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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 30.11.2018
PRONOUNCED ON : 12.04.2019
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P. (NPD) (MD)No.1951 of 2018
and
C.M.P. (MD) .No.8591 of 2018

1.B.Anandaraj

2.B.Dharmaraj : Petitioners/Respondents/
Respondents / Tenants
vs.

S.Sundarrajan : Respondent/ Appellant/
Petitioner / landlord

PRAYER : Civil Revision Petition filed under Section 25 of the Tamil Nadu Building (Lease and Rent) Control Act, against the judgment and decree, dated 30.07.2018 passed in R.C.A.No.22 of 2017 by the learned Rent Control Appellate Authority / Subordinate Court, Thoothukudi, reversing the order, dated 11.05.2017, passed in R.C.O.P.No.33 of 2012 by the Rent Controller / Principal District Munsif Court, Thoothukudi.

For Petitioners : Mr.M.Alagappan

For respondent : Mr.K.Angayarkanni

ORDER

This Civil Revision Petition has been filed by the petitioners / tenants as against the judgment, dated 30.07.2018, passed by the learned Rent Control Appellate Authority, whereby and whereunder the order passed by the Rent Controller was reversed.

2. According to the respondent / landlord, the schedule mentioned property originally belonged to one Jegadeesan, who got the property by way of a partition deed, dated 31.05.1970. The petitioners' father by name Baskar was tenant of the property and after his death, the petitioners are in possession of the property as tenants. The said Jegadeesan settled the property in favour of his son by name Chandran by way of settlement deed, dated 25.11.2010. The said Chandran sold the property to the respondent / landlord by way of registered sale deed dated 06.02.2012. The respondent / landlord called upon the petitioners / tenants to pay future monthly rent ie., from February, 2012 to him. But, the petitioners / tenants refused to pay rent disputing the title of Chandran and also the respondent/landlord. Though the petitioners / tenants deposited the rent of Rs.6200/- in the account of the original landlord viz., Jagadeesan, the said Jegadeesan has repaid the amount to the petitioners / tenants through Demand Draft on 15.03.2012 and also issued notice directing him to pay the rent to the respondent / landlord, who is the subsequent purchaser of the

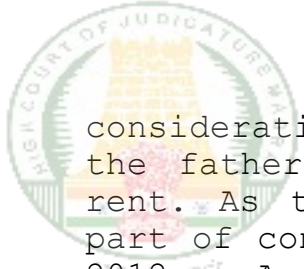


property. In the meantime, on 27.02.2012 the petitioners / tenants filed a suit for specific performance against Jegadeesan in O.S.No.10 of 2012 stating that a sale agreement dated 14.05.2003 had been entered between their father viz., Baskaran and Jegadeesan, and that from that day itself, the said Jegadeesan handed over possession of the property to their father and after the demise of their father, they are in possession and enjoyment of the same. The petitioners / tenants did not pay rent for the month of February 2012 to May 2012 and thereby, they committed wilful default in payment of rent. The respondent / landlord has been running a paints and sanitary ware business at Madurai and in order to establish the said business at Tuticorin, the respondent / landlord required the said property. Hence, the respondent / landlord filed R.C.O.P.No.33 of 2012 on the ground of wilful default and own use and occupation.

3. According to the petitioners / tenants, a sale agreement was entered between their father and the original owner by name Jegadeesan in the year 2003 and the disputed property was handed over to the possession of their father and after the demise of their father, they are in possession and enjoyment of the same. The original landlord viz., Jegadeesan failed to perform his part of the contract and therefore, the petitioners / tenants filed O.S.No.10 of 2012 seeking a direction to the said Jegadeesan to perform his part of the contract. Thus, there is no tenant and landlord relationship between petitioners / tenants and the said Jegadeesan. The petitioners / tenants have filed another suit in O.S.No.510 of 2013 seeking declaration of the settlement deed executed by Jegadeesan in favour of his son Chandran and the sale deed executed by Chandran in favour of the respondent/landlord as null and void. There is no tenancy agreement entered between themselves and the respondent / landlord and the same was accepted by the respondent/landlord in his evidence and therefore, the rent control proceedings is not maintainable.

4. The learned Rent Controller dismissed the petition holding that since there is no tenancy agreement entered between the parties, there is no landlord and tenant relationship between them and hence, the rent control proceedings is not maintainable. Aggrieved by the said order, the respondent/landlord filed an appeal. The Rent Control Appellate Authority has allowed the appeal holding that the respondent /landlord proved his case and granted two months time to the petitioners/tenants to vacate the property. But, aggrieved by the same, the petitioners / tenants filed this Civil Revision Petition.

5. The learned counsel appearing for the petitioners / tenants mainly contended that on 14.05.2003, an unregistered sale agreement was entered between the father of the petitioners/tenants and the original owner Jegadeesan and out of sale consideration of Rs.25 lakhs, the father of the petitioners/tenants paid Rs.20 lakhs on various dates to the said Jegadeesan. As per the agreement, the sale deed has got to be executed after getting the balance sale



consideration of Rs.5 lakhs within 12 years and till such payment, the father of the petitioners/tenants agreed to pay Rs.6000/- as rent. As the original owner Jegadeesan has failed to perform his part of contract, the petitioners / tenants have filed O.S.No.10 of 2012. As the petitioners / tenants have already deposited the balance sale consideration of Rs.5 lakhs in O.S.No.10 of 2012, now they are not liable to pay rent. There is also no tenancy agreement entered between the petitioners / tenants and the respondent / landlord, and therefore the rent control proceeding is not maintainable. The trial Court has rightly dismissed the petition. But, the first appellate Court has erroneously allowed the appeal. Thus, he prayed to set aside the judgment passed by the first appellate Court.

6. The learned counsel appearing for the respondent / landlord submitted that the petitioners / tenants have not proved the execution of the alleged unregistered sale agreement and therefore, O.S.No.10 of 2012 was dismissed and that the petitioners/tenants cannot say that they are not tenants. They have also no right to question the title of the respondent / landlord. The first appellate Court has rightly allowed the appeal and the same need not be interfered with. Thus, he prayed to dismiss the petition.

7. Heard the learned counsel appearing for both sides and perused the records carefully.

8. Admittedly, in this case, though the petitioners/tenants denied the landlord and tenant relationship based on the sale agreement dated 14.05.2003, the said agreement has not been legally proved and the suit filed by them, in this regard, in O.S.No.10 of 2012 has already been dismissed. It is also pertinent to point out that though the father of the petitioners/tenants was arrayed as 5th defendant in the suit in O.S.No.82 of 2005 pending between respondent's/landlord's vendor family in respect of the disputed property, the father of the petitioners/tenants has not stated anything about the sale agreement. Further, the father of the petitioners/tenants did not divulge the said agreement, till his death. On the other hand, the respondent / landlord has proved that he is the subsequent purchaser of the property. Through Exs.P1 to P3 - rental receipts and bank passbook, the respondent / landlord proved that the petitioners/tenants are in possession of the property only as tenants and they had been paying rent to his vendor. It is seen that the petitioners/tenants deposited the rent in the bank account of Jegadeesan, denying the title of the respondent/landlord. But, the original owner viz., Jegadeesan has sent a notice to the petitioners/tenants directing them to pay rent to the respondent/landlord, who is the subsequent purchaser of the property. Even after receipt of notice from Jegadeesan, who is the original owner of the property, the petitioners/tenants have purposefully not paid rent to the respondent/landlord and thereby, they committed wilful default in payment of rent.



9. It is stated by the learned counsel for the petitioners/tenants that there is no tenancy agreement entered between them and therefore, the rent control proceeding is not maintainable. As stated supra, the petitioners are in possession of the property only as tenants. The respondent / landlord is a subsequent purchaser of the property. On such purchase, the transferee viz., respondent/landlord acquires all the rights possessed by the transferor in the property inclusive of the right to proceed against the tenant. Therefore, even in the absence of tenancy agreement, the eviction proceeding is maintainable.

10. So far as the ground for own use and occupation is concerned, it is stated by the respondent / landlord that he has been running a paints and sanitary ware business at Madurai and he wants to establish his business at Tuticorin after constructing a new building in the property in dispute, for which he has sufficient means. The first appellate Court has held that there is no *mala fide* intention on the part of the respondent/landlord in seeking the building for his own use. This Court does not find any reason to interfere with the said finding of the first appellate Court. Thus, viewing from any angle, the present Civil Revision Petition is liable to be dismissed.

11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. It is seen that when the matter came up for admission before this Court on 11.09.2018, the learned counsel appearing for the petitioner requested six months time to vacate the property. Now, almost six months have gone. Therefore, this Court grants only two months time to the petitioners/tenants to vacate the property.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Rent Control Appellate Authority /
Subordinate Judge, Tuticorin.

2.The Rent Controller / Principal District Munsif,
Tuticorin.

+1cc to Mr.K.ANGAYARKANNI, Advocate, SR.No. 61075

+1cc to Mr.M.ALAGAPPAN, Advocate, SR.No.60647

C.R.P. (PD) (MD) No.1951 of 2018