

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.12.2019

PRONOUNCED ON : 02.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).Nos.1231 & 1232 of 2009

and

M.P.Nos. 1 & 1 of 2009

1.D.Sambandam(deceased)

2.S.Kalai Selvi

3.S.Karthikeyan

4.S.Ramya Swaminathan

5.S.Vigneshwaran

(The petitioners 2 to 5 brought on record as legal representatives of the deceased/sole petitioner vide order of this Court dated 03.06.2014, made in M.P.Nos.1 to 3 of 2012 in CRP.Nos.1231 & 1232 of 2009.)

...Petitioners
in both CRPs

.. Vs ..

The Executive Officer,
K.Maqqoom Mohammed Marakkyar Wakf,
George Town, Mannady, Chennai - 1.

(Sole Respondent substituted vide Court order dated 05.04.2019 made in M.P.Nos.1 & 1 of 2014 in CRP.Nos.1231 & 1232 of 2009)

...Respondent
in both CRPs

COMMON PRAYER: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 to set aside the fair and decreetal order dated 18.02.2009 passed in

RCA.Nos.464 & 465 of 2005, on the file of the VIII Court of Small Causes at Chennai, confirming the fair and decreetal order dated 18.02.2005, passed in RCOP.Nos.961 & 1346 of 2004 on the file of the learned XII Judge, Court of Small Causes at Chennai.

For Petitioners
in both CRPs : Mr.P.Haribabu

For Respondent
in both CRPs : Mr.Avinash Wadhwani
for Mr.V.Lakshminarayanan

JUDGMENT

These Civil Revision Petitions are filed against the orders passed by the VIII Court of Small Causes, Chennai, dated 18.02.2009 in RCA.Nos.464 & 465 of 2005.

2 The first petitioner herein is the tenant and respondent herein is the land lord. The respondent, who claims that he is the Official Receiver of K.Magdoom Muhammad Maracayar and also a co-owner of the property and he was appointed as a Party Receiver by the Civil Court in O.S.No.4285 of 1977, on the file of the learned IV Assistant Judge, City Civil Court, Madras and on the said pleading, has filed petitions in RCOP.No.961 of 2004 and RCOP.No.1346 of 2004 for eviction.

3 While RCOP.No.961 of 2004 was filed for eviction on the ground of willful default for non payment of rent from 01.01.1977 to 28.02.2003, another RCOP.No.1346 of 2004 was filed in respect of the default period commencing from 01.03.2003 to 30.06.2004. The revision petitioner/tenant had filed a counter statement, wherein, he has denied the landlord tenancy relationship between parties and also raised plea that the petition-mentioned property has belonged to the wakf and he had remitted rent to Muthavalli of the wakf viz., Mohammed Jaffer and further contended that since, he has remitting the rent to the Muthavalli, duly appointed by the wakf, there is no willful default and also challenged maintainability of the petition filed by the petitioner before the Rent Control Authority on the ground that the petition mentioned property is the wakf property and the same is exempted under G.O.No.2000, dated 16.08.1976 and hence, Section 29 of the Tamil Nadu Building (Lease and Rent Control) Act, is not applicable.

4 Before the Rent Control Authority,

(i) the landlord has filed xerox copy of the order passed in I.A.No.19249 of 1981, in O.S.No.4285 of 1977, which is a contested decree, between the parties and the co-owners, whereby, the

petitioner before the Rent Controller was appointed as an Party Receiver, which was challenged by the very same Mohammed Jaffer and that the petition was dismissed.

(ii) The next document is the certified copy of the decree passed in RCOP.No.3714 of 1981, which was filed by the tenant before the Rent Control Authority to deposit the rent, wherein, the Rent Controller has rendered a categorical finding that the revision petitioner is the owner of the property and as such, he being appointed as a Party Receiver by the Competent Civil Court and therefore, dismissed the petition for depositing the rent filed by the revision petitioner/tenant and directed him to pay the amount to the respondent/landlord.

(iii) The certified copy of the memorandum of compromise filed in O.S.No.8296 of 1988 is marked as Ex.P3 and Ex.P5 is the letter addressed by the respondent/land lord to the petitioner/tenant.

5 Based upon the oral and documentary evidence, the learned Rent Controller has held that the petition premises belongs

to the private family settlement and the respondent herein was appointed as a Party Receiver as confirmed by the Civil Court by an order passed in I.A.No.19249 of 1981 in O.S.No.4285 of 1977, and the said order was marked as Ex.P1. Furthermore, RCOP filed by the revision petitioner/tenant was dismissed with a direction to remit the amount to the respondent herein. Accordingly, ordered for eviction, by holding that the petitioner herein has defaulted for both periods as mentioned in RCOP.

6 Aggrieved against the said finding and order of eviction, the revision petitioner/tenant has preferred an appeal in RCA.Nos.464 of 2005 and 465 of 2005. Taking into consideration the earlier proceedings of the Civil Court, the Appellate Authority has dismissed the appeals and by confirming all the findings of RCOP, as mentioned above. Taking note of the submission made by RW1 in the witness box, regarding the death of the Muthavali in the year 1997, has held that the receipts Exs.R2 and R3 stated to be the invalid receipts and it is noting but forged one, since, the same contains the signatures of the Mohammed Syed for the year 1977, 2002 and 2003, while as admitted by the tenant as RW1, the said Syed died even in the year 1997 and accordingly, held that the

petition mentioned property belongs to the private wakf and the respondent herein was appointed as a party receiver and there exists jural relationship of landlord and tenant between the parties. The rent for the petition premises is Rs.120/- per month and for the period he was in default to pay the rent and the said default is willful default and he has shown a supine in-difference to the title and right of the respondent herein by making a false plea of payment of rent to Syed, who was no more at the time of issuance of the receipt and has confirmed ordered for eviction.

7 Challenging the concurrent findings, the tenant has preferred this revision. Pending revision, Sambandam died and legal representatives were brought on record. So also the Executive Officer was substituted for the respondent.

8 The learned counsel for the revision petitioner would contend that both the Rent Control Authority and Rent Control Appellate Authority have not viewed the case in proper prospective. The property is a wakf property are exempted from the purview of the Rent Control Act and also reported some grounds that has been raised before the Rent Control Authority.

9 After going through the evidence on record and the findings rendered there on, this Court is of the considered view that both the Authority under the Rent Control Act has taken note off the order passed by the Civil Court, as could be seen from Ex.P1, P2, P3 and P4, the Courts below have categorically come to the conclusion that on the date of filing of RCOP, the property belongs to private wakf and the petitioner in the RCOP was duly appointed as a party receiver and the same was accepted by the Mohammed Syed to whom, the tenants claims to have paid rent and acknowledged him as a landlord.

10 In view of the order passed by the Competent Civil Court, appointing the petitioner before the Rent Controller as a Party Receiver to maintain the property in question and by virtue of Section 2(6) of the Tamil Nadu Building (Rent and Lease Control) Act, the landlord includes the party receiver appointed by the Civil Court, therefore, the petitioner before the Rent Control Court is a landlord, within the meaning of landlord under Section 2(6) of the Rent Control Act.

11 PW1 in his evidence has categorically stated about the Sub Court proceedings and also non payment rent. The tenant, who was examined as RW1, has categorically admitted in the cross examination that he was also a party to the compromise decree and Ex.P3 also admitted in the cross examination that on 09.09.1978, the petitioner/party receiver was appointed and the said appointment was notified to him by the communication and he also stated that he also party to the proceedings, who has entered in compromise, whereby, the respondent herein is the competent person to receive the rent and hence, in view of the admission elicited in the cross examination of RW1 regarding appointment of an Official Receiver and the knowledge of such appointment and consequently, he falls under the definition of landlord and hence, the concurrent finding rendered by the both authorities below as to the existence of the Jural relationship of landlord and tenant between the parties is well considered and well merited and does not warrant any interference.

12 Yet another point is that RW1 in the cross examination has admitted that the signature found in Exs.R1, R2, R3 and R8 bears the date of the years 1975, 2002, 2002 and 2003

respectively. While the alleged issue namely Mohemed Syed was died on 01.01.1997 and thus, this Court finds that the alleged payment rent receipts produced by the revision petitioner/tenant is a bogus one, forged for the purpose of the case by forging the signature of the Mohemed Syed, who is already a dead person and hence, the non payment of rent for the petition premises and disputing title of the petitioner is also not *bona fide* and appears to be willful and hence, this Court finds that the respondent/landlord has successfully demonstrated the acceptance of his title over the petition property and non payment of rent and said non payment is also willful in nature and the revision petitioner/tenant had exhibited supine in difference to the title of the land owner and hence, has rightly come to the conclusion that the default is willful in nature and ordered for eviction and hence, such a finding does not suffer from any illegality or irregularity warranting interference at this revisional stage.

13 In this view of the above matter, both the Civil Revision Petitions are dismissed and order of eviction passed in the respective RCOP.Nos. 961 & 1346 of 2004, by the learned XII Judge, Court of Small Causes, Chennai, as confirmed in

RMT.TEEKAA RAMAN., J

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RCA.Nos.464 & 465 of 2005, by the VIII Court of Small Causes, Chennai, are hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

02.01.2020

Index : Yes / No

Internet : Yes

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To

1.The VIII Court of Small Causes
Chennai.

2.The learned XII Judge,
Court of Small Causes,
Chennai.

Pre-Delivery Judgment

in

CRP.(NPD).Nos.1231 & 1232 of 2009

and

M.P.Nos. 1 & 1 of 2009

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