



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

C.R.P. (NPD) (MD) .No.2501 of 2010

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C.Arul Thiagarajan

... Petitioner/Respondent/ Petitioner

Vs.

1.L.Ronickam

2.M.Jayanthi

3.M.Rajasekar

4.M.Inbasekaran

... Respondents/Appellants/ Respondents

Prayer: Civil Revision Petition filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960, against the fair and decreetal order dated 23.12.2009 passed in R.C.A.No.25 of 2005 on the file of the Principal Subordinate Judge, Nagercoil, reversing the fair and decreetal order, dated 11.04.2005 passed in R.C.O.P.No.45 of 2002 on the file of the Rent Controller, Nagercoil.

For Petitioner : Mr.P.Mahindravarman

For Respondents : Mr.S.Kadarkarai

ORDER

This Civil Revision petition is directed against the order of the learned Principal Subordinate Judge, Nagercoil (Rent Control Appellate Authority) passed in R.C.A.No.25 of 2005, reversing the order passed in R.C.O.P.No.45 of 2002 on the file of the Rent Controller, Nagercoil.

2.The brief facts that are necessary for the disposal of the civil revision petition are as follows:

(i) the petitioner, who is the landlord, filed a petition in R.C.O.P.No.45 of 2002 on the file of Rent Controller, Nagercoil, for ordering eviction of tenant on the ground of owner's occupation and willful default.

(ii) The Rent Controller ordered eviction on the ground of owner's of occupation. However, the landlord's contention that the eviction also should be ordered on the ground of willful default, was negatived. Aggrieved by the same, the tenant preferred R.C.A.No.25 of 2005 before the Principal Sub Court, Nagercoil (Appellate Authority). The Rent Control Appellate Authority allowed the R.C.A.No.25 of 2005. As a result, the petition filed by the landlord for eviction is dismissed.

iii) The sister of the landlord filed a petition in R.C.O.P. 23 of 2003 for fixing a fair rent for the same building which was independent. The petition in R.C.O.P.No.23 of 2003 was allowed by



fixing fair rent at Rs.2,193/- per month. However, in the appeal filed by the tenant in R.C.A.No.24 of 2005, the order of Rent Controller was set aside, on the ground that the tenant has purchased the share of the petitioner in R.C.O.P.No.23 of 2003. The Appellate Authority also observes that the tenant is liable to pay only the rent of Rs.30 per month directly.

3.It is admitted before this Court that the tenant has acquired $\frac{1}{2}$ share from some of the co-owners. A suit filed by one of the co-owners for partition and separate possession in O.S.No.130 of 1985 was decreed and the preliminary decree passed therein has become final. It is further stated that the final decree application is pending and the revision petitioner as well as the tenant will get their share and allotment. Since it is admitted that the tenant as well as the revision petitioner have acquired one half share, and the allotment of specific properties has to be decided by the court, in which final decree application is pending, the division by metes and bounds will be done in the final decree proceedings independently.

4.In such circumstances, both parties have agreed in principle that eviction proceedings can be put an end to as the tenant agrees to pay a sum of Rs.2 lakhs towards the fair rent payable for the demised building from the date of petition. Out of the said sum of Rs.2 lakhs, the tenant has agreed to pay sum of Rs.1 lakhs by way of demand draft drawn in favour of revision petitioner and to deposit the balance of Rs.1 lakh to the credit of the final decree proceedings. The tenant has now brought before this court a demand draft for a sum of Rs.1 lakh and the counsel for the revision petitioner acknowledged the receipt of the demand draft. The tenant shall deposit the remaining amount to the credit of the final decree proceedings. The court in which the final decree application is pending may decide as to the entitlement of the sharers which depends upon the allotment of the demised property. As part of this arrangement, the revision petitioner has also agreed that he will not put up any construction in any portion of the property which is the subject matter of the final decree proceedings. The undertaking given by the learned counsel appearing for the revision petitioner is recorded. The eviction proceeding has come to an end and therefore, the parties are given liberty to workout their remedy only in the final decree proceedings.

5.Having regard to the nature of agreement, the conclusion is irresistible that the tenancy has come to an end and the parties hence forth has to work out their remedy only as co-owners to the property. The tenant who is now in possession in a portion of building that was leased out to him will claim right to the same as a co-owner in possession and he shall not claim possessory right in respect of any other portion of the property that is the subject matter of the final decree proceedings. Since the tenant entered into possession of the property only under a lease in respect of the demised



premises, he cannot claim any right to allow any particular portion of the property which was taken on lease.

6. This civil revision petition is disposed of accordingly. No costs.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal Sub Judge,
Nagercoil. (Rent Control Appellate Authority)
2. The Principal District Munsif,
Nagercoil. (Rent Controller)

copy to

The Section Officer,
V.R.Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

- +1 CC to Mr.T.ARUL, Advocate (SR-82912[F] dated 22/08/2019)
+1 CC to Mr.S. KADARKARAI, Advocate (SR-82901[F] dated 22/08/2019)

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