Reserved on : 25.02.2019

Pronounced on : 04.03.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.459 of 2013

Mrs.Azima Bivi .. Petitioner

Vs.

Louis Sinnaya Arokiasamy .. Respondent

PRAYER: Civil Revision Petition filed under Section 25 of Pondicherry Buildings (Lease & Rent Control) Act against the fair and decreetal Order dated 21.12.2012 in R.C.A.No.16 of 2012 dated 27.09.2013 on the file of III Additional District Court, Puducherry reversing the Fair and Decreetal Order dated 24.07.2012 in R..O.P.No.73 of 2002 on the file of the learned Rent Controller, Puducherry.

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For Petitioner : Mr.N.Suresh

For Respondent : Mrs.Chitra Sampath, Senior Counsel
for Mr.C.Vigneshwaran

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O R D E R

Aggrieved over the finding of the Rent Control Appellate Authority in allowing the petition filed by the respondent for eviction of the tenant on the ground of demolition and reconstruction and also denial of title by the petitioner not a bonafide, the present revision came to be filed.

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

3. Brief facts leading to filing of this revision is as follows :

The petition premises originally belong to the ancestors of the petitioner. The petition premises was orally let out to the respondent for residential purpose on a monthly rent of Rs.25/-. The rent was not enhanced all these years as a gratitude shown towards the service of the respondent's husband as a car driver for the family members of the petitioner. The demised premises was in common occupation with the petitioner's brother and sister. After the death of the said sister of the petitioner, the legal heirs were in enjoyment as co-owners of their respective shares. The petitioner's brother and sister was entitled for 5/12 and 2/12 share respectively in the said demised house property. The said house property came to the exclusive possession of the petitioner by virtue of registered release deeds executed by his brother and sister. The respondent

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made an attempt to create encumbrance over the petition premises. The respondent is also not residing in the premises and residing with her daughters and making only casual visit to the premises. The petition premises is old and without any maintenance and is in dilapidated condition and it may collapse at any time. Hence, the petition to demolish and construct residential apartment in the site. The petitioner had informed the same to the respondent. Thereafter the petitioner has issued a legal notice dated 20.02.2002. However, reply was given by the respondent denying the title of the landlord. Hence, the petition for eviction.

4. In the counter, the respondent took a defence that she is not a tenant under the petitioner. Monthly rent of Rs.25/- is also denied. Neither the respondent nor her husband were ever tenant under the petitioner. It is the case of the respondent that late Carmindra Mudaliar entered into an agreement for sale for the demised premises and pursuant to which the respondent has been in actual, exclusive and peaceful possession and enjoyment of the property having paid the entire sale consideration. It is also denied that the respondent has made any renovation in the petition premises. The respondent has perfected the title by adverse possession. It is also denied that the premises is in dilapidated condition and the petition is liable to be dismissed.

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5. The learned Rent Controller had dismissed the application on the ground that there is no landlord tenant relationship between the petitioner and the respondent. However, the appellate authority allowed the appeal and Ordered eviction under section 14(2)(b) of Pondicherry Buildings (Lease and Rent Control) Act and also held that denial of the title is not bonafide. As against which the present revision is filed.

6. The learned counsel appearing for the revision petitioner would contend that Ex.P.1 to Ex.P.4 are documents prior to the date of release deed. Ex.P.1 to Ex.P.4 receipts show as if rent was paid by the husband of the respondent. Whereas, the evidence of P.W.1 clearly indicate that the husband of the respondent died 50 years back. Therefore, the payment of rent in the name of the husband of the respondent 20 years ago is highly improbable. Therefore, the learned Rent Controller has rightly held that Ex.P.1 to Ex.P.4 are concocted documents and the petitioner has not come before this Court bonafidely since Ex.P.1 to Ex.P.4 are not genuine documents. The first appellate Court relying upon the other documents had erroneously come to the conclusion that the petitioner is the owner of the property and there exist landlord tenant relationship.

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7. It is the contention of the learned counsel for the petitioner that contrary stands have been taken by the petitioner, one in the notice and in the

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evidence. In Ex.P.1, it is stated that the husband of the respondent was a tenant. Whereas, in the petition it is pleaded as if the respondent is a tenant. The first appellate Court without considering the above aspect has simply allowed the application. Further the ownership of the petitioner to the property has not been established. Except the release deeds, no other title deeds have been filed to prove the ownership of the respondent. When the documents itself found to be fabricated, the first appellate Court ought not to have Ordered eviction.

8. The learned appellate authority has ordered eviction on the ground of denial of title. Wherein, the petitioner himself has not sought eviction on that ground. In the reply notice, the respondent denied the title of the petitioner. However, they have not sought eviction on that ground. That itself clearly indicate that the petitioner has not come before the Court with clean hands. The respondent had full knowledge of the ground alleged against her. Despite the fact that the appellant took the plea that there is no landlord tenant relationship and denied the title, he should have included the relief under the above ground also. It has not been done so. Hence, submitted that the Order of the appellate authority is not based on proper appreciation of evidence or law. In support of his contention, he has relied on the following judgments :

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J.J.Lal Pvt. Ltd. And others vs. M.r.Murali and another reported in **AIR 2002 Supreme Court 1061**

Oswal Fats and Oils Limited Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and others reported in **2010 (4) Supreme Court Cases 728** and

Dalip Singh Vs. State of Uttar Pradesh and others reported in **2010 (2) SCC 114**.

9. The learned Senior counsel for the respondent has submitted that the respondent had never entered into the box and only her daughter had given evidence before the Court. When a specific allegation has been made in petition and not denied by the respondent in the Court, now she cannot contend that there is no landlord tenant relationship. The very case of the respondent itself is that they are in possession of the petition premises on the basis of the agreement executed by one Carmindra Mudaliar. Even in the evidence, R.W.1 admitted that her grandfather is in the possession of the premises. However, there is no evidence to prove the possession of the respondent was on the basis of the alleged agreement. The alleged agreement has also not been produced. Whereas, the petitioner has given evidence and produced the documents to show that the building requires immediate demolition and reconstruction.

10. It is the contention of the learned Senior Counsel that it is not even

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denied by the respondent that her husband is a driver under the petitioner. Ex.P.1 to Ex.P.4 receipts were in the name of the husband of the respondent. The trial Court found that those receipts are fabricated. Such finding is not based on proper appreciation of evidence. The carbon copy is only produced and in fact those receipts are not signed by the tenants to contend that the tenant was alive at the time of issuance of the receipts. Normally, the receipts will be issued in the name of the original tenant. If really, signature was obtained by the tenant, then it can be said that those receipts could not have been signed by the original tenant, the tenant who had already died long back. Therefore, merely because the receipts, which were not signed by the tenants was issued in the name of the original tenants, those documents cannot be held as fabricated documents.

11. The evidence of R.W.1 clearly indicates that she has no knowledge about the entire proceedings. The respondent has not come to the Court to deny the averments in the petition. Ex.P.5, release deed registered in the name of the petitioner clearly show that the petitioner is the owner of the property. R.W.1 also admitted that they were inducted into the possession of the property by the grandfather of the petitioner. These facts clearly prove that the petitioner is the owner of the property. Once, the petitioner establish the ownership and the respondent did not enter into the box and the petitioner also proved that the building is old and in dilapidated condition and obtained necessary plans, he is

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certainly entitled for eviction. Once the ownership through the predecessors in title is established, the respondent failed to prove their defence, the denial of title is not a bonafide one. Hence, the appellate authority had considered the entire aspects and rightly ordered eviction. In support of his contentions, he has relied on the following judgment :

Boorugu Mahadev and Sons and another Vs. Sirigiri Narasing Rao and others reported in **2006 (3) SCC 343**

Iswar Bhai C.Patel Alias Bachu Bhai Patel Vs. Harihar Behera and another reported in **1999 (3) Supreme Court Cases 457** and

Julkabi (Died) and two others Vs. Vairavan reported in **2000(1) CTC 628.**

12. Heard the learned counsel for the petitioner and the learned Senior counsel for the respondent and perused the entire materials available on record.

13. The petitioner has filed a petition for eviction of the respondent under Section 14(1) (b) of Pondicherry Buildings (Lease and Rent Control) Act on the ground that the building is old and in dilapidated condition and he is proposed to construct new residential apartments in the site. It is the main contention of the petitioner that the premises has been let out to the respondent for residential purpose on a monthly rent of Rs.25/-. Thereafter, the property is enjoyed by the

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co-owners and leased out to the respondent. It is further contended by the petitioner that the rent was not enhanced as a gratitude shown towards the service of the husband of the respondent, who worked as a car driver for the family members of the petitioner. In the legal notice, it is the contention of the petitioner that her husband was originally a tenant since he was a driver, he was given on a monthly rent of Rs.25/-. It is the admitted case of the respondent that her husband died long back. This fact is not in dispute. The respondent was residing with her husband. After the life time of her husband, she continued to be a tenant in the premises. Therefore, merely because, in the legal notice it is averred that her husband was a lawful tenant and the petitioner filed a petition for eviction showing the respondent as a tenant and the same cannot be a ground to non suit the respondent. After the life time of her husband, the respondent continued to remain in the premises. Therefore, mentioning the respondent as a tenant in the petition contrary to the legal notice is not a ground to hold that the petition is not maintainable.

14. It is the contention of the revision petitioner that there was no landlord tenant relationship between the petitioner and the respondent. There was an agreement between one Carmindra Mudaliar for sale of the petition mentioned premises and pursuant to the same, they are in possession of the premises. Therefore, the main contention of the respondent that she is in possession of the premises on the basis of the agreement executed by Carmindra Mudaliar. The

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respondent has not come before the Court to give evidence. Only her daughter has been examined as P.W.1. In her evidence, she has denied that she is not living with her mother and has admitted that her father was a driver under the petitioner's grandfather and she has also stated that only her mother is aware of the ownership of the property and she has shown ignorance about the agreement with respect of the property. The agreement of sale pleaded in the counter has not seen the light of the day. P.W.1 has stated in her evidence about the ownership of the property and also the plan obtained from the planning authority for demolition and construction and house tax receipts have also been filed by him.

15. On a perusal of Ex.P.1 to Ex.P.4 receipts, prior to the release deeds, show that the rent receipts were issued by the petitioner in the name of the husband of the respondent. It is to be noted that it is the admitted case of the parties that the husband of the respondent was inducted as a tenant originally. It is the case of the petitioner that the rent receipts have been issued in her husband's name. Merely because the receipts were issued in the name of the original tenant, who is not alive at the relevant point of time, it cannot be said that the receipts have been concocted for the purpose of this case. If the signature of a dead person is in the receipt, one can say without hesitation, that the receipts have been created for the purpose of the case. Normal practice prevailing in the society cannot be ignored. Issuing receipts in the name of the

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original tenant is a prevailing practice. Merely on the said circumstances, it cannot be held that those receipts are fabricated.

16. The brother and sister of the petitioner have executed Ex.P.5 and Ex.P.6 release deeds in favour of the petitioner. The release deeds, when carefully perused, the same make it clear that the name of one Carmindra Mudaliar is also shown as an ancestor and he had right in the suit property. Unless the persons have right in the immovable property, their right cannot be released and such document could not be registered. The registration of release deed itself clearly indicate that only the petitioner is the owner of the property. The petitioner has also obtained necessary permission from the authorities on the strength of his title to the property for demolition and reconstruction. Ex.P.11 and Ex.P.14 to Ex.P.18 statement extract issued by the Deputy Tahsildar also show that the property stands in the name of the petitioner. All these facts coupled with the registered release deeds, the ownership of the petitioner has been clearly established by the petitioner petitioner.

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17. When the respondents have taken a specific defence that they are in possession of the property on the basis of an agreement of sale, when they failed to establish any such agreement and the respondent also failed to appear before this Court to deny the allegation of the petitioner on oath, an adverse

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inference has to be drawn against the respondent. The burden to establish her defence has not been discharged. Once, a specific allegation has been made and spoken by the petitioner on oath and it has not been confronted or denied by the other side, such allegation should be taken as an admission. Coupled with oral evidence of the petitioner and the release deed and revenue records, the petitioner has clearly established the ownership to the property. Therefore, without any semblance of right, denying the title of the landlord is not a bonafide one. The petitioner has filed necessary documents to show that they have necessary wherewithal and also obtained planning permission from the concerned authorities. It is also an admitted fact that the building is old and in dilapidated condition. Therefore, the petitioner is certainly entitled to eviction on the ground of demolition and reconstruction. Merely because, the appellate authority has incidentally decided the issue of denial of title is not a bonafide one, it cannot be contended by the revision petitioner that eviction cannot be granted on that ground alone.

18. In a judgment in **Julkabi (Died) and 2 others Vs. Vairavan** reported in **2000(1) CTC 628,** this Court relying upon the judgment of the Honourble Apex Court in **M.Subbarao V. P.V.K.Krishna Rao reported in 1989 AIR 2187** wherein the appex Court has held that denying the title during the course of proceedings itself is a ground for eviction and no need for amendment of

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pleadings is required and in that proceedings itself eviction can be ordered. As already discussed, Order of eviction on the ground of denial of title, which is not a bonafide one, cannot be found fault with.

19. The respondent has not appeared before the Court. In a judgment in **Iswar Bhai C. Patel Alias Bachu Bhai Patel Vs. Harihar Behera and another** reported in **1999 (3) Supreme Court Cases 457**, the Honourable Supreme Court has held as follows.

> "Applying the principles stated above to the instant case, it would be found that in the instant case also the appellant had abstained from the witness box and had not made any statement on oath in support of his pleading set out in the written statement. An adverse inference has, therefore, to be drawn against him. Since it was specifically stated by respondent No.2 in his statement on oath that it was at the instance of the appellant that he had issued the cheque on the account of respondent No.1 in the Central Bank of India Ltd., Sambalpur Branch, and the appellant, admittedly, had encashed that cheque, an inference has to be drawn against the appellant that what he stated in the written statement was not correct. In these circumstances,

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the High Court was fully justified in decreeing the suit of respondent No.1 in its entirety and passing a decree against the appellant also."

20. In another judgment in **Boorugu Mahadev and Sons and another Vs. Sirigiri Narasing Rao and others** reported in **Supreme Court Cases 343**, the Honourable Supreme Court has held as follows :

"That apart, we find that the appellants were able to prove their ownership through their predecessor-in-title on the strength of sale deed (Ex-P.6/7) of the suit premises whereas the respondents failed to prove their defence. Indeed, the burden being on them, it was necessary for the respondents to prove that the sale in favour of the appellants' predecessor- in-title of suit premises was a transaction of mortgage and not an outright sale. Since the respondents did not adduce any documentary or oral evidence to prove their defence, the first appellate Court was justified in allowing the eviction petition. In our view, the evidence adduced by the appellants to prove their title over the suit premises was sufficient to maintain eviction petition against the respondents and it was, therefore, rightly accepted by the first appellate Court."

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21. The above dictum is squarely applicable to the facts of this case. The petitioner not only through his oral evidence, but also through Ex.P.5 and Ex.P.6 release deeds and other revenue records has established his title to the property. When the respondents failed to prove their specific defence that there was an agreement for sale, as she had not produce any documentary evidence, the petition for eviction is maintainable.

22. In **Dalip Singh Vs. State of Uttar Pradesh and others** reported in **2010 (2) SCC 114**, it has been held that a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Absolutely, there is no quarrel over the above judgment. But the fact remains that Ex.P.1 to Ex.P.4 have not been signed by the tenant. Therefore, merely because it was issued in the name of the original tenant, those documents cannot be considered as created documents.

23. In a judgment in **Oswal Fats and Oils Limited Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and others** reported in **2010 (4) Supre Court Cases 728** relied upon by the revision petitioner show that a person who suppress the material facts is not entitled to any relief.

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24. In **J.J.Lal Pvt. Ltd. And others Vs. M.R.Murali and another reported in AIR 2002 SC 1061**, the Honourable Supreme Court has held as follows :

> "For several reasons, we are of the opinion that a decree on the ground of denial of landlord's title by tenant and such denial being not bona fide could not have been a ground for directing eviction of tenant in the present case. Firstly, the application for eviction filed by the landlord does not plead such a cause of action, setting out material facts and as providing a ground for relief of eviction. The plea taken by the defendant-tenants in their additional counter does not by itself amount to denial of title so as to render them vulnerable to eviction by attracting applicability of Section 10(2)(vii) of the Act. The basic question was whether the landlords themselves treated the plea taken by the tenants in their additional counter as denial of their title and if that be so the landlords should have amended their application for eviction incorporating the averment that the said additional counter amounted to denial of title of the landlords and such denial was not bona fide. Thereupon the tenants would have had an

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opportunity of explaining the facts and circumstances in which the additional counter, along with the pleas raised therein, came to be filed and if that amounted to denial of landlords' title then how did they propose to justify such denial as bona fide. Such pleas could have been subject matter of trial and evidence adduced by the parties followed by expression of opinion by the Controller as to whether a ground for eviction was made out or not. Before the Controller none of the parties were alive to the fact that alleged denial of title by tenants could possibly be clicked by the landlords as a ground for eviction. The Appellate Authority for the first time formulated a point at issue touching this ground during the course of its decision and yet held in favour of the tenants holding that such denial was bona fide. If at all the Appellate Authority was inclined to frame an issue then it ought to have been tried on the lines laid down in Order 41 Rule 25 of the Code of Civil Procedure. The High Court, as already stated, shifted the emphasis and treated the denial of title by tenant as primary ground for eviction and proceeded to decide the same. Thus what was not in issue before the trial Court at all became the core issue on which the High Court has

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founded its decision. This is not only violative of the established procedure for civil trials but also violative of principles of justice and fair play. The tenants have been certainly prejudiced in their defence and, therefore, availability of that ground for eviction of tenants in the present proceedings cannot be sustained."

25. In the above judgment, the Honourable Supreme Court taking into consideration of the fact that the High Court had Ordered eviction on the ground of denial of title was not a bonafide. But the fact remains that the appellate authority has incidentally decided that the denial of title is not a bonafide. But, whereas, the appellate Court had Ordered eviction under 14(2) of Pondicherry Buildings (Lease and Rent Control) Act taking into consideration the capacity of the landlord and the age of the building, etc. Therefore, the contention of the learned counsel for the revision petitioner that the appellate Court has Ordered eviction on the ground of denial of title alone cannot be countenanced. Having regard to the facts of the case, this Court do not find any merits in the revision and this revision is liable to be dismissed.

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26. Accordingly, this revision is dismissed and the Order of the appellate authority is confirmed. No cost.

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To

1. The Rent Controller,
   Pondicherry.

2. The III Additional District Judge,
   Pondicherry.

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N.SATHISH KUMAR, J.

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Order in

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