

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2019

PRONOUNCED ON : 11.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(NPD).No.223 of 2014

1.Krishnakumari
2.Mohandass

... Petitioners

VS.

1.Prabu
2.Narendraraj Jain

... Respondents

PRAYER: Civil Revision petition filed under Section 25 of the Tamil nadu Buildings (Lease and Rent Control Act, 1960 as amended by Acts 11 of 1962 against the fair and decretal order passed in R.C.A.No.718 of 2012 on the file of Rent Control Appellate Authority (VIII Judge, Small Causes Court), Chennai dated 05.11.2013 and reversing the order passed in R.C.O.P.No.2363 of 2009 (XIII Judge, Small Causes Court) Chennai dated 17.11.2012.

For Petitioners : Mr.I.Abrar Md. Abdulla

For Respondents : M/s.V.S.Usha Rani for R1
R2-No Appearance

ORDER

The present Civil Revision Petition is directed against fair and decretal order dated 05.11.2013 in RCA No.718 of 2012 passed by the Rent Control

Appellate Court under the provisions of the Tamil Nadu Buildings (Lease And Rent-Control) Act, 1973.

2. The Rent Controller had ordered eviction of the 2nd respondent by an order dated 07.11.2011 in RCOP No.2363 of 2009.

3. By the impugned order dated 05.11.2013 in RCA No.718 of 2012, the Rent Control Appellate Court reversed the aforesaid order dated 07.11.2011 of the Rent Controller in RCOP No.2363 of 2009.

4. The Rent Control Appellate Court has merely extracted the following deposition of the second petitioner during cross examination to conclude that the dispute was beyond the scope of tenancy law which read as under:-

“ 2004y; ehd; kDr; brhj;ij brd;W ghh;j;jnghJ mJ Kjy;
vjph;kDjhuh; RthjPd;ijpy; jhd; ,Ue;jJ. ehd; 2004y; Kjy;
vjph;kDjhuh; gzj;ij jpUg;gp bfhLj;J RthjPd;ij nfl;lnghJ
2k; vjph;kDjhuh; Kjy; vjph;kDjhuhplk; gzk;
th';fpapUg;gjhy; RthjPd;ij vd;dplk; xg;gilf;f Koahj vd;W
Twpdhh;. 2k; vjph;kDjhuh; Kjy; vjph;kDjhuUf;F
U:.50/000/- bfhLj;jpUe;jhh; vd;why; rhp. v.k.rh.M.3
K:yk; 2k; vjph;kDjhuUf;F vdf;F fldhf bfhLj;j U:.1 yl;rk;

2k; vjph;kDjhuh; Kjy; vjph;kDjhuUf;F bfhLj;j U;gha;
 3/50/000/- Kk; Fwpg;gplg;gl;Ls;sJ vd;why; rhp” The
 1st respondent was the 2nd respondent in the
 R.C.O.P.No.2363 of 2009.

5. Challenging the same, the present civil revision has been filed by the unsuccessful landlord.

6. The petitioners are the owners of the leased premises which is now in the custody and possession of the first respondent herein. The said RCOP was filed by the petitioners under Section 10 (2) (ii) (a) of the TamilNadu Buildings (Lease and Rent Control) Act, 1960.

7. It is a case of the petitioners that the second petitioner had leased the subject premises to the second respondent and therefore Ex.R.2/4 an unregistered Possession Agreement dated 19.05.2001 came to be executed between them.

8. The second petitioner received a lumpsum amount of Rs.3.5 lakh as lease amount to be returned to the second respondent at the time of the termination of the leased.

9. In connection of his business, the 1st petitioner appears to have borrowed a sum of Rupees One Lakh from the 1st respondent. At that time the 1st respondent appears to have collected signature in blank in stamp papers and sheets from the 2nd petitioner which according to the 2nd petitioner were fabricated by the 1st respondent as Exhibit R1 and R3 apart from blank Cheques. Photo copies of the Blank Cheque were marked as Ex.P11.

10. In the proceedings before the Rent Controller, the petitioners claimed that they were absentee landlords and that the first respondent trespassed into the property and was in illegal occupation of the same pursuant to sub-letting of the premises by the second respondent herein.

11. In the petition, the petitioners also stated that on an earlier occasion they had filed R.C.O.P.No. 2743 of 2008 against the respondents but same was withdrawn as the first respondent had agreed to vacate the premises.

12. However, first respondent continued to be in possession and therefore for the second time R.C.O.P.No. 2363 of 2009 was filed under section 10 (1)(ii)(a) of the Act before the Rent Controller.

13. The said R.C.O.P was contested by the first respondent by stating

that the proceedings initiated were vexatious in the light of Ex.R3 Memorandum of Understanding (MOU) dated 09.08.2002 allegedly signed between the 2nd petitioner and the 2nd respondent on 09.08.2002 wherein it was agreed that the said premises was agreed to be sold for a total the sale consideration of Rs.12,50,000/- by adjusting a sum of Rs.1 lakh already paid in respect of which the 2nd petitioner executed Ex.R1 pro note dated 22.6.2002 and on payment of Rs.3,50,000 directly to the 2nd respondent to discharge the lease and a further sum of Rs.2 lakhs directly to the petitioner.

14. Thus, according to the 1st respondent, he paid a total sum of Rs.6,50,000/- to the 2nd petitioner and further agreed to directly remit the balance sale consideration of Rs.6 lakhs to the petitioners. However, there is no evidence to show such deposit in farm of the petitioners.

15. It was further stated that on the date of execution of Ex.R3 MOU dated 09.08.2002, the first respondent was put in possession of the property and that he has been since then in enjoyment of the said property all through. However, in the cross examination on 22.02.2012 the 1st respondent stated that he was put in possession on 14.01.2004.

16. In the said proceeding the petitioner marked Exhibit P-1 to 12 which includes legal notices dated 27.01.2004, 4.09.2008, 10.09.2009 issued to the respondents and acknowledgment card evidencing the receipt of the notice by the 2nd respondent herein and letter dated 7.10.2011 signed by one Ashok Jain of Mahaveer Apartment marked as Exhibit P8 stating that the 1st respondent had grabbed the petitioners' property from 2nd respondent and Ex.P12 dated 14.4.2012 of the resident association to the effect that the 1st respondent was in arrears of maintenance charges for the apartment of the petitioners. The 1st respondent had refused to receive the legal notices and were returned.

17. In the proceeding before the Rent Controller, the second petitioner submitted and admitted that in connection with his business requirement he had borrowed a sum of Rs.1 lakh from the first respondent and that at the time of borrowing, the first respondent had collected signatures and blank stamp papers and blank sheets which have been fabricated by the first respondent.

18. The second petitioner also admitted that a sum of Rs.3,50,000 was paid to the second respondent by the 1st respondent and admitted to the execution of Ex-R/4 Possession Agreement dated

19. During cross examination second petitioner also admitted that the signatures on Ex.R3 MOU and Ex. R2 promissory note was his signature but denied to its content as they were fabricated and misused by the first respondent using documents signed in blank. During the interregnum the second petitioner settled the above property in favour of the first petitioner who is his wife.

20. The Rent Controller accepted the case of the petitioner's and ordered eviction of the 1st respondent by an order dated 17.11.2012 in R.C.O.P.No. 2363 of 2009.

21. The said order was reversed by the Rent Control Appellate Court. It is this order which is subject matter of the present Civil Revision Petition filed under Section 25 of the Act.

22. I have heard the arguments advanced by the counsel for the petitioners and the 1st respondent written submissions were also filed.

23. I have perused the records and the case laws filed. I have also

perused the order passed by the Rent Controller in R.C.O.P.No.2363 of 2009 and the impugned order of the Rent Control Appellate Court.

24. The second respondent in this Revision Petition who was the first respondent in said R.C.O.P has remained absent all through the course of the litigation perhaps on account of the fact that he is no longer in possession of the leased property.

25. As per the decision of the Hon'ble Supreme Court in **Hindustan Petroleum Corpn. Ltd. vs Dilbahar Singh, (2014) 9 SCC 78** it was held that *"the Tamil Nadu Rent Control Act provides that the High Court on the application of an aggrieved person may call for and examine the record of the appellate authority to satisfy itself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed therein. The High Court in exercise of its revisional power may modify, annul or reverse the order or decision impugned before it or remit the matter for reconsideration. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappraisal of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional*

jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law.”

26. It further held that, “a finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

27. In **Sri Raja Lakshmi Dyeing Works vs RangaswamyChettiar**, (1980) 4 SCC 259, it was held that *“the dominant idea conveyed by the incorporation of the words ‘to satisfy itself’ under Section 25 appears to be that the power conferred on the High Court under Section 25 is essentially a power of superintendence. Therefore, despite the wide language employed in Section 25 the High Court quite obviously should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority. The power conferred on the High Court under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act may not be as narrow as the revisional power of the High Court under Section 115 of the Code of Civil Procedure but in the words of Untwalia, J., in **Dattonpant Gopalvarao Devakate vs Vithalrao Maruthirao Janagaval** [**Dattonpant Gopalvarao Devakate vs Vithalrao Maruthirao Janagaval**, (1975) 2 SCC 246] , ‘it is not wide enough to make the High Court a second court of first appeal.’”*

28. Thus, the powers of this court though wider than the power under Section 115 of the CPC is yet narrower than the power of an appellate Court.

29. In the present case, the Rent Controller has concluded that the first respondent has not shown any document to justify possession and was

therefore liable to be evicted.

30. The Rent Controller has also found that though Exhibit R.3 MOU is dated 09.08.2002 is on a the stamp paper which appears to have been purchased on 08.08.2002 but bears a seal of the year 1999 and had been altered.

31. In impugned order, the Appellate Court has concluded that the disputed questions raised in the R.C.O.P are beyond the scope of the tenancy law and therefore allowed the appeal filed by the first respondent herein.

32. It was been concluded that the transactions between the second petitioner and the respondent's are beyond the scope of the tenancy laws and therefore cannot be agitated under the provisions of the Act unless possession of the 1st respondent was in the capacity of a sub-tenant.

33. During the pendency of the proceedings the second petitioner has transferred the ownership of the premises to the first petitioner. On the date of this Revision Petition first petitioner is the owner of the aforesaid premises.

34. The first respondent has not taken any steps to exercise rights if any as per Ex. R3 MOU dated 09.08.2002. Instead, he is satisfied as long as he is in possession of the property.

35. Under normal circumstances, the first respondent as an agreement holder would have rushed to civil court to establish his right in terms of Ex- R3 MOU dated 09.08.2002. However, the first respondent has not chosen to exercise his rights in terms of the Ex.R3 MOU dated 09.08.2002.

36. However, Ex- R3 MOU dated 09.08.2002 is neither stamped properly nor is registered. It has also not been witnessed. Perhaps it is for this reason he has not chosen to exercise any rights.

37. Ex- R3 MOU dated 09.08.2002 has been written on a Rupees Ten Stamp paper. It bears an official seal of the year 1999. It indicates the year of its printing as 1999 and appears to have been purchased in the name of the 2nd petitioner.

38. On the alleged date of execution of Ex-Ex.P.2/4 R3 MOU on 09.08.2002, the two years lease was in force as per ExP2/4 Possession Agreement dated 19.5.2001. Therefore, the said lease would have expired only on 18.2.2003. At the expiry of the lease period, the lessor was required to

give a notice of 90 days to the Lessee and pay a sum of Rs.3,50,000/- to the lessee which taking re-possession of the leased property.

39. At the expiry of the lease period, the 2nd petitioner was to return a sum of Rs.3,50,000/- to the 2nd respondent. It has been specifically agreed in Ex.R2/4 Possession Agreement that the second respondent lessee had no authority to sublet entire or any portion of the flat to any third party on any account.

40. Therefore, question of recording pledging of the Possession Agreement Ex- R2/4 in Pro-Note Agreement marked as Ex.-R1 defies logic and shows fabrication of the documents by the respondents. If at all, only 2nd respondent could have pledged the document as it asset in the hands of 2nd respondent and a liability in the hand of 2nd petitioner.

41. If the lease as per Ex- R2/4 Possession Agreement was in force, there would be no question of the petitioner's pledging the same as has been recorded in the document marked as Ex-R1 Pro Note Agreement dated 22.06.2002.

42. The fact that Ex.R3 dated 09.08.2002 records as if the MOU the 2nd petitioner had mortgaged the property to the 2nd respondent shows that it is contrary to the recital in Ex.R2 Possession Agreement dated 19/05/2001. It cannot be ignored.

43. Thus, it is prima facie it is evident documents have been fabricated to justify the possession and to non suit the petitioner. At this stage it may be apt to refer to the decision of the Hon'ble Supreme Court in **Nidhi v. Ram Kripal Sharma**, (2017) 5 SCC 640. The Hon'ble Supreme Court held that, *the legislations made for dealing with such landlord-tenant disputes were pro-tenant as the court tends to bend towards the tenant in order to do justice with the tenant; but in the process of doing justice the court cannot be overzealous and forget its duty towards the landlord also as ultimately, it is the landlord who owns the property and is entitled to possession of the same when he proves his bona fide beyond reasonable doubt as it is in the case before this Court.*"

44. It is quite possible for the second respondent may have pledged Ex.R.2/4 with the first respondent to get money and it is unlikely the 2nd petitioner could have pledged an liability in ExR2/4 dated 19.05.2001. It is for

this reason perhaps this document was marked only by the 1st respondent.

45. The 2nd petitioner has also stated that the second respondent refused to cooperate by stating that he cannot handover possession as the first respondent had paid to him directly the lease amount of Rs.3, 50 lakhs when he found that the first respondent was an possession of the property in 2004.

46. Thus, it is evident that the petitioner had indeed borrowed a sum of Rs.1 lakh from the first respondent and had executed documents in blank stamp papers and blank sheets. These stamp papers and sheets have been filled up by the first respondent perhaps with the active connivance of the second respondent who has conveniently remained absent.

47. The fact that Ex R1- Pro-Note dated 22.06.2012 is not witnessed and is not in the usual format of a Pro Note and is titled as “Pro Note Agreement” and that there are insertion of the first petitioner’s name with blue ballpoint shows that the documents has been filled up and created subsequently, Ex R2/4, Possession Agreement dated 19.05.2001 has been marked as if the said document was pledged by the second petitioner vide per Ex R.3 MOU dated

9.8.2002 and makes no sense as already observed in this order.

48. Further, as per the recital in Ex R.3 MOU dated 9.8.2002, there was a mortgage in favour of the second respondent. Ex R.3 MOU dated 9.8.2002 as mentioned above is under stamped, unregistered and is not witnessed. It is handwritten in blue ink and but bears the signature of the 2nd petitioner in black ink clearly indicating it is not only fabricated and is inadmissible and cannot be relied as an evidence even by way of defence.

49. The deposition of 2nd petitioner extracted in the impugned order has been read in isolation by the Rent Control Appellate Court. As per the above deposition , the second petitioner has clearly stated that in 2004, when the second petitioner went to the second respondent to return the lease amount and to take back the possession of the property, the second respondent stated that he had received the aforesaid amount from the first respondent and therefore he cannot hand over the possession to the second petitioner.

50. In the cross examination held on 22.02.2012, the first respondent has stated that the second petitioner had authorised the possession to him on 14.01.2004 but he had no other documents establish that the second petitioner

had authorised to take possession of the property. He has stated that possession was handed over for staying. Relevant portion of the deposition reads as under:-

“k.rh.M/Mh;3 go t';f;F nyhd; mbkhd;l; fl;ltpy;iy. kh.rh.M.Mh;3 kDjhuh; vGjp bfhLf;fpy;iy. ehDk; Kjy; v.k.nrh;e;J NH;r;rpahf ,e;j Mtzj;ij cUthf;fp Kjy; v.k/ Kjy; v.k.brhj;jpd; RthjPd;ij vLj;njd; vd;W brhd;dhy; rhpay;y. 2004y; kD brhj;jpw;F brd;w gpwF vd;dhy; 2k; kDjhuii gh;f;f Koatpy;iy.” The 1st respondent was the 2nd respondent in RCOP No.2363 of 2009.”

51. If aforesaid version of the 1st respondent is to be accepted it again defies logic as to why and MOU dated 9.8.2002 vide Ex-R3 would have been signed and why there is a delay in taking possession on 14.1.2004. Therefore, the reliance placed on the deposition of first respondent to non suit the petitioner by stating that the disputed questions of fact which are beyond the scope of the tenancy law requires interference. Clearly such observations are refusal to do substantial justice and has resulted in mis carriage of justice.

52. The second petitioner has clearly stated that he had not authorised the second respondent to receive any amount from the first respondent. The second petitioner has also stated that the first respondent may have exercised force to get possession of the property.

53. The second petitioner has also during cross examination stated that he had given a police complaint but was advised to approach the court and therefore filed above RCOP to evict the first respondent who trespassed into the property.

54. The fact that the first respondent has not exercised any legal right over the property based on the purported rights contained in Ex R.3 MOU dated 9.8.2002 shows that the Rent Control Appellate Court was not justified in solely relying on the said document. In any event, it appears that the said document is inadmissible in evidence. The Rent Control Appellate Court has allowed illegality to be perpetrated on the strength of an inadmissible document namely Ex.R3 MOU dated 09.08.2002 while allowing the Appeal filed by the 1st respondent.

55. In any event, there is also no other evidence to show that in furtherance of Ex.R3 MOU dated 09.08.2002, the 1st respondent has paid the balance sale consideration of Rs.6,00,000/- to the 2nd petitioner.

56. In my view, the defence put up the 1st respondent on the strength of Ex R.3 MOU dated 9.8.2002 is feeble and fraught with contradiction. The

possession being illegal without authority of the petitioners, it has to be construed that the 1st respondent was a sub tenant having paid the lease amount directly to the 2nd respondent. Therefore, the first respondent cannot rely on the said document. The fact that the first respondent has not chosen to exercise his rights in terms of the Ex.R3 MOU dated 09.08.2002 shows he is satisfied squatting on the property without any legal basis. There, is subletting and trespassing and large scale collusion by the respondents and therefore reason given by the Rent Control Appellate Court to allow and R.C.A.No.718 of 2012 deserves to be interfered.

57. In view of the above observation, the Civil Revision Petition is allowed. The impugned order passed by the Rent Control Appellate Authority (VIII Judge, Small Causes Court) Chennai in RCA.No.718 of 2012 dated 03.11.2003 is set aside with consequential relief. No cost.

11.04.2019

Index :Yes/No

Internet :Yes/No

Speaking Order : Yes/No
jen/kkd

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C.SARAVANAN,J.
kkd

To

1. VIII Judge, Small Causes Court,
Chennai.
2. XIII Judge, Small Causes Court
Chennai .
- 3.The Section Officer,
V.R.Section, High Court, Madras.

Pre-delivery order in
CRP (NPD) No.223 of 2014



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