

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2019

DELIVERED ON : 22.08.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P. (NPD) No.1312 of 2014

P.P.Jayaraj

... Petitioner

Vs.

Thundiyil Vinodini

... Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Pondicherry Buildings (Lease and Rent Control) Act 1969 against the Judgment and Decree passed in R.C.A.No.36 of 2011 dated 22.10.2013 on the file of the Second Additional District Judge, Puducherry in confirming the order and decretal order passed in HRCOP.No.5 of 2010 dated 14.09.2011 on the file of the Rent Controller (Sub Judge) at Mahe.

For Petitioner ...

Mr.R.Natarajan

For Respondent ...

Ms.M.Hepzhiba

ORDER

The instant civil revision petition has been filed challenging the judgment and decree dated 22.10.2013 passed by the learned Second Additional District Judge, Puduchery in RCA.No.36 of 2011 confirming the order dated 14.09.2011 passed by the learned Rent Controller, Sub Judge at Mahe in HRCOP.No.5 of 2010.

Brief facts leading to the filing of this civil revision petition under Section 25 of the Pondicherry Buildings (Lease and Rent Control) Act, 1969:

2. The petitioner is the landlord and the respondent is the tenant in HRCOP.No.5 of 2010 filed before the learned Rent Controller (Sub Judge) at Mahe. HRCOP No.5 of 2010 was filed by the petitioner under Section 10 (2) (i) and 10 (3) (a) (i) of the Pondicherry Buildings (Lease and Rent Control) Act, 1969 seeking eviction of the respondent from the petition schedule premises on the ground of wilful default in the payment of the monthly rent by the respondent and also on the ground of owners occupation.

3. It is the case of the petitioner that the residential building mentioned in the petition schedule originally belonged to Oravangara Prabhakaran Nair by virtue of a jenmam deed dated 25.05.1997 registered as document No.280/1997, Sub Registrar's Office, Mahe. According to the petitioner, after the death of Prabhakaran Nair, his jenmam right on the property devolved on his wife Geetha Prabhakaran Nair, children Babitha Prabhakaran Nair and Babu Prabhakaran Nair.

4. It is the case of the petitioner that Geetha Prabhakaran Nair let out the petition schedule premises to the respondent on a monthly rent of Rs.1,000/- for residential purpose of the respondent and her family members only for a period of three months with effect from 25.05.2009. According to the petitioner, even after the expiry of the lease period, the respondent continued with the tenancy. According to the petitioner, while tenancy was in existence, Geetha Prabhakaran Nair and her children sold the property including the house to the petitioner by virtue of jenmam deed No.12 of 2010 dated 05.01.2010. Thereafter, Geetha Prabhakaran Nair, her children and the petitioner served

registered notice dated 07.01.2010 to the respondent informing her about the sale of the petition schedule premises to the petitioner and requesting her to henceforth pay the monthly rent to the petitioner.

5. According to the petitioner, the said notice dated 07.01.2010 was received by the respondent on 09.01.2010. But no reply was sent by the respondent to the petitioner. It is his case that tenancy has been attorned in favour of the petitioner by previous owners Geetha Prabhakaran Nair and her children and hence, the petitioner has become the landlord for the respondent. According to the petitioner, ever since his purchase of the petition schedule premises, the respondent did not pay the rent. The petitioner has stated in the petition filed in support of HRCOP.No.5 of 2010 that the petition schedule premises was purchased by him only for the residential purpose for him and his family members. According to him, he does not own any other residential building in the town of Mahe or elsewhere and therefore, the requirement of the petition schedule premises for the petitioner is a bonafide one. With these averments, the petitioner has filed HRCOP.No.5 of 2010 for

eviction of the respondent on the ground of wilful default and owners occupation.

6. A counter statement was also filed by the respondent in HRCOP No.5 of 2010 denying the allegations of the petitioner. According to her, the petition schedule premises and the property belongs to respondent's husband, Pothankad Gangatharan who purchased the same by way of a registered jenmam assignment deed No.39 of 1994, Sub Registrar's Officer, Mahe. According to her, after purchasing the property, her husband had constructed a house in the property and was residing there with his family since 1995. According to the respondent, in the year 1997, her husband, Gangadharan borrowed Rs.1,00,000/- from Prabhakaran Nair who is the husband of Geetha Prabhakaran Nair to clear some debts incurred at the time of construction of the house.

7. According to the respondent, at the time of lending the amount, Prabhakaran Nair demanded the respondent's husband to execute a mortgage deed in his favour as a security for the loan of

Rs.1,00,000/- borrowed from him. According to the respondent, Prabhakaran Nair himself had prepared the document and the same was produced before the Registrar's Office and got executed and registered in his favour. According to the respondent, her husband, Gangadharan was under the impression that the document executed in favour of Prabhakaran Nair is a mortgage deed. According to the respondent, after the death of Prabhakaran Nair, Geetha Prabhakaran Nair and her children demanded from Gangadharan and his family members a sum of Rs.5,00,000/- towards repayment of the loan availed by Gangadharan.

8. It is the case of the respondent that Geetha Prabhakaran Nair threatened that she will evict Gangadharan and his family members from the petition schedule premises, if he did not repay the loan availed from her husband. According to the respondent, after interference of couple of mediators, Geetha Prabhakaran Nair informed that the document executed in favour of her husband is a sale deed. Thereafter, the respondent's husband, Gangadharan approached the Registrar's Office and found that the document prepared by Mr.Prabhakaran Nair and

registered is not an assignment deed. According to the respondent, the sale deed executed and registered in favour of Mr.Prabhakaran Nair in respect of the petition schedule premises and land has been obtained by misrepresentation and fraud.

9. According to the respondent, before and after the execution of the said document, Gangadharan and his family were in absolute possession and enjoyment of the petition schedule premises and the house therein. According to the respondent, the alleged sale deed is a fabricated and fake document. According to the respondent, after the death of Prabhakaran Nair, no right or title or interest in the petition schedule premises has been devolved in favour of Geetha Prabhakaran Nair and her children. Therefore, according to her, Geetha Prabhakaran Nair and her children have no right to transfer or execute any document in favour of the petitioner. Hence, according to the respondent, Jenmam deed No.12 of 2010 dated 05.01.2010 executed in favour of the petitioner is a fake document.

10. According to the respondent, there is no landlord-tenant relationship between the respondent and the petitioner or Geetha Prabhakaran Nair. According to her, she and her family members are residing in the petition schedule property ever since 1995 as the absolute owners. According to her, since there is no landlord-tenant relationship, HRCOP No.5/2010 filed by the petitioner is not maintainable.

11. Before the learned Rent Controller, oral and documentary evidence was let in by the petitioner as well as the respondent. By order dated 14.09.2011, the learned Rent Controller, Mahe dismissed HRCOP.No.5 of 2010 filed under the ground of willful default as well as owners occupation, on the ground that there is no clear evidence on the side of the petitioner to establish that there exists landlord-tenant relationship between the parties.

12. Aggrieved by the order dated 14.09.2011 passed in HRCOP. No.5 of 2010, an appeal was filed by the petitioner before the learned

Rent Control Appellate Authority viz., Second Additional District Judge at Pondicherry in RCA.No.36 of 2011. By Judgment and decree dated 22.10.2013, the learned Rent Control Appellate Authority confirmed the order of the learned Rent Controller and dismissed RCA.No.36 of 2011. Aggrieved by the Judgment and Decree dated 22.10.2013 passed in RCA.No.36 of 2011 confirming the order of the learned Rent Controller, the instant Civil Revision Petition has been filed under Section 25 of the Pondicherry Buildings (Lease and Rent Control) Act, 1969.

Submissions of the learned counsels:

13. Heard Mr.R.Natarajan, learned counsel for the petitioner and Ms.M.Hepzhiba, learned counsel for the respondent

14. The learned counsel for the petitioner submits that despite having an undisputed title over the property, the authorities below have erroneously accepted the contention of the respondent that there is a dispute of title and the said dispute will have to be adjudicated only by the Civil Court.

15. The learned counsel for the petitioner submitted that before the learned Rent Controller, all the material documents connected with the petitioner's ownership of the petition schedule premises were marked as exhibits. He drew the attention of this Court to all the exhibits marked on the side of the petitioner. Ex.P1 is the registered sale deed dated 25.05.1997 standing in the name of Prabhakaran Nair. Ex.P3 is the receipt of building tax in the name of Prabhakaran Nair. Ex.P4 is the receipt of discharge of mortgage deed by Mahe Service Cooperative Bank. Ex.P5 dated 25.05.2009 is a lease agreement executed between Geetha Prabhakaran Nair and the respondent. Ex.P6 is the encumbrance certificate dated 09.12.2009. Ex.P7 is the possession certificate in the name of Geetha Prabhakaran Nair and her children. Ex.P8 is the sale deed executed in favour of the petitioner by Geetha Prabhakaran Nair and her children. Ex.P9 is the notice sent to the respondent informing about the sale of the property to the petitioner and attornment of the tenancy in favour of the petitioner. Ex.P11 is the possession certificate in favour of the petitioner. Ex.P15 is the intimation of change of ownership. Ex.P16 is the registration copy of Ex.P8. Referring to the above

mentioned exhibits, the learned counsel for the petitioner would contend that the petitioner is having an absolute title over the petition schedule premises.

16. The learned counsel for the petitioner also drew the attention of this Court to the depositions. He submitted that before the learned Rent Controller, the petitioner was examined as PW1, the Commissioner of Municipality, Mahe was examined as PW2, the petitioner's vendor Geetha Prabhakaran Nair was examined as PW3, Mr. Jothir Manoj, the attesor to the document Ex.P5 was examined as PW4. The respondent was examined as RW1 and her husband was examined as RW2 and one Rathoyhan, the attesor of the document Ex.P1 as RW3. Referring to the exhibits and the depositions, the learned counsel for the petitioner submitted that the petitioner has established that he is the lawful owner of the petition schedule premises and denial of title by the respondent is not bonafide, but has been made wilfully and deliberately to protract the proceedings.

17. The learned counsel for the petitioner submitted that the respondent in her cross examination has admitted Ex.P1 which is the sale deed dated 25.05.1997 executed in favour of Prabhakaran Nair, which was disputed by the respondent in the counter statement claiming that the said document was in fact a mortgage deed executed for the purpose of availing a loan by her husband from Prabhakaran Nair.

18. The learned counsel for the petitioner drew the attention of this Court to the relevant portion of the cross examination wherein the respondent has stated that as per Ex.R1, Prabhakaran Nair is the owner of the property. Ex.R1 is the agreement of sale for the petition schedule property entered into between Geetha Prabhakaran Nair and her children and the respondent, after the death of Prabhakaran Nair. According to him, the respondent has filed the agreement of sale entered into with Geetha Prabhakaran Nair and her children which was marked as Ex.R1 and it will clearly reveal that the respondent has recognized the ownership of Prabhakaran Nair.

19. The learned counsel for the petitioner also drew the attention of this Court to the deposition of PW2 Mr.O.Pradeep Kumar, the Commissioner of Mahe Municipality who has stated that before 21.08.1998, Gangadharan was an assessee and with effect from 21.08.1998, Prabhakaran Nair was an assessee upto 04.05.2010 and from 5th May 2010 onwards, Mr.Jayaraj, the petitioner herein is the assessee. He has also deposed that only after getting original possession certificate and copy of the document, the name would be changed. Therefore according to the learned counsel for the petitioner, the title over the petition schedule property is an undisputed one and the petitioner is the absolute owner. According to him, since it is an admitted fact that the sale deeds Ex.P1 dated 25.05.1997 in favour of Prabhakaran Nair and the sale deed Ex.P8 executed in favour of the petitioner by Geetha Prabhakaran Nair and her children have not been challenged before any court of law, there cannot be any dispute of title over the same now.

20. The learned counsel for the petitioner also drew the attention of this Court to the notice dated 07.01.2010 Ex.P9 sent by

Geetha Prabhakaran Nair, her children and the petitioner to the respondent after the purchase of the petition schedule property by the petitioner under Ex.P8 sale deed calling upon the respondent to pay rent to the petitioner as he is the absolute owner. After referring to the exhibits as well as the depositions, the learned counsel for the petitioner would contend that the denial of title raised by the respondent is not a bonafide one. But according to him, despite the same, the authorities below have without any basis accepted the contention of the respondent that there is a dispute in the title over the petition schedule property and there is no landlord-tenant relationship.

21. According to him, the concept of bonafide in rent control proceedings with regard to denial of title has got to be determined on the principles of law with documents produced. According to him, without any valid document to dispute the title of the petitioner, the authorities below had accepted the contention of the respondent mainly based on the pleadings made in the counter statement filed in HRCOP.No.5 of 2010.

22. The learned counsel for the petitioner drew the attention of this Court to the following authorities:

(a) a Single bench judgment of Madras High Court in the case of ***S.Sugumaran vs. Seenu @ Natarajan*** reported in **2000-1-L.W.897**

(b) a Single bench judgment of Madras High Court in the case of ***Mani muthuswamy and others vs. P.Soundapandiyan and another*** reported in **1996 (1) MLJ 435**

(c) a Single bench judgment of Madras High Court in the case of ***Kannika vs. Krishnasamy*** reported in **2003 (1) MLJ 225**

(d) a decision of the Hon'ble Supreme Court in the case of ***Padmawati vs. Harijan Sewak Sangh and Others*** reported in **2012 (6) SCC 460**

(e) a Single bench judgment of Madras High Court in the case of ***C.Shanmugam vs. N.S.K.Chokkalingam Pillai*** reported in **1992-1-L.W.-315**

(f) a Single bench judgment of Madras High Court in the case of ***Jaga Industries vs. Sulochana Cotton Spinning Mills Pvt. Ltd.,*** reported in **2009 (1) MLJ 1067**

(g) a Single bench judgment of Madras High Court in the case of ***Meetupalayam Municipality vs. R.M.Shanmugam*** reported in **1999 (3) MLJ 691**

(h) a decision of the Hon'ble Supreme Court in the case of ***A.Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu madalaya Nandhavana Paripalanai sangam*** reported in **2012 (6) SCC 430**

(i) First Bench Judgment of Madras High Court dated **07.02.2019** made in **W.P.No.25355 of 2018** in the case of ***N.Umapathy and others vs. The Secretary to Government, Revenue Department.***

23. Relying upon the aforesaid decisions, the learned counsel for the petitioner would submit that (a) mere denial of title will not oust the jurisdiction of the rent controller; (b) the appellate authority has to give reasons for arriving at a conclusion and will have to consider the evidence on record; (c) adverse inference can be drawn against the respondent, since no reply was sent to the legal notice dated 07.01.2010 Ex.P9 by the respondent; (d) the High Court exercising its power under Section 25 of the Rent Control Act has got the powers to interfere with

the findings of the authority below, if the said findings are arbitrary, illogical and illegal.

24. Per contra, learned counsel for the respondent would submit that the petition schedule building and the property belongs to Pothankad Gangatharan who is the husband of the respondent. According to her, the respondent's husband had purchased the property by virtue of registered Janmam Assignment deed bearing registration No.39 of 1994, Sub Registrar's Office, Mahe. According to her, he thereafter constructed a house in the property and resided there with his family since 1995.

25. According to the respondent, Gangatharan borrowed Rs.1,00,000/- from Prabhakaran Nair who is the husband of Geetha Prabhakaran Nair in the year 1997 to clear some debts incurred at the time of construction of the house. According to the respondent, at the time of lending loan, Mr.Prabhakaran Nair demanded to execute a mortgage deed in his favour as a security for the loan of Rs.1,00,000/- borrowed from him. According to the respondent, Prabhakaran Nair

himself had prepared the document and the same was produced before the Registrar's office, Mahe and got executed and registered the document in his favour.

26. According to the respondent, Gangatharan, who is her husband, never got any opportunity to read the document before execution. According to the respondent, Gangatharan was under the impression that the document executed by him in favour of Prabhakaran Nair is a mortgage deed. According to the respondent, the document Ex.P1 is not a sale deed executed in favour of Prabhakaran Nair but it is a mortgage deed executed to secure the loan availed by Gangatharan from Prabhakaran Nair. According to the respondent, Geetha Prabhakaran Nair and her children did not have any right to transfer or execute any document in favour of the petitioner, since Ex.P1 sale deed is a fabricated and fake document.

27. According to the learned counsel for the respondent, the petitioner is a policeman and he has played fraud upon the respondent

and he has colluded with Geetha Prabhakaran Nair and her children and got the sale deed executed in his favour. According to the learned counsel for the respondent, there is no landlord-tenant relationship, since the respondent has categorically disputed the title of the petitioner over the petition schedule property. According to her, the authorities below have rightly held that rent control act will not have jurisdiction to decide the dispute between the parties as there is no landlord-tenant relationship.

28. The learned counsel for the respondent referring to the pleadings in the counter of the respondent would also submit that some mediators interfered in the dispute between Geetha Prabhakaran Nair and the respondent's husband and there was a settlement between them. According to her, as per the terms of the settlement, Gangatharan agreed to pay Rs.6,00,000/- to Geetha Prabhakaran Nair and on receipt of the same, Geetha Prabhakaran Nair agreed to register a sale deed for the petition schedule property in favour of the respondent. According to the learned counsel for the respondent, only due to the said

understanding, an agreement of sale dated 25.05.2009 (Ex.R1) was entered into between Geetha Prabhakaran Nair and her children and the respondent.

29. According to the learned counsel for the respondent, for the foregoing reasons, there is a bonafide denial of title by the respondent and hence, the rent control does not have jurisdiction to decide the dispute as there is no landlord-tenant relationship. The learned counsel for the respondent drew the attention of this Court to the following authorities in support of his submissions:

(a) An unreported Single bench judgment of the Madras High Court dated 15.11.2017 passed in *CRP (NPD) No.3850 of 2009* in the case of *P.Pongaiyan and others vs. Saradhambal*.

(b) A single bench judgment of the Madras High Court in the case of *E.Venkata Naicker Trust vs. Muthusamy Chettiar* reported in *1994 2 MLJ 447*.

Discussion:

30. The proviso to Section 10(1) of the Pondicherry Buildings (Lease and Rent Control) Act, 1960 makes it clear that the denial of title of the landlord by the tenant must be a bonafide one and only then the jurisdiction of the Rent Control Court is ousted. This Court needs to now examine from the evidence available on record in the case on hand as to whether the denial of title of the landlord alleged by the tenant is a bonafide one or not.

31. Ex.P1 is a registered sale deed (Jenmam Deed) dated 25.05.1997 standing in the name of Prabhakaran Nair who has derived the title of the petition schedule premises from the respondent's husband Gangatharan. It is the case of the respondent that Gangatharan never had the intention of executing a sale deed namely Ex.P1 in favour of Prabhakaran Nair. According to the respondent, Gangatharan borrowed a sum of Rs.1,00,000/- from Prabhakaran Nair and only as a security for the said loan, Gangatharan had executed the document on 25.05.1997 in favour of Prabhakaran Nair before the Sub Registrar's Office, Mahe.

According to the respondent, the said document was prepared by Prabhakaran Nair and without knowing the contents of the same, Gangatharan had executed Ex.P1 in favour of Prabhakaran Nair and hence, Ex.P1 is only a mortgage deed and not a sale deed. The respondent has also pleaded in the counter stated filed in HRCOP.No.5 of 2010 that she is taking steps to challenge Ex.P1 namely the sale deed dated 25.05.1997 executed in favour of Prabhakaran Nair. But till date, the sale deed dated 25.05.1997 Ex.P1 standing in the name of Prabhakaran Nair has not been challenged by the respondent before any court of law.

32. Though it is the contention of the respondent that Ex.P1 is only a mortgage deed and not a sale deed and it was executed only as a security for the loan of Rs.1,00,000/- availed by Gangatharan from Prabhakaran Nair, there is no evidence available on record to show that Gangatharan has repaid the loan to Prabhakaran Nair or has taken steps for the repayment of the said loan.

33. There is no dispute raised by the respondent as seen from the evidence available on record that Geetha Prabhakaran Nair and her children Babitha Prabhakaran Nair and Babu Prabhakaran Nair became the legal heirs of the Prabhakaran Nair after his death. Excepting for pleading in the counter statement filed by the respondent in HRCOP.No.5 of 2010 and in her oral evidence, the respondent has not filed any documentary evidence before the rent controller to prove that after the death of Prabhakaran Nair, Geetha Prabhakaran Nair and her children demanded from Gangatharan and his family members a sum of Rs.5,00,000/- towards repayment of the loan availed by Gangatharan.

34. Ex.P1 is the registered sale deed dated 25.05.1997 standing in the name of Prabhakaran Nair. Ex.P3 is the Building tax receipt standing in the name of Prabhakaran Nair. Ex.P4 is the mortgage discharge receipt issued by Mahe Service Cooperative Bank. Ex.P5 dated 25.05.2009 is the lease agreement executed between Geetha Prabhakaran Nair and the respondent. Ex.P6 is the encumbrance certificate dated 09.12.2009. Ex.P7 is the possession certificate in the

name of Geetha Prabhakaran Nair and her children. Ex.P8 is the sale deed dated 05.01.2010 executed in favour of the petitioner by Geetha Prabhakaran Nair and her children. Ex.P9 is the notice dated 07.01.2010 sent by Geetha Prabhakaran Nair, her children and the petitioner to the respondent informing her about the sale of the petition schedule premises in favour of the petitioner.

35. As seen from Ex.P5 namely lease agreement dated 25.05.2009 entered into between the respondent and Geetha Prabhakaran Nair, the respondent has recognized the ownership of the petition schedule premises by Geetha Prabhakaran Nair. The property tax for the petition schedule premises till the date of his death, was paid by Prabhakaran Nair as evidenced by Ex.P3. On the side of the respondent, an agreement of sale entered into between Geetha Prabhakaran Nair and her children and the respondent was marked as Ex.R1.

36. It is case of the respondent that Ex.R1 was entered into, since Geetha Prabhakaran Nair agreed to execute a sale deed in favour of

the respondent on receipt of a sum of Rs.6,00,000/- payable by Gangatharan, the respondent's husband towards repayment of the loan availed by him from Prabhakaran Nair. But as seen from the evidence available on record, there is no iota of truth in the said statement as no documentary evidence has been produced by the respondent in support of her contention.

37. Geetha Prabhakaran Nair and her children have executed a sale deed for the petition schedule premises in favour of the petitioner on 05.01.2010 which was marked as Ex.P8 and Ex.P9 is the notice dated 07.01.2010 to the respondent informing about the sale of the petition schedule premises to the petitioner and the attornment of tenancy in favour of the petitioner. It is not in dispute that Ex.P9 notice was received by the respondent and no reply was sent to the said notice denying the title of the petitioner over the petition schedule premises.

38. Before the learned Rent Controller, the petitioner was examined as PW1, the Commissioner of Municipality, Mahe was examined

as PW2, Geetha Prabhakaran Nair, the petitioner's vendor was examined as PW3, Mr.Jothir Manoj, the attesor to the document Ex.P5 namely lease agreement entered into between Geetha Prabhakaran Nair and the respondent was examined as PW4 and the respondent was examined as RW1 and her husband, Gangatharan was examined as RW2 and one Rathoyhan, the attesor of the document Ex.P1 as RW3.

39. As a prudent landlord, the petitioner has taken all possible steps to establish his title over the petition schedule premises by examining the Commissioner of Mahe Municipality as PW2, the petitioner's vendor Geetha Prabhakaran Nair as PW2 and Mr.Jothir Manoj, the attesor of the lease agreement Ex.P5 dated 25.05.2009 entered into between Geetha Prabhakaran Nair and the respondent. Mr.O.Pradeep Kumar, the Commissioner of Mahe Municipality who was examined as PW2 has deposed that Gangatharan was an assessee in respect of the petition schedule premises with effect from 21.08.1998, Prabhakaran Nair was an assessee up to 04.05.2010 and from 5th May 2010 onwards, the petitioner became an assessee. The statement of Commissioner of

Mahe Municipality (PW2) in his oral evidence is in consonance with the pleadings made by the petitioner in HRCOP.No.5 of 2010.

40. Excepting for filing three documents viz., Ex.R1- Agreement of sale dated 25.05.2009 executed between the respondent and Geetha Prabhakaran Nair, Ex.R2-Electricity bills (Series) (8 Nos.) and Ex.R3- Telephone bills (Series) (29 Nos.), no other document has been filed by the respondent before the learned Rent Controller. In fact Ex.R1 namely agreement of sale dated 25.05.2009 will reveal that the respondent has recognized that after the death of Prabhakaran Nair, his wife Geetha Prabhakaran Nair and his two children are the absolute owners of the petition schedule premises and have thereafter sold the property to the petitioner under sale deed dated 05.01.2010 which was marked as Ex.P8.

41. With regard to allegations made by the respondent that the petitioner being a police man has played fraud upon the respondent and colluded with Geetha Prabhakaran and her children and got the sale deed executed in his favour, the evidence available on record does not reveal

any such misrepresentation or fraud played by the petitioner on the respondent. For the afore-mentioned reasons, it can be clearly established that there existed a landlord-tenant relationship between the petitioner and the respondent.

42. It is sufficient for the learned Rent Controller to be subjectively satisfied regarding the title of the petition schedule premises by the petitioner and the existence of landlord-tenant relationship between the petitioner and the respondent. There is no need for the learned Rent controller to hold a comprehensive enquiry as in the case of a suit for the purpose of deciding whether there is any landlord-tenant relationship. As observed earlier, the sale deeds namely Ex.P1 and Ex.P8 have not been challenged before any court of law by the respondent. Despite the statement made by the respondent in her counter statement filed before the learned Rent Controller as well as in her oral evidence that she is taking steps to challenge the execution of Ex.P1 and Ex.P8, till date, even after the lapse of several years, she has not chosen to do so. This will clearly indicate that there is a landlord-

tenant relationship between the petitioner and the respondent and there is no bonafides on the part of the respondent in the denial of title of the petitioner over the petition schedule premises raised by the respondent.

43. Excepting for her pleadings as seen from the counter statement filed before the learned Rent Controller, the respondent has not produced any iota of evidence to establish that the petitioner does not have title over the petition schedule premises and there is no landlord-tenant relationship between the petitioner and the respondent. Ex.R2 and Ex.R3 are the receipts issued by the Electricity Board and Telephone Exchange respectively. As a tenant who is in occupation of the petition schedule premises, it is natural that she will be paying the electricity bills and telephone charges and therefore, Ex.R2 and Ex.R3 are irrelevant for the purpose of substantiating the claim of the respondent.

44. The Judgments relied upon by the learned counsel for the petitioner is squarely applicable to the facts of the instant case.

45. This court has also perused and examined the orders dated 14.09.2011 passed by the learned Rent Controller in HRCOP No.5 of 2010 as well as the order dated 22.10.2013 passed by the learned Rent Control Appellate Authority in RCA No.36 of 2011.

46. The learned Rent Controller in his order dated 14.09.2011 in HRCOP.No.5 of 2010 has accepted the statement of the respondent denying the title of the petitioner and his predecessor's title to be a bonafide one without any evidence whatsoever in support of her contention. There is a total non-application of mind by the learned Rent Controller who has observed in the impugned order that the documents produced by the petitioner is not sufficient to decide the title over the petition schedule premises whereas in fact, the petitioner has produced his title deed namely Ex.P8 as well as his predecessor's title deed namely Ex.P1 and other documents marked as Exhibits which will clearly reveal that the petitioner is the absolute owner of the petition schedule premises and there exists landlord-tenant relationship between the petitioner and the respondent. The learned Rent Control Appellate

Authority has also without applying its mind independently accepted the findings of the learned Rent Controller, without giving any reason for the same.

47. An adverse inference can also be drawn against the respondent for her failure to issue a reply to the notice Ex.P9 dated 07.01.2010 by Geetha Prabhakaran Nair, her children and the petitioner as well as from the other documents which were marked as exhibits through the petitioner that it can be conclusively established that there exists landlord-tenant relationship between the petitioner and the respondent.

48. The Judgments relied upon by the learned counsel for the respondent are not applicable to the facts of the instant case as in those cases, there was no sale deed standing in the name of the landlord or his predecessor's in title whereas in the instant case there existed sale deed in favour of the petitioner as well as his predecessor.

49. For the foregoing reasons, this Court is of the considered view that the learned Rent Controller as well as the learned Rent Control Appellate Authority by total non-application of mind have passed the impugned orders. Since the concurrent findings of the authorities below are arbitrary, illogical and illegal, it will have to be necessarily quashed. Since the landlord-tenant relationship has been established, it can be inferred that the respondent has wilfully and deliberately defaulted in the payment of the rent to the petitioner ever since attornment of tenancy in the petitioner's favour as per Ex.P9 notice dated 07.01.2010.

50. Insofar as the second ground raised by the petitioner namely "owners occupation" is concerned, since no evidence has been let in by the petitioner on that score before the learned Rent Controller, this Court is not giving any finding as regards the same.

Conclusion:

51. In the result, the impugned Judgment and decree dated 22.10.2013 passed in RCA No.36 of 2011 by the learned Second Additional

District Judge, Pondicherry (Rent Control Appellate Authority) and the order order 14.09.2011 passed by the Rent controller, Sub Judge, at Mahe in HRCOP No.5 of 2010 are hereby set aside and the Civil Revision Petition is allowed and the respondent is directed to handover possession of the petition schedule premises to the petitioner within a period of one month from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2019

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Index : Yes / No
Internet: Yes/No
Speaking/Non-Speaking orders

To

1.The Second Additional District Judge, Pondicherry

2.The Sub Judge, at Mahe

ABDUL QUDDHOSE. J,

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Pre-Delivery Order in
CRP (NPD) No.1312 of 2014

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22.08.2019