



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.06.2019
(Reserved on 25.01.2019)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (NPD) (MD) No.2611 of 2018

and

C.M.P (MD) No.11452 of 2018

R.Kanagaraj

... Petitioner/Appellant/
Respondent/Tenant

vs.

Vallinathan

... Respondent/Respondent/
Petitioner/Landlord

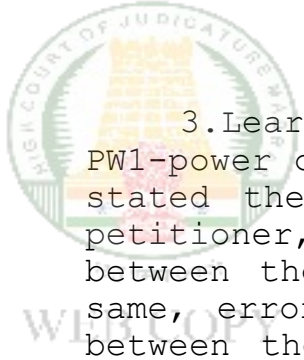
Petition filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960, to call for the records and set aside the order relating to the fair and decreetal order dated 12.07.2018 passed in RCA.No.9 of 2011 on the file of the Principal Sub Judge, (Rent Control Appellate Authority, Madurai), confirming the fair and decreetal order dated 11.02.2011 passed in RCOP.No.2 of 2009 on the file of the District Munsif, Madurai Taluk (Rent Controller).

For Petitioner : Mr.D.S.Haroon Rasheed
For Respondent : Mr.D.Sadiq Raja

ORDER

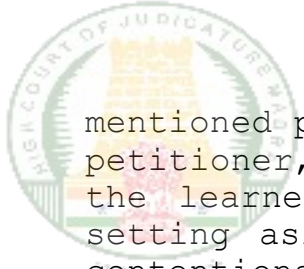
Against the concurrent finding of eviction ordered by the Rent Controller and Rent Control Appellate Authority, this revision petition is filed by the tenant.

2.The revision petitioner is the tenant and the respondent is landlord. The respondent filed RCOP before the Rent Controller, for eviction of the revision petitioner from the petition mentioned property on the ground of wilful default and for different user. The Rent Controller considering the evidence on both sides, ordered eviction on both grounds. Aggrieved by the order of eviction, the tenant preferred RCA before the Rent Control Appellate Authority on the ground that there was no landlord-tenant relationship between the respondent and petitioner. The Rent Control Appellate Authority, considering the evidence on both sides, dismissed the appeal confirming the order of eviction passed by the Rent Controller, against which, the revision petitioner/tenant has filed this revision petition.



3. Learned counsel for the petitioner/tenant would contend that PW1-power of attorney of the respondent in his cross examination has stated there was no rental agreement between the respondent and petitioner, thereby, there was no landlord-tenant relationship between the parties, but the Courts below without considering the same, erroneously held that there was landlord-tenant relationship between the parties. He would further contend that the petition mentioned property originally belonged to one Shanmugampillai under whom, the father of the petitioner was tenant and later the revision petitioner and according to the respondent, he got title of the petition mentioned property through Ex.P3-will executed by Shanmugampillai in favour of his daughter Govindammal and her son Vallinathan/respondent herein and though the respondent contends that after the death of his mother Govindammal, he inherited the petition mentioned property, he was not examined to prove that he is the son of Govindammal and that the alleged will was executed in his favour. Thus, his title to the petition mentioned property was not established. According to the learned counsel for the petitioner, there is no necessity for executing the will by Shanmugam Pillai, because, after the death of Shanmugam Pillai, the entire property will devolve upon Govindammal and after her death to her son/respondent, but in order to grab the property of the said Govindammal, PW1/power of attorney of the respondent created the will which has not been proved and neither the respondent was examined to prove that he is the son of Govindammal nor evidence was let in to that effect.

4. Learned counsel for the petitioner would further contend that if the respondent is the owner of the petition mentioned property, he would have sent notice to the petitioner for collecting rent and PW1 also admitted to that effect that no notice was sent to the petitioner for collecting the rent. Therefore, there was no landlord-tenant relationship between the parties. It is also contended that PW1/Kamaleshwaran collected rent from the revision petitioner as a power agent of the landlady Govindammal, which has been admitted by PW1 in his evidence. Thus, there was no default in payment of rent much less wilful default on the part of the petitioner. After the death of Govindammal, in order to grab the property of Govindammal, PW1 filed RCOP as if he is the husband of Govindammal. According to the petitioner, Govindammal is found missing from 2002 and therefore, he has given a complaint to the police about the missing of Govindammal and also the threatening by PW1. Learned counsel further submitted that no proof was adduced to prove that Govindammal married PW1 and both of them were belonged to different communities. According to the counsel for petitioner, as Govindammal found missing from 2002, he was unable to pay the rent and from 2002 upto 2018, the petitioner has deposited the rent before the Court below. Thus, there was no wilful default in payment of rent. As regards the contention of different user, learned counsel for the petitioner would contend that the petitioner both in chief and cross examination has categorically stated that he resides and doing some small scale business in the petition



mentioned property and there is no alteration of the property by the petitioner, but the Court below failed to consider the same. Thus, the learned counsel prays for allowing this revision petition by setting aside the orders of the Courts below. In support of his contentions, learned counsel for the petitioner relied on the following decisions:-

- 1) S.A.No.851 of 2008 dated 10.03.2011 (Govindaraj vs, Ramadoss)
- 2) Civil Appeal No.1071 of 2006 dated 03.05.2013 (Ramesh (D) by LRs vs. K.M.Veeraje Urs (D) by LRs and others.
- 3) Hemavathy vs. Udhavum Karangal reported in 2015 (3) MWN (Civil) 450.
- 4) Chellammal vs. Krishnaveni Ammal reported in (2006) 3 MLJ 360.
- 5) J.Rani vs. G.Manoharan and others reported in 2018-5-L.W.124.
- 6) S.M.Subbiah vs. S.Nandappan and others reported in 1999 (III) CTC 521.

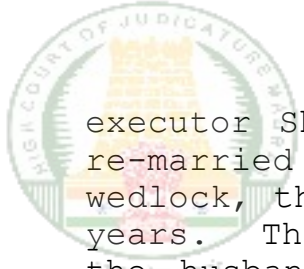
5. Learned counsel for the respondent/landlord would contend that in the rent control proceedings, the tenant cannot challenge the ownership of the property. He would further contend that the concurrent finding in the rent control proceedings cannot be interfered with unless the same is perverse or based on no evidence. In the present case, both the Rent Controller and Appellate Authority have categorically dealt with the evidence adduced by the landlord on both grounds of wilful default in payment of rent and different use, in proper perspective and ordered eviction, which does not require interference by this Court. In support of his contention, learned counsel for the respondent relied on the following decisions:-

- 1) Kailash Chander vs. Om Prakash and another reported in (2003) 12 SCC 728.
- 2) Kamakshi vs. Karpagam (CRP.No.2647 of 2000 dated 28.09.2018).

6. Heard both sides and perused the records.

7. Perusal of record shows that it is the admitted case of the parties that the petition mentioned property originally belonged to one Shanmugam Pillai and it was let out to the father of the respondent/Rathina Nadar on a monthly rent of Rs.185/- for running a grocery shop. It is also admitted that the Shanmugam Pillai has got only one daughter namely, Govindammal and after the death of Shanmugam Pillai, Govindammal inherited the petition mentioned property and the rent was collected from the petitioner by her power agent PW1/Kamaleswaran at Rs.350/- per month.

8. Though the petitioner contended that the respondent is not the son of Govindammal, the Courts below found from Ex.P5-Death Certificate of Govindammal that Govindammal was the wife of C.Kamaleswaran and died on 23.06.1982 and also found out from Ex.P2-Birth Certificate issued by Corporation of Madurai that a son/respondent born to C.Kamaleswaran - Govindammal couple on 10.04.1970. Even in the recital of the alleged will-Ex.P3, the



executor Shanmugam Pillai has stated that his daughter Govindammal re-married one Kamaleshwaran, S/o.Chellaiah, Madurai Town and in the wedlock, they have a son namely, Vijayabaskaran @ Vallinathan aged 6 years. Therefore, it is seen from the above, PW1/Kamaleshwaran is the husband of Govindammal and respondent/Vallinathan is the son born to Kamaleshwaran and Govindammal couple. It is the admitted case of both parties that Shanmugam Pillai is the owner of the petition mentioned property and Govindammal is the only daughter of Shanmugam Pillai and therefore, the authority of Shanmugam Pillai to execute Ex.P3-will in favour of Govindammal cannot be disputed.

9.Perusal of record further shows that though the respondent in the counter in RCOP has averred that in the month of January 1990, the father of the respondent transferred his business licence in the name of respondent and thereafter, the respondent directly became the tenant under Govindammal by oral tenancy agreement in respect of the petition mentioned property and in the month of February 2002, the respondent's power agent/PW1-Kamaleshwaran refused to receive the rent tendered by the petitioner and informed the petitioner that Govindammal has demanded an advance of Rs.50,000/- and has enhanced the rent to Rs.600/- from Rs.350/- per month and that the respondent came to know that Govindammal has terminated Kamaleshwaran from service as Manager due to his mis-management of petition mentioned property and the petitioner was not able to find out the whereabouts of Govindammal and therefore, he was not able to pay the rent from 2002, the Court below found from the Death Certificate of Govindammal that Govindammal died on 23.06.1982 itself and therefore, held that all the above contentions of the petitioner are unbelievable and not reliable.

10.Though the petitioner denied title of the respondent stating that the alleged will through which the respondent derived title of the petition mentioned property, itself is a fabricated one and not proved, as held in the decision in CRP.No.2647 of 2000 relied on by the counsel for respondent, it is settled law that the Rent Controller has no jurisdiction to adjudicate on title and the Rent Controller has to only decide the bona fide of denial of title by a tenant in a Rent Control Proceedings. As stated supra, the respondent is the son born to Govindammal-Kamaleshwaran couple and he succeeded the petition mentioned property as per the will executed by Shanmugam Pillai.

11.As regards the default in payment of rent, the petitioner contended that in the month of February 2002, the respondent's power agent/PW1-Kamaleshwaran refused to receive the rent tendered by the petitioner and informed the petitioner that Govindammal has demanded an advance of Rs.50,000/- and has enhanced the rent to Rs.600/- from Rs.350/- per month and that the respondent came to know that Govindammal has terminated Kamaleshwaran from service as Manager and the petitioner was not able to find out the whereabouts of Govindammal and therefore, he was not able to pay the rent from 2002.



12.It is not disputed by the parties that the admitted rate of rent is Rs.350/- and from Ex.P6-rent receipt book, the Courts below found that the petitioner has paid the rent in the following manner:-

Monthly Rent @ Rs.350/- Rent due months	Date of Payment of rent at column-1 by the petitioner
May and June 1999 at Rs.700/-	15.11.1999
July, August and September 1999 at Rs.1,050/-	23.01.2000
October 1999 to January 2000 at Rs.1,400/-	28.04.2000
February 2000 to June 2000 at Rs.1,750/-	15.09.2000
July to September 2000 at Rs.1,050/-	16.03.2001
October 2000 to September 2001 at Rs.4,200/-	10.01.2002

13.Thus, the Court below found that the petitioner was irregular in payment of rent and hence ordered eviction on the ground of wilful default. As per the order in I.A.No.274/2009, the petitioner has deposited the rent from October 2001 till the date of filing of RCOP amounting to Rs.29,750/-. In view of the default in payment of rent by the petitioner as tabulated above, the Courts below in my considered opinion, were right in ordering eviction on the ground of wilful default.

14.As far as the plea of different use, the respondent contended that the petitioner has converted the petition mentioned property from commercial into residential purpose without the knowledge and consent of the landlord and therefore sought eviction on that ground. In this regard, the Courts below found from the averments in the counter in RCOP filed by the petitioner, where, he himself has admitted that since the petition mentioned property had become unfit for business, he converted it into his residential house. The Court below also found from Ex.P9 which is the plaint in O.S.No.1078 of 2006 filed by the petitioner against the power of attorney holder for permanent injunction in respect of the petition mentioned property, wherein, the revision petitioner/plaintiff therein has specifically admitted as below:-

'The plaintiff has converted due premises as his residence and residing there with his family by paying electricity and other charges payable to the concerned departments.'

15.Admittedly, the petition mentioned property was let out for running a grocery shop which is a non residential purpose, but from the above, it is seen that the respondent converted it into



residential house. Further, there is no pleading or evidence by the petitioner that he has got consent of the landlord for converting the petition mentioned property let out for the purpose of running grocery shop, into residential house. As per Section 10(2)(ii) of the Tamil Nadu (Lease and Rent Control) Act, the tenant requires the written consent of the landlord, if the building let in were to be used for a purpose other than that for which it was leased. Perusal of record also shows that the Rent Controller referred to the decision reported in 1981 (1) MLJ 19, wherein, it has been held that in the absence of written consent, the landlord is entitled to evict the tenant having used the building for a purpose other than for which it was leased out.

16. In the present case, admittedly, the petition mentioned property was let out for commercial purpose and the Courts below finding that without the consent of the landlord, the petitioner converted the same into residential house, ordered eviction on the ground of different use. Thus, on the grounds of wilful default of rent and different use, both the Rent Controller and Rent Control Appellate Authority ordered eviction. In my considered opinion, the said finding is based on categorical evidence and therefore, interference of the same by this Court is not necessary. The judgments relied on by the counsel for petitioner is not applicable to the circumstances of the present case.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar(CS)

To

- 1) The Principal Sub Judge,
(Rent Controller, Appellate Authority),
Madurai.
- 2) The District Munsif,
(Rent Controller),
Madurai Taluk.

+1 CC to Mr.D.SADIQ RAJA, Advocate (SR-66812[F] dated 04/06/2019)
+1 CC to Mr.D.S.HAROON RASHEED, Advocate (SR-66872[F] dated 04/06/2019)

order made in
C.R.P (NPD) (MD) No.2611 of 2018
04.06.2019