



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

C.R.P.(NPD)(MD).No.1708 of 2009
M.P.(MD).No.1 of 2009

1.K.R.Subramanian (died)
2.K.S.Surendran
3.K.S.Suriya Prakash

.. Petitioners/Respondent/
Respondent/Landlord

(Petitioners 2 and 3 are bring on record as the legal representatives of the deceased sole petitioner as per order, dated 11.12.2018 in M.P.No.1 of 2013 in C.R.P.No.1708 of 2009)

Vs.

A.R.Janarthanan

.. Respondent/Appellant/
Petitioner/Tenant

Prayer: Civil Revision Petition filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960, to set aside the fair and decreetal order, dated 01.09.2009 passed in R.C.A.No.1 of 2006 on the file of the Principal Sub Court, Madurai, reversing the fair and decreetal order, dated 01.12.2005, passed in I.A.No.160 of 2004 in R.C.O.P.No.65 of 2000 on the file of Additional District Munsif (Rent Controller), Madurai Town.

For Petitioner : Mr.M.Saravanan

For Respondents : Mr.D.Nallathambi

ORDER

This civil revision petition is filed by the landlord challenging the order of Rent Control Appellate Authority in R.C.A.No.1 of 2006 reversing the order passed by the Rent Controller in I.A.No.160 of 2004 in R.C.O.P.No.65 of 2000.

2.The revision petitioner as landlord filed a petition in R.C.O.P.No.65 of 2000 on the file of Rent Controller (Additional District Munsif), Madurai Town, for fixation of fair rent under Section 4 of Tamilnadu Buildings (Lease and Rent Control) Act 1960 in respect of the premises that was let out by the revision petitioner to the respondent who is also the son-in-law of the revision petitioner. The petition for fixation of fair rent was filed in January 2000.

<https://hcservices.ecourts.gov.in/hcservices/>

3.It is the case of the revision petitioner that the



petitioner and his wife Srimathi K.Dhanalakshmiammal leased out a portion of building to the respondent for non residential purpose i.e., for running a watch business. Though it is stated that the tenancy was oral and a sum of Rs.100/- p.m. was collected as rent, a sum of Rs.3,500/- p.m. was claimed by the revision petitioner as fair rent.

4.The petition was contested by the respondent on various grounds. With regard to tenancy, the respondent admitted that he has been paying the rent for the suit building to the revision petitioner before the death of Dahanalakshmi ammam and that he has not committed any wilful default. From the statement of objections filed by the respondent tenant, it is evident that the respondent has admitted the tenancy under the revision petitioner by paying monthly rent.

5.In the statement of objections, it is further stated that the demised property originally belonged to the wife of revision petitioner as she had inherited the property from her parents Nagalammam and Salavaier. It is further stated that since the revision petitioner is the only male member, he was administering all the properties, even during the life time of Nagalammam. It is contended by the respondent that after the death of Nagalammam on 12.10.1985, the property absolutely belonged to Danalakshmiammam, who died on 22.10.1999. It is the further case of the respondent that the property devolved on the legal heirs of the Danalakshmi ammam. Since the respondent's wife is also one of the heirs of Danalakshmiammam, it was contended that the petitioner is no more the land lord as he is not the absolute owner and that the respondent is not liable to pay the rent after the death of Danalakshmiammam on 22.10.1999. The maintainability of the petition by the revision petitioner was also disputed.

6.During the pendency of the revision proceedings, the respondent filed an interlocutory application in I.A.No.160 of 2004 to reject the Rent control Original Petition on the grounds that the petitioner is not the absolute owner of the property and that a suit for partition is pending. Even in the interlocutory application filed by the respondent and in the statement of objections the respondent admitted that the revision petitioner claimed title and right on the basis of the Will stated to have been executed by Nagalammam and Dhanalakshmiammam in favour of the revision petitioner. Stating that the respondent's wife along with their sisters have filed a suit for partition in O.S.No.163 of 2000, the respondent prayed for rejection of the petition as not maintainable. Though the petition was dismissed by the rent controller, learned Rent Controller Appellate Authority allowed the appeal in R.C.A.No.1 of 2006 (Principal Sub Court, Madurai). The Appellate Authority after referring to the preliminary decree passed in O.S.No.163 of 2000, held that the respondent's wife has become a co-owner in respect of her 1/7 share and held that there is a chance for tenant's wife getting the same property towards her



share. After referring to the allotment of share in favour of the respondent's wife, the Appellate Authority found that the petition filed by the co-owner namely the revision petitioner is not maintainable. Aggrieved by the same, the petitioner in the Rent Control Original Petition has filed the above civil revision petition.

7. Learned counsel appearing for the revision petitioner submitted that the revision petitioner is the landlord and that he is entitled to file a petition for fixing fair rent. He also relied upon certain precedents to show that landlord is entitled to collect the fair rent from the date of petition and hence, the petition filed by the revision petitioner for fixation of fair rent is maintainable. He further contended that the respondent is a third party to the family. It was pointed out by the learned counsel for the revision petitioner that the respondent tenant has admitted the relationship. Since the tenant has specifically admitted in the statement of objections that the revision petitioner was collecting rent from him and that he was in-charge of managing the property of his mother-in-law even during her life time, this Court is able to see that the respondent has accepted the payment of rent to the revision petitioner even during the life time of Nagalammal. Learned counsel for the revision petitioner further pointed out that the Nagalammal/ original owner had executed a Will in respect of the demised property and the said Will was also referred to in the judgment of civil court in the suit filed by the respondent's wife and her sisters for partition.

8. Learned counsel submitted that as per the Will, the properties were bequeathed in favour of revision petitioner and his wife and that the grandchildren of Nagalammal including the respondent's wife was given right to get the property only if it is available after the life time of the parents of respondent's wife. Having regard to the contents of the Will and the findings of the trial Court, the counsel appearing for the revision petitioner submitted that the judgment in the partition suit will disclose that the respondent's wife is entitled to a share in the property, only after the life time of revision petitioner in terms of the Will alleged to have been executed by the Nagalammal in favour of the revision petitioner and his wife. Thus the preliminary decree is to the effect that the respondent's wife and other heir are entitled to 1/7 share subject to the Will executed by Nagalammal.

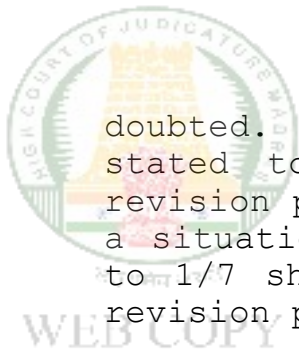
9. Having regard to the background of the case, this Court is able to see that the petition for fixation of fair rent filed by the revision petitioner is maintainable as against the respondent who is a tenant under the revision petitioner. Assuming that the Will executed by Nagalammal is the subject matter of litigation, the right of the revision petitioner to collect rent on behalf of his wife Dhanalakshmiammal cannot be disputed. In such circumstances, the petitioner has every right to file a petition for fixation of fair rent against the respondent who is neither a

co-owner nor has acquired any right in respect of any portion of demised property.

10. Learned counsel appearing for the respondent relied upon the Judgment of the Honourable Supreme Court in **India Umbrella Manufacturing Co. and others Vs. Bhagabandei Agarwalla (Dead) by Lrs. Smt. Savitri Agarwalla and others** reported in **2004 (1) CTC 353**, wherein in paragraph 6 it is held as follows:

"6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See: **Sri Ram Pasricha V. Jagannath and others** 1976 (4) SCC 185; **Dhannalal V. Kalawatibai and others**, 2002(6) SCC 16, Para 25). This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by the both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystalised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law."

11. In Principle the judgment is against the stand taken by the respondent. In the above judgment, the case dealt with by the Honourable Supreme Court arise out of a suit filed for ejectment. That is not an eviction petition covered by a special law. As per Section 2(6) of Tamilnadu Buildings (Lease and Rent Control) Act, land lord includes a person who is receiving or entitled to receive the rent for the building whether on his own account or another or on behalf himself and others as an agent. It is admitted in this case that the petition for fixation of fair rent was filed by the revision petitioner before the suit filed by the respondent's wife for partition. In such circumstances, the revision petitioner falls within the definition of landlord. Even in a case where the petition for fixation of fair rent is filed after the life time of Dhanalakshmi, the petition filed by the revision petitioner has to be assumed as one filed on behalf of himself and other co-owners. It is in the said circumstances, the maintainability of the rent control original petition for fixation of fair rent cannot be



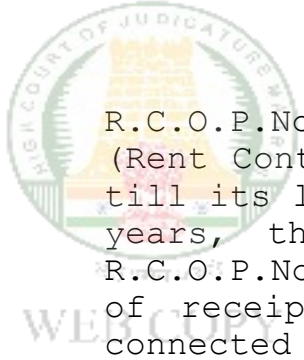
doubted. In the suit filed by the respondent's wife, the Will stated to have been executed by Nagalammal in favour of the revision petitioner and Dhanalakshmiammal has been upheld. In such a situation the respondent's contention that his wife is entitled to 1/7 share in the property and that the petition filed by the revision petitioner is not maintainable cannot be countenanced.

12. Learned counsel for the respondent relied upon observation of the Supreme Court to the effect that the right of co-owners to eject the tenant may come to the end by act of parties or by operation of law. In this case either by act of parties or by operation of law, there is no change of circumstances to hold that the proceedings initiated by the revision petitioner against a stranger for fixation of fair rent comes to an end. For the forgoing reasons, this Court is unable to sustain the order of Rent Control Appellate Authority in R.C.A.No.1/2006 dated 01.09.2009.

13. At this juncture, learned counsel for the respondent submitted that the revision petitioner died recently and his sons alone were brought on record as representatives. It is further stated that the sons of revision petitioners were impleaded only on the basis of a settlement deed executed by the revision petitioner in favour of his sons. Since the Will alleged to have been executed by Nagalammal in favour of the revision petitioner and his wife is in dispute and since the verdict of the Will executed by Nagalammal in favour of revision petitioner's wife is also subject matter of appeal preferred by the wife of respondent as against the judgment and decree in O.S.No.141 of 2005 on the file of the Additional District Court, Madurai, it is further contended by the respondent's counsel that the observations made by this Court in the civil revision petitioner either in the present revision or by allowing the sons of the revision petitioner to come on record to prosecute the civil revision petition shall not come in the way of respondent's wife establishing her right as a co-owner in the manner known to law. The wife of the respondent is not a party and hence there is no impediment for the respondent's wife to agitate her right. After admitting payment of rent to the revision petitioner and recognising the revision petitioner as landlord as per the provisions of the Rent Control Act, it is not open to the respondent to take a view inconsistent to his position accepting the tenancy.

14. It is also pertinent to point out that the Rent Control Act does not contain a provision to reject the petition like Order 7 Rule 11 C.P.C. Any objection can be taken note of the dispose of the petition on merits. This Court is also of the view that the petition filed by the tenant is not maintainable.

15. Accordingly, the revision petition is allowed and the order passed in R.C.A.No.1 of 2006 dated 01.09.2009 on the filed of the Principal Sub Court, Madurai, is set aside. The revision petitioner is entitled to prosecute the Rent Control Original Petition in



R.C.O.P.No.65 of 2000 on the file of Additional District Munsif (Rent Controller), Madurai Town, for fixation of fair rent further till its logical end. Since the matter is pending for more than 10 years, the learned Rent Controller is directed to dispose of R.C.O.P.No.65 of 2000, within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Principal Sub Judge, Madurai.

2.The Additional District Munsif (Rent Controller),
Madurai Town.

+1CC TO MR.R.SUBRAMANIAN, Advocate Sr. No. 76194

+1CC TO MR.D.NALLATHAMBI, Advocate Sr. No.76475

C.R.P.(MD).No.1708 of 2009
17.07.2019

SCR(CO)

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