

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.03.2019

Delivered on : 1206.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.4725 of 2017
and
C.M.P.No.22255 of 2017

H. Shyam Sundar
Proprietor,
M/s.Siddarth Electricals,
No.94/47, Mayor Ramanathan Street,
Chetpet,
Chennai -31.

...Appellant/Petitioner

Vs

1.S. Shyam Kumar

सत्यमेव जयते ...Respondent/Respondent

2.Maharaja Bedmart
rep. by M/s.Azeema,
W/O.K.Nizzan,
No.94/47, Mayor Ramanathan Street,
Chetpet,
Chennai-31.

...Respondent/Respondent

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, against the Judgment and Decree order of the learned IX Judge, Court of Small Causes, Chennai, dated 28.08.2017, in R.C.A.No.642 of 2014, confirming the order and decretal order of the learned XVI Judge, Court of Small Causes, Chennai, in R.C.O.P.No.319 of 2012 dated 12.09.2014.

For Petitioner : Mr.M. Mahendra Kumar

For Respondents : Mr.S.K. Chandrakumar

ORDER

The tenant is the revision petitioner before this Court. The Civil Revision Petition arises out of a proceeding for eviction on the ground of additional accommodation. The parties are referred to in the same litigative status as in the Rent Control Petition.

2.The eviction proceedings is in respect of a shop portion measuring 200 sq.ft. facing the street and the godown portion measuring 325 sq.ft. in the rear portion of the ground floor in which the revision petitioner who is the first respondent is in occupation and an extent of 80 sq.ft. facing the street in the ground floor which is under the tenancy of the 2nd respondent herein, who is the 2nd respondent in the RCOP proceedings. These portions are within the premises bearing Door No.94, (Old No.47), Mayor Ramanathan Salai, Spurtank Road, Chetpet, Chennai-600 031.

Landlord's Case:

3.The landlord claims a right to the suit property on the basis of a registered Sale Deed dated 12.11.2007, in and by which he had purchased the entire property situate at Door No.94, (Old No.47), Spurtank Road, Mayor Ramanathan Salai, Chetpet, Chennai-600 031, consisting of 1000 sq.ft. in the

ground floor and 1000 sq.ft in the first floor. The landlord has filed a petition for eviction on the ground of additional accommodation stating that his father is engaged in the business of Textiles in the name and style of Mohan Stores in a small portion in the ground floor of the above premises. The landlord would contend that the respondents had been inducted as tenants under the original owner and that the 1st respondent was paying a monthly rent of Rs.2,550/- and the 2nd respondent was paying a rent of Rs.1,660/- per month. Since the petitioner's father has expanded his business he had requested the tenants to vacate and hand over vacant possession of the demised premises so that his father would have additional space for running his business. The respondents initially requested four years time to vacate the premises, however, contrary to the undertaking, the tenants have reneged on their promise. He would plead that unless the respondents are vacated and vacant possession handed over to the landlord, his father's business would suffer since he is now unable to run his expanded business

in a small area measuring 80 sq.ft. The petitioner's father is unable to accommodate a large number of customers since the shop is very small. If the tenants vacate the premises in their possession, the landlord will be able to annexe this portion to his existing shop by reason of which is space crunch will be resolved. However, if the tenants do not vacate the premises the relative hardship that would be caused to him, would be immense. He therefore sought for eviction on the ground of additional accommodation.

1st Respondent's Contention:

4.The 2nd respondent remained *ex parte* and it was only the 1st respondent who is contesting the case.The 1st respondent has filed a detailed counter *inter alia* denying the claim of the landlord and raising the following defences:

- (a)The land belongs to the Temple and the petitioner had only purchased a leasehold right and therefore, the eviction petition was not maintainable.

- (b)The petitioner and his father owned a commercial complex nearby consisting of several shops in the ground floor and the first floor and the same have been let out to several persons which clearly proves the malafides of the petitioner.
- (c)The petitioner's father had taken on lease the property 40 years back from the original owner and he is continuing to do the very same business and therefore, the contention that the business has expanded is false.
- (d)The petition lacks bonafides since the only object of the petitioner is to get a higher rent, which is evident from the fact that the petitioner had filed R.C.O.P.No.165 of 2012 on the file of the learned XIV Judge, Court of Small Causes, Chennai, for fixing a fair rent of Rs.31,095/- which was ultimately not proceeded with.
- (e)The 1st respondent would contend that the relative hardship that he would face in the event of eviction far outweighed the relative hardship that the petitioner would suffer. He would contend that he had carved a niche for

himself in the electrical business and his customers include Government Offices, Educational Institutions, House Complexes, etc., and it is the petition premises that is his established place of business and with his turnover increasing any move to evict him at this juncture would result in a heavy loss to him.

Rent Controller:

5.The 2nd respondent had remained *ex parte* and an *ex parte* order of eviction was passed against him. The 1st respondent is the only contesting respondent. The petitioner had examined his father as P.W.1 and had marked Ex.P.1 to Ex.P.23. On the side of the 1st respondent, the 1st respondent had examined himself as R.W.1 and marked exhibits Ex.R.1 to Ex.R.10. The learned Rent Controller, after analysing both the oral and documentary evidence, came to a conclusion that the petitioner was entitled to an order of eviction on the ground of additional accommodation, as the premises was very much

required for accommodating the business that his father is carrying on in one portion of the premises.

Appellate Court:

6.The 1st respondent had challenged the eviction order by filing an appeal in R.C.A.No.642 of 2014 on the file of the learned IX Judge, Court of Small Causes, Chennai. The learned Appellate Judge also concurred with the findings of the learned Rent Controller and dismissed the appeal.

7.It is challenging this concurrent order of eviction that the revision petitioner is before this Court.

Submissions:

8.Mr.M. Mahendra Kumar, learned counsel appearing for the 1st respondent had made the following submissions:

- (a)The very petition was not maintainable since the eviction petition was filed against two different tenants in respect of

two different shop portions and therefore, a single petition for eviction under Section 10(3)(c) of the Act, is not maintainable.

(b)The petition for eviction lacks bonafides since the petitioner and his father are owning a commercial complex just near the petition premises in which there are several shop portions belonging to the petitioner and without moving into that premises, the landlord with an intent to evict the 1st respondent has filed the rent control proceedings.

(c)The plea that the business has expanded, is made only for the purpose of the petition since the petitioner's father has been carrying on the very same volume of business in the very same portion of the petition premises for over 40 years and therefore, the contention that his business has multiplied necessitating a bigger premises is a reason solely created for the purpose of this petition.

(d)The next point which was urged by the 1st respondent's counsel was that the relative hardship which the 1st

respondent would suffer far exceeded the relative hardship of the petitioner as the 1st respondent had established a name for himself in the market and has been operating from the premises for several decades and he has also got a regular clientele which includes Government Offices, Educational Institutions and housing complexes, etc., all of whom associate the 1st respondent's business only with the petition premises and at this juncture if the 1st respondent is evicted from the premises, it would create irreparable loss to the 1st respondent in the form of a drop in business.

(e) The 1st respondent would further argue that the petitioner has not get into the witness box and examined himself, but on the contrary, it was his father who was examined as R.W.1 and therefore, adverse inference has to be drawn against the petitioner.

WEB COPY

9. The learned counsel would further argue that the eviction petition is not maintainable inasmuch as the petitioner is not the

owner of the petition premises. The land belongs to the Temple and therefore, the filing of the eviction petition is without any legal basis and the petitioner did not have the authority to file the eviction petition. Therefore, the 1st respondent prays to set aside the order of the Authorities below and to allow the revision.

10.Per Contra, Mr.S.K. Chandrakumar, learned counsel appearing for the respondents [who had not made oral submissions but had filed a detailed written arguments] would refute the grounds raised by the 1st respondent as follows:

(a)The petition premises is a single door number and the parties are only occupying portions of the same property and no prejudice whatsoever is going to be caused to the tenant on account of this eviction petition. In support of his arguments, the learned counsel would rely on the Judgment of this Court reported in **Janab K.M.A. Abdul Khader and others v. M/s.P.Palanisamy Nadar and sons [(1987) 1 MLJ 430]**. In

the said Judgment, the learned Judge had held that prejudice will not be caused in cases where the premises in question forms part of a single building and is being enjoyed as a single unit, though the tenants may be different. The learned counsel would contend that in the instant case also falls under this category and no prejudice has been caused to the tenants by filing of a single petition seeking additional accommodation. Further, the 2nd respondent had been set *ex parte* and an *ex parte* order has been passed against him which to date has not been set aside.

(b) The learned counsel would counter the argument that the Rent Control Court did not have jurisdiction since the land belongs to a Temple by contending that it is only the land which belongs to the Temple whereas the building was put up by the petitioner's predecessors in title. Further, the rents were being paid by the respondents to the petitioner and prior to him to his predecessor in title. The proceedings for eviction is made only with reference to the building.

(c) Section 2(6) of the Tamil Nadu Buildings (Lease and Rent) Control Act defines a Landlord as follows:

"(6)"landlord" includes the person who is receiving or is entitled: to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant;"

From a reading of the above Section, it is clear that it is not necessary that the petition for eviction has to be filed by the owner of the property, it can be filed by the person, who has leased out the property and to whom the tenant is paying the rents. In the instant case, admittedly, rents are being paid to the petitioner.

(d)The learned counsel would argue that in the instant case, even under Ex.P.22 - Sale Deed, it is clear that what was conveyed was the building along with the lease hold right over the land and the eviction petition is only with reference to the building portion and therefore, the Rent Control Court is vested with the jurisdiction to try the case.

(e)The next point that has been canvassed by the counsel for the petitioner is regarding the non examination of the landlord as a witness and instead examining his father. The learned counsel would argue that the petition premises was required for the business purpose of P.W.1 and therefore, he is the most competent person to adduce evidence about the necessity of the premises for his business and the relative hardship that would be caused to him.

Discussion:

11.The main ground urged in the above rent control proceedings are:

- (a)The petition is not maintainable since the property belongs to the Temple.
- (b)A single eviction petition filed against the two distinct and different tenants who are lessees in respect of different portions is not maintainable; *and*
- (c)The relative hardship caused to the parties.

12.As regards the first issue i.e., with reference to the property belonging to the Temple, it is not the case of the petitioner that the land belongs to him has been the contention of the petitioner that the building has been put up by his predecessor in title and that he had purchased this building and the leasehold right over the land upon which the building is constructed. A perusal of Ex.P.22 – Sale Deed under which the

petitioner purchases the property would clearly demonstrate this fact. The building admittedly does not belong to the Temple and further, the 1st respondent had paid the rents for all these years to the petitioner's vendor and thereafter, to the petitioner. Therefore, the 1st respondent had recognised the petitioner as his landlord and is therefore estopped from contending otherwise.

13. This Court in the Judgment cited by the petitioner and reported in ***Ramdas v. Kaliamoorthy (died) and another [2004 (3) CTC 122]***, following an earlier Judgment had ultimately dismissed the Rent Control Petition filed by the landlord stating that the "building" was exempt from the provisions of the Act since in that case the building belonged to the Trust. In the case of hand, it is only the land and not the building which is owned by the Temple.

WEB COPY

14. The next point for consideration is the filing of the single eviction petition against the two different tenants. From a

reading of the schedule given to the petition as well as Ex.P.22 - Sale Deed it is clearly evident that the respondents are tenants in respect of the portions of a single building belonging to the petitioner.

15. Therefore, applying the ratio of the Judgment reported in **Janab K.M.A. Abdul Khader and others v. M/s.P.Palanisamy Nadar and sons [(1987) 1 MLJ 430]**, the present petition is very much maintainable.

16. As regards the issue of relative hardship, the 1st respondent has not let in any evidence whatsoever to show his relative hardship whereas the petitioner has in very great detail stated in his petition that his father has expanded his business and that the existing premises is inadequate to receive his customers. The petitioner has also filed documents to show the increased business. Therefore, on this score also the revision petitioner has failed to prove his case. It is also to be borne in

mind that the 2nd respondent has suffered an *ex parte* order of eviction.

17.This Court, while sitting in Revision under Section 25 of the Act, cannot re-appreciate or re-assess the evidence and can only interfere with the order passed by the Authorities below, if the same is perverse. I do not find any perversity or infirmity in the order passed by the authorities below. Consequently, the Civil Revision petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.06.2019

Index : Yes/No
Internet : Yes/No
mps

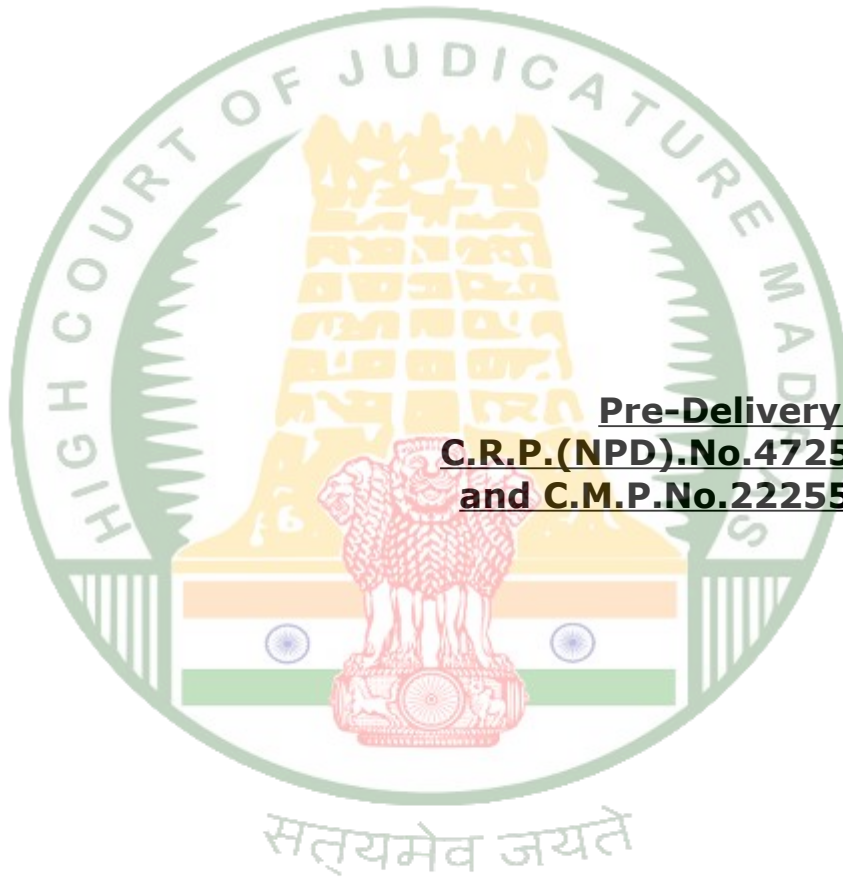
To
1.The IX Judge,
Court of Small Causes,
Chennai.

2.The XVI Judge,
Court of Small Causes,
Chennai.

WEB COPY

P.T. ASHA, J,

mps



Pre-Delivery Order in
C.R.P.(NPD).No.4725 of 2017
and C.M.P.No.22255 of 2017

WEB COPY **12.06.2019**