

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Orders : 17.09.2019	Date of Pronouncing Orders : 16.10.2019
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CORAM

The Hon'ble Mr.Justice R.PONGIAPPAN

C.R.P.(NPD) No.4389 of 2014
and M.P.No.1 of 2014

M/s.P.K.Power Appliances Pvt. Ltd.,
Rep. By its Managing Director,
P.K.Balamuruges,
Flat No.10, Door No.99 Old No.55
Nungambakkam High Road,
Chennai-600 324. ..Petitioner/Tenant

Vs.

R.Nirmala ..Respondent/Landlady

Prayer:- Civil Revision Petition filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as amended by Act 23 of 1973 and Act 1 of 1980 to set aside the fair and final order dated 25.08.2014 made in R.C.A.No.774 of 2008, on the file of the Appellate Authority (IX Court of Small Causes, Chennai) in confirming the fair and final order dated 30.09.2008 made in R.C.O.P.No.959 of 2007 on the file of the Rent Controller (XVI Court of Small Causes, Chennai).

For Petitioner : Mr.T.Murugamanickam
Senior Counsel for
M/s. Zeenath Begum
For Respondent : Mr.K.Sukumaran

O R D E R

Aggrieved over the concurrent findings made in R.C.O.P.No.959 of 2007 on the file of the Rent Controller (XVI Court of Small Causes, Chennai) and in R.C.A.No.774 of 2008 on the file of the Rent Control Appellate Authority (IX Court of Small Causes, Chennai), the petitioner who is the tenant has filed this Civil Revision Petition as against the orders passed in the above two proceedings.

2. The petitioner herein is the tenant and the respondent in the Civil Revision Petition is the landlady before the learned Rent Controller. For the sake of convenience, the

petitioner herein is hereinafter called as 'tenant' and the respondent is called as 'landlady'.

3. Before the learned Rent Controller, the landlady filed an application under Section 10(2) (vii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as amended by Act 23 of 1973 and Act 1 of 1980, for eviction.

4. Brief averments of the R.C.O.P.No.959 of 2007, is as follows:-

i) The landlady is an absolute owner of the petition mentioned property and she has purchased the same from one Mr.V.Srinivasan and 5 others, on 09.03.2007 under Document No.243 of 2007. Ever since from the date of purchase, she is the absolute owner of the petition mentioned property. As such, she is entitled to collect rent from the respondent, who was inducted into as a tenant by the vendors of the landlady. Immediately, after the purchase, the landlady sent a lawyer's notice to the tenant, calling upon him to attorn the tenancy in her favour, and on such attornment, to pay the monthly rent of Rs.6,500/- from the month of March 2007, on 02.04.2007. After receipt of the said notice sent by the landlady, the tenant had sent a reply notice, dated 02.04.2007, wherein, the tenant contended that there was a settlement between him and the vendors of the landlady.

ii) As per the aforesaid settlement, the vendor of the landlady and five others offered to sell the petition mentioned premises to the tenant at the rate of Rs.15,50,000/- as agreed between them. Towards the said agreement, the tenant paid a sum of Rs.51,000/- as part of the sale consideration and that, the said agreement is only an oral agreement and the tenant, as an agreement holder, is in lawful possession and enjoyment of the petition premises and not as a tenant, and thus, the respondent would deny the contention of the landlady that she is the owner of the said petition premises. The denial of title of the landlady is not a bona fide one. Further, the reply sent by the tenant would categorically constitute the denial of title of the landlady, wherein, the respondent/tenant has renounced the character of the tenant and set up the title, in consistent with the relationship of landlady and tenant. In view of the denial of title, there is no relationship of 'landlord' and 'tenant'. Hence, the tenant is liable to be evicted on the ground of denial of title.

iii) Denying the averments made by the landlady, the tenant filed a counter statement, stating that they are running a Company in the petition premises for more than 17 years and

that, they had entered in a sale agreement on 02.10.2006 with Srinivasan, who is a Joint Owner and General Power of Attorney as per the Deed of General Power of attorney, vide Doc.No.303 of 2002 dated 28.05.2002 executed by the other legal heirs of Varadha Iyengar. The tenant paid a sum of Rs.51,000/- by way of drawing a cheque in favour of Srinivasan with the HDFC Bank, which was also credited into his account. But, in the mean time, the landlady had illegally purchased the petition mentioned property and demanded them(tenant) to pay the rent to her. Therefore, according to the tenant, the petition filed by the landlady is liable for dismissal.

5. Before the learned Rent Controller, on the side of the landlady, one Mr.Ravichandran, her husband was examined as PW1 and Ex.P1 to Ex.P2 were marked. On the side of the tenant, the tenant examined himself as R.W.1 and Ex.R1 to Ex.R3 were marked.

6. Having considered all the materials placed before him, the learned Rent Controller allowed the Eviction Petition filed in R.C.O.P.No.959 of 2007 and passed an order of eviction in favour of the landlady. Aggrieved over the same, the tenant filed an appeal before the learned Rent Control Appellate Authority. The learned Rent Control Appellate Authority after an elaborate argument, concluded the Appeal in favour of the landlady by confirming findings arrived at by the learned Rent Controller. Aggrieved over the said concurrent findings, the tenant is before this Court with this Civil Revision Petition.

7. When the Civil Revision Petition was taken up for hearing, the learned Senior Counsel appearing on behalf of the tenant is present and made a submission that, even though, it was the contention before the learned Rent Controller that the landlady purchased the petition mentioned property on 09.03.2007, to prove the same, she has not produced the copy of the sale deed so far. On the other hand, the tenant entered into the sale agreement on 02.10.2006 with one Srinivasan, who is one of the joint owners and also General Power of Attorney to the legal heirs of Varadha Iyengar. The said Srinivasan received a sum of Rs.51,000/- as an advance sale amount from the tenant by way of cheque drawn in his favour with the HDFC Bank bearing No.42812 which was also credited into the Bank. But, in the meantime, the landlay purchased the petition mentioned property illegally. Further, before the filing of the Eviction Petition by the landlady, the original owner Srinivasan filed another RCOP and the same was dismissed. In the Encumbrance Certificate received from the Sub-Registrar Office, it is disclosed that the name of the landlady is not reflected, and thereby, it cannot be

said that the landlady is the purchaser of the petition property. More than that, the landlady has not entered into the box, and therefore, the denial of title made by the tenant is bona fide one.

8. Further, the learned Senior Counsel has added that the receipt issued by the Corporation of Chennai, dated 23.06.2019 has also disclosed the fact that the petition mentioned property is in the name of Varadha Iyengar, who is the vendor of the landlady. Hence, since the sale is completed on 09.03.2007, the name of the landlady has to be necessarily entered into the property register, but the same was not done. Therefore, in terms of Section 116 of the Indian Evidence Act, if the landlady claims that she has purchased the petition mentioned property, onus is cast upon her to prove the same. But, she has not proved the title before the learned Rent Controller and the Courts below without appreciating the said aspect, decided the issue in favour of landlady and passed a concurrent findings, in which, order of eviction is passed.

9. Per contra, the learned counsel appearing for the respondent/landlady would contend that in the counter statement filed by the tenant before the learned Rent controller, it was stated that the landlady purchased the petition mentioned property. The said averments establishes the fact that the tenant admitted the sale alleged by the landlady. In other words, the oral agreement stated to have made with the Power of Attorney of the vendor of the landlady is not substantiated by the tenant by producing the relevant evidence. According to the learned counsel, the concurrent findings made by the Courts below is found correct.

10. The submissions made by the learned counsel on either side are considered. Before entering into the aspect with regard to the merits of the case, since the Eviction Petition filed by the landlady is on the ground of denial of title, it would be appropriate to refer to a decision of the Hon'ble Supreme Court, in the case of J.J.LAL PVT. LTD. and others vs M.R.Murali and another (2003)3 Supreme Court Cases 98, wherein, in respect to the aspect of denial of title, it is held as follows:-

18. What amounts to denial of title, and whether such denial is bona fide or not, are the questions to be determined in the facts and circumstances of each case. As a general rule the vulnerability of denial of title by the tenant shall be tested by

reference to the rule of estoppel contained in Section 116 of the Evidence Act which estops the tenant from denying the title of the landlord at the commencement of the tenancy and the estoppel continues to operate so long as the tenant does not surrender possession over the tenancy premises to the landlord who inducted him in possession. The tenant is not estopped from denying the title of the landlord if it comes to an end subsequent to the creation of the tenancy nor is he estopped from questioning the derivative title of a transferee of his landlord. However, the rule of estoppel contained in Section 116 of the Evidence Act is not exhaustive. To operate against the tenant as providing a ground for eviction under Section 10 of the Act, a mere denial of the title of the landlord is not enough; such denial has to be "Not bona fide" would mean absence of good faith or non-genuineness of the tenant's plea. If denial of title by the tenant is an outcome of good faith or honesty or sincerity, and is intended only to project the facts without any intention of causing any harm to the landlord it may not be "not bona fide". Therefore to answer the question whether an assertion of denial of the landlord's title by the tenant was bona fide or not, all the surrounding circumstances under which the assertion was made shall have to be seen."

11. Hence, the ratio laid down in the above referred judgment is for claiming right under Section 10 of the Indian Evidence Act. Mere denial of the title of the landlady is not enough; such denial has to be "bona fide one" when the landlady is eligible to get the order of eviction. In this regard, at the time of trial proceedings, on the side of tenant, three documents were marked as Ex.R1 to R3. The first one is reply notice dated 23.10.2006 which was sent to the landlady after receiving the lawyer's notice on 29.03.2007. The 2nd document is the Encumbrance certificate to the petition mentioned premises. The 3rd one is courier receipt for the payment of rents. It is apparent that the said documents did not prove that the tenant entered into the sale agreement with the Power of Attorney of the original owner, who sells the property to the landlady.

12. It is also true that, on the side of landlady, the sale deed dated 09.03.2007 has not been exhibited to prove her bonafide. Notwithstanding the same, since the tenant admitted that he is inducted as a tenant in the petition premises by the erstwhile owner Srinivasan, he is duty bound to tender the monthly rent to the said Srinivasan. Immediately, after receiving the notice/Ex.P.1, it is an axiomatic that the petition property is purchased by the some other party, he should attorn the tenancy of property in favour of the subsequent purchaser. Atleast, he can ask the landlady to produce the sale deed and after ascertaining the title, he is bound to pay the monthly rent to the subsequent purchaser. The above acts is not completed by the tenant. Hence, the said attitude evidences that the tenant, without any sufficient cause, after taking a flimsy reasons, denied the title of the landlady.

13. After admitting the sale made in favour of landlady, in the counter statement, the non payment of monthly rent would clearly establish the fact that the tenant had not denied the title of respondent with bona fide intention. In terms of Section 10 of Tamil Nadu Buildings (Lease and Rent Control) Act,1960, it is clear that, a mere denial of title of the landlord (landlady in this case) is not enough; such denial has to be "Not bona fide" would mean the absence of good faith or non-genuineness of the tenant's plea. In this case, after admitting his possession in the petition premises as a tenant under the erstwhile owner, he is estopped from denying the title of the subsequent purchaser.

14. It is a peculiar case, where, the tenant himself set up the title as his own, without producing any relevant document to prove the payment of advance amount of Rs.51,000/- as alleged. But the fact remains that the landlady has come forward with the specific case that the tenant has not paid rent after receiving the notice from her by saying that he(tenant) is the agreement holder with the erstwhile owner of the petition premises, without collecting any other details in respect of the transfer of title, and he has not paid any rent. In this connection, it is relevant and useful to refer the judgment of this Court in the case of " R.Sambandan alias Babu Vs. S.Krishnaveni, reported in 2001 (2) CTC 321, wherein, this Court already has ruled out the position of law as follows:-

"16. The fact remains that the respondent herein has come forward with a specific case that the revision petitioner has not paid rent for the demised premises

with effect from 1.11.1989 till January, 1991. The revision petitioner admits that he has not paid rent for the abovesaid period on the ground that he is not liable to pay rent as there is no relationship of landlord and tenant between the respondent herein and the revision petitioner. The Courts below have concurrently held that there is relationship of landlord and tenant between the respondent and the revision petitioner and that the revision petitioner has committed wilful default in payment of rent. This Court also has concurred with the findings of the Courts below that there is relationship of landlord and tenant between the respondent herein and the revision petitioner. Therefore, the revision petitioner is bound to pay rent at the rate of Rs.210 per month for the premises under his occupation, to the respondent herein. The conduct of the revision petitioner in not paying the rent to the respondent for the occupation of the premises owned by the respondent herein by denying the title of the respondent to the said premises shows the supine indifference on the part of the revision petitioner herein in payment of rent.

17. The Apex Court, in *S. Thangappan v. P. Padmavathay*, 2000 (1) L.W782, has held that if the denial of landlord's title by the tenant is not bonafide the default in payment of rent to the landlord by the tenant is wilful. The principle laid down in the above case squarely applies to the facts and circumstances of the case on hand and, therefore, the nonpayment of rent by the revision petitioner for the period mentioned above will certainly amount to wilful default."

15. Therefore, all the seriatim circumstances, under which, the case set up by the tenant in the Civil Revision Petition has not established the fact that he has not denied the title with bona fide intention. The Courts below rightly arrived the conclusion that the tenant has no locus standi to deny the title of the landlady. Therefore, the findings arrived at between the Courts below does not warrant any interference in this Civil Revision Petition.

16. In the result, this Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1) The IX Judge,
Small Causes Court, Chennai.
- 2) The XVI Judge,
Small Causes Court, Chennai.

+1cc to M/s.Zeenath Begum, Advocate SR.NO..86439

+1 cc to M/s.K.Sukumaran,Advocate Sr.No. 86336

AKM/03.01.2020/8P-4C /
AKM/31.03.21

Orders passed in
C.R.P. (NPD) No.4389 of 2014

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