

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE. RMT TEEKARAMAN

CRP No.4777 of 2014 and

M.P.No.1 of 2014

1. Asuntha

2. B.K.Nirmala Rani

3. Kalpagavadana

4. Ananthi

... Petitioners

Vs.

Nishar Khan

... Respondent

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18/1960 as amended Act 1 /1980 against the decree and judgment dated 05.07.2014 passed in RCA No.21 of 2012 on the file of the Subordinate Judge, Rent Control Appellate Authority of the Nilgiris at Uthagamandalam reversing the decree and judgment dated 11.10.2012 passed in RCOP No.45 of 2008 by the Rent Controller, Uthagamandalam.

For Revision Petitioner

: Ms. R.Gouri

For Respondents

: Mr.V.Rajesh

JUDGMENT

The Civil Revision Petitioners are the tenants and they have filed the present appeal challenging the decree and judgment passed in RCA No.21 of 20012 by the Subordinate Judge, Rent Control Appellate Authority of the Nilgiris at Uthagamandalam reversing the decree and judgment passed in RCOP No.45 of 2008 by the Rent Controller, Udhagamandalam.

2. The respondent/landlord filed the above said Rent control Original Petition seeking eviction of the tenanted portion under Section 10(3)(a)(i) of the Tamilnadu Buildings (Lease and Rent Control) Act for the owners occupation. The petition mentioned property consists of ground and first floor portion. The ground floor portion was occupied by the petitioners herein as tenants under the original owner for non residential purpose and the first floor portion was occupied by the original owner for the residential purpose. The above said Rent Control Original Petition was filed on the ground that the land and building consists of both ground and first floor were originally owned by one Sunaitha, who purchased the same in the year 2011 from one Alimabee. The respondent herein (original tenant) was inducted in as tenant under the original owner (Sunaitha). Thereafter, from the above said Sunaitha, the respondent herein purchased both the residential and non-residential portion through a sale deed dated 07.07.2008. He also issued a legal notice dated 10.07.2008 along with the original owner under Ex.P3, whereby,

the tenancy was attained infavour of the purchaser namely, the respondent herein and subsequently, he filed the petition in RCOP No.45 of 2008 on the ground of owners occupation, since he is residing in the tenanted house and not owned any other property in the city, other than the suit property.

3. During the pendency of the RCOP, the original tenant Mrs.Rosalucina (first respondent in the RCOP petition) died and hence, her legal heirs were added as the respondents 2 to 5 and they are the revision petitioners herein.

4. In the Trial Court, on the side of the petitioner/landlord, the petitioner himself was examined as PW1 and Ex.P1 to Ex.P5 were marked. On the side of the respondents/tenants, the 3rd respondent was examined as RW1 and Ex.R1 to Ex.R4 were marked.

5. After analysing the evidence on record, the learned Rent Controller dismissed the RCOP petition on the ground that the title of the respondent herein/landlord is disputed and he has not proved his case in the manner known to law. Aggrieved over the same the respondent herein/landlord had filed an appeal in RCA No.21 of 2012 before the Subordinate Judge, Rent Control Appellate Authority of Nilgiris and Uthagamandalam.

6. The learned first appellate Judge allowed the appeal on the ground that the jural relationship of landlord-tenant was proved in the manner known to law and the requirement of the landlord for his own occupation is bonafide and ordered for eviction. Against which, the civil revision petition has been filed by the tenants.

7. The points to be considered in this civil revision petition are

- (i) Whether there is a jural relationship between the petitioners and the respondent as tenants and landlord?
- (ii) Whether the alleged plea of the landlord regarding owner's occupation is bonafide or not?

8. The learned counsel for the revision petitioners/tenants contended that the respondent/landlord has not established the relationship of the landlord and tenant and during the life time of their mother and the petitioners have paid the entire property tax and other assessment taxes in respect of the petition mentioned premises and hence seeks to set aside the order of eviction.

9. The learned counsel appearing for the respondent/landlord made his submissions in support of the order of the first appellate court.

10. The evidence of PW1 (the respondent herein/landlord) reveals that he was a tenant under the original owner (Sunaitha) in respect of the ground floor for non residential purpose and the petition mentioned property is a residential portion under the occupation of the present revision petitioners. The legal notice Ex.P3 issued by the landlord (respondent herein) shows that he does not own any other residential properties in the city other than the petition mentioned property and he is residing in the tenanted premises. Accordingly, the plea of the landlord that the petition mentioned property is required for his own occupation appears to be bonafide and similarly, the findings rendered by the first appellate court cannot be found fault with. Accordingly the requirement of the property for owners own occupation is bonafide one and hence the point No.2 is answered infavour of the first respondent (landlod).

11. As far as the point No.1 regarding the jural relationship of landlord-tenant between the parties is concerned, this court finds that the RW1, who is the daughter of the original tenant (since deceased), in her cross examination had accepted the receipt of the Ex.P3 legal notice by her mother, issued by the previous owner along with the present owner (respondent herein), intimating the tenants about the sale of the petition mentioned property along with the attornment of the tenancy infavour of the respondent herein. The said notice was duly served upon the original tenant (the mother of the civil revision

petitioners) vide postal receipt Ex.P4 and the postal acknowledgment card Ex.P5 bears the signature of the original tenant (since deceased). In view of the answer elicited by the RW1 in her cross examination, this court has no hesitation to hold that when the legal notice (Ex.P3) was specifically acknowledged by the original tenant, none other than the mother of the present revision petitioners 2 to 5, the factum of jural relationship of landlord-tenants between the respondent and the petitioners herein is established, in the absence of any rebuttal evidence or any reply notice thereto. Further more, after the death of their mother, during the pendency of the RCOP proceedings itself, the revision petitioners herein were let in possession of the property as tenants. Hence, this court is of the considered view that the respondent has let in vital evidence to prove the jural relationship of landlord-tenant between the parties and the point is answered in favour of the respondent.

12. Accordingly, the findings recorded by the first appellate does not suffer from any illegality or irregularity and the same does not warrant any interference by this court

13. In the result,

(i) The civil revision petition is dismissed. No costs. The connected miscellaneous petition is closed.

(ii) The decree and judgment dated 05.07.2014 passed in RCA No.21 of 2012 by the learned Subordinate Judge, Rent Control Appellate Authority of the Nilgiris at Uthagamandalam is upheld.

04.12.2019

Index:Yes/No
Internet:Yes/No
Speaking/non Speaking order
mst

To

1. The Rent Controller,
Uthagamandalam.
2. The learned Subordinate Judge,
Rent Control Appellate Authority,
Nilgiris at Uthagamandalam

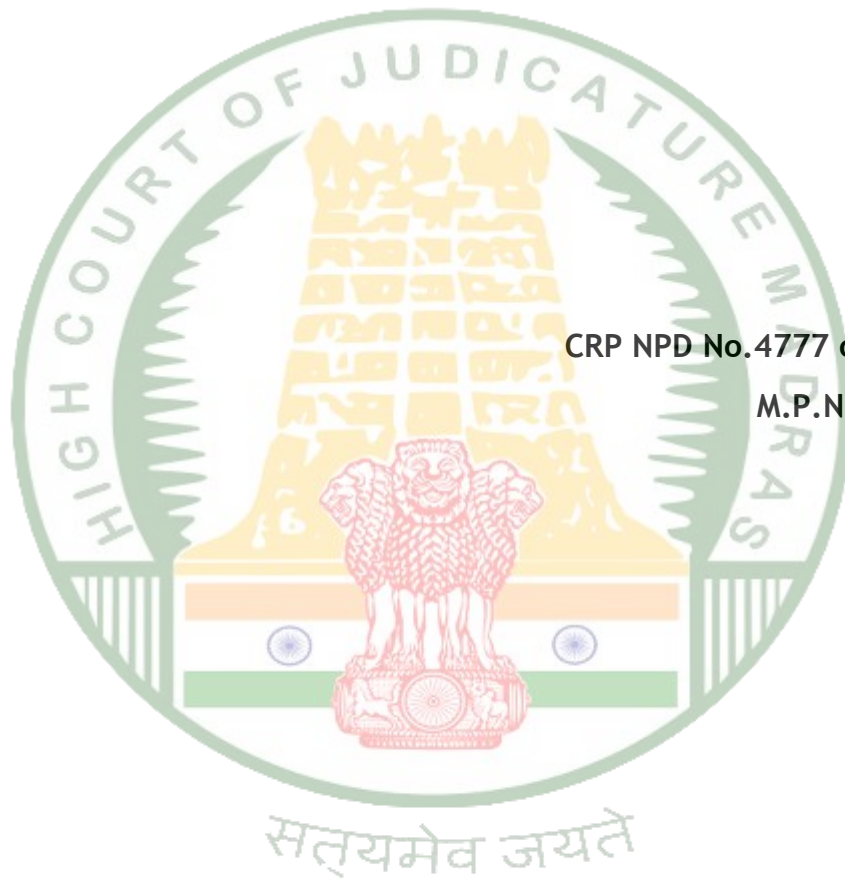


WEB COPY

CRP NPD No.4777 of 2014

RMT. TEEKARAMAN, J.

mst



**CRP NPD No.4777 of 2014 and
M.P.No.1 of 2014**

WEB COPY

04.12.2019