIII Judge, Court of Small Causes in RCA No.658 of 2012 is set aside.

(iii) RCOP No.356 of 2009 on the file of the XVI Judge, Court of Small Causes, Chennai is allowed. One month time is given to the tenant to vacate the premises, from the date of this order.

सत्यमेव जयते

18.07.2019

Index : Yes/No

Internet : Yes/No

Speaking/non-speaking order
mst

To

1. The VIII Judge, Court of Small Causes, Chennai.

2. The XVI Judge, Court of Small Causes, Chennai.

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R.HEMALATHA,J.
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