

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 07.01.2020

ORDER PRONOUNCED ON : 24.02.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P (NPD) No.4278 of 2009

M/s.Sha Poosajee Samrathmull
(HUF) rep by its Karta
Mr.Champalal Jain,
No.58, Perumal Mudali Street,
Chennai – 600 079.

... Petitioner

...Versus...

1.Sha Ganeshmal Nathmal Jain
rep.by its Partner,
Mr.Kundanmal (deceased)

2.Mr.Ugamchand

3.M/s.New Novelty Centre,
No.58, Perumal Mudali street,
Chennai – 79.

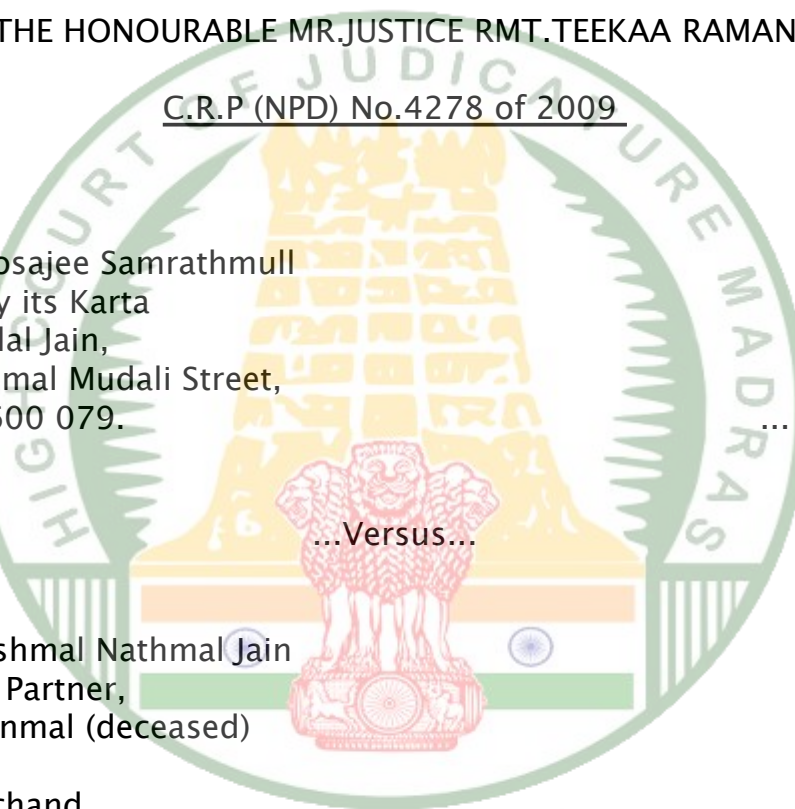
4. Mrs.Gulabi Devi

5.Mr.Babula

6.Mr.Raju

7.Mr.Praveen Kumar

... Respondents



PRAYER:This Civil Revision Petition has been filed under Section 25 of Tamil Nadu Act 18 of 1960 as amended by Act 23 of 1973, against the judgment and decree dated 08.09.2009 in RCA.No.112 of 2008 on the file of VII Judge (Appellate Authority) Court of Small Causes, Chennai, reversing the order and decretal order dated 23.08.2007 in RCOP.No.1068 of 2000 on the file of XI Judge (Rent Controller) Court of Small Causes, Chennai.

For Petitioner :: Mr.P.Sunil
for Mr.T.Viswanatha Rao

For R1 :: Died

For R2 :: Mr.P.B.Ramanujam

For R3 to R7 :: No appearance

ORDER

The landlord is the revision petitioner herein.

2. According to petition, (i) the first respondent M/s.Sha Ganeshamal Nathmal Jain, a partnership firm was let out as a tenant of the demised portion mentioned in the schedule for the business on the ground floor at No.58, Perumal Mudali Street, Chennai – 79 and another portion for residential purpose in the second floor. The ground floor portion rent fixed at Rs.950/- and the second floor portion rent fixed at Rs.1985/-.

(ii) The first respondent have sublet the demised portion let out to him to the second and third respondent on a fixed rent without any written consent of permission from the petitioner who is the landlord.

(iii) The first respondent has not paid the rent from January 2000 to July 2000 and also lift charges and wilfully withheld the same and therefore the first respondent is liable for the commission of act of wilful default. The first respondent has not paid the rent with ulterior motive and therefore, he is liable for eviction under Section 10(2)(i) of the act.

(iv) Both the portions let out to the first respondent have been subleased to one Mr.Ugamchand Jain claiming himself to be the proprietor of the firm M/s.Sha Ganeshmull Nathmal Jain-first respondent.

(v) The tenancy is given to the partnership firm and not to any individual as proprietor of the alleged firm and hence, sought the order of eviction in respect of the petition premises ground, first and second floor in the said Door No.

3. In the counter statement, the third respondent/tenant has specifically resisted the revision petition on the ground that:-

(i) the third respondent is the sole proprietor of the first respondent concern "Sha Ganeshmal Jain and carrying on the business as a sole proprietor, for which Mr.Kundammal is nothing to do with the proprietorship concern.

(ii) The third respondent is not a sub-tenant under the firm viz., the first respondent. On the other hand, the third respondent is the sole proprietor running the business under the name and style "Sha Ganeshmal Nath Jain" in the ground floor tenancy portion and residing with his family in the second floor residential portion and paying the rent in conformity with the order passed by this Court in C.R.P.No.865/2006, filed against the fixation of fair rent proceedings, initiated by the petitioner against the respondent in the capacity of representing the first respondent firm, where in the above RCOP No.355/1996, the petitioner was not impleaded the said Kundanmal as partner of the first respondent. Since, the said Kundanmal is not a necessary party, the legal heirs of viz., the newly added parties, respondents 4 to 7 is not all necessary parties for the disposal of the case.

4. The other respondents are not contesting parties and hence, their pleadings are not necessary. In the trial before the Rent Control, On the side of the petitioner, one witness was examined and 15 exhibits

were marked. Court witness 1 examined. One Court exhibit marked. On the side of the respondent two witness was examined and 54 exhibits were marked.

5. The trial Court has come to the conclusion that in the absence of anything to show or in the absence of any proof to show that when the partnership business was dissolved and when it has become changed to proprietary concern has held that the petition premises was let out to partnership firm-Sha Ganeshmal Nathmal Jain/first respondent represented by M/s.Sha Poosajee Samrathmull/petitioner not to the third respondent who claims to the proprietary of the said Sha Ganeshmal Nathmal Jain/first respondent. Since the cheques were sent by the contesting third respondent in the name of proprietary ship, the same was originally rejected and accordingly held that there is a default in payment of rent and subletting and accordingly order for eviction. Aggrieved against the said finding and order of the eviction, the tenant has preferred RCA.112 of 2008 and the learned Appellate Authority under Rent Control has allowed the appeal and hence, the revision by the tenant.

6. Heard both sides and perused the records.

7. The admitted factual matrix of the case are that the petitioner is the landlord and the first respondent is a tenant in respect of the petition premises is situated at No.58, Perumal Mudali street, Chennai - 79 and the ground floor was let out for non-residential purpose on a monthly rent of Rs.950/- and the second floor was let out for residential purpose on a monthly rent of Rs.1985/-. The petition premises was let out to the first respondent which is partnership firm and the first respondent without any written consent from the petitioner sublet the petition premises to the respondents 2 and 3. The first respondent had not paid the rent from January 2000 to May 2000 and therefore, the first respondent has committed wilful default in payment of rent.

8. As stated supra, during enquiry on the side of the petitioner P.W.1 examined and Exs.P1 to P15 marked and on the side of the respondent RW1 examined and Exs.R1 to R54 marked. CW1 examined and Ex.C1 series marked. The learned Rent Controller after enquiry, ordered eviction of the respondents on the ground of wilful default and sub-letting.

9. As per petition, the petition premises is situated at No.58, Perumal Mudali Street, chennai - 2 and the petitioner is the owner of the premises and the ground floor was let out for non-residential purpose on a monthly rent of Rs.950/- and the second floor was let out for residential purpose on a monthly rent of Rs.1985/- all are the admitted facts.

10. It is the contention of the petitioner that the petition premises was let out to the first respondent which is a partnership firm and the first respondent without any written consent from the petitioner sublet the petition premises to respondents 2 and 3 and therefore liable to be evicted. On the other hand the contention of the respondent is that the first respondent is not a partnership firm but it is only a proprietary concern wherein the third respondent is a sole proprietor who came as a tenant in 1983 and the petitioner himself filed RCOP 355-96 for fixation of fair rent by mentioning R3 ugam Chand representing Sri Ganeshml Nathmal Jain and Kundammal had nothing to do with the first respondent business and therefore the question of subletting does not arise.

11. While the petitioners raised the plea that petition premises was let out to the first respondent, partnership firm-the first respondent without any written consent from the petitioner on sublet the petition

premises to the second and third respondents and hence, sought the relief of vacation.

12. Per contra, the learned counsel for the first and third respondents contended that the first respondent is not a partnership firm. But only a proprietary concern, wherein the third respondent is a sole proprietary who was conducted to possession as a statutory pending suit during the year 1983 and the very same landlord has filed R.C.O.P.No.355/1996 for fixation of fair rent showing that the third respondent is nothing to do with the first respondent business and therefore, the plea of subletting does not arise.

13. In a plea of Sub-letting (i) it is for the petitioner to establish that parting of exclusive right in favour of third party and the same in lieu of remuneration of rent.

(ii) The act of sub-letting is secret transaction between the tenant and the sub-tenant and the landlord can prove the sub-lease only through the circumstances and the petitioner also proved the same through documentary evidence and therefore prayed to confirm the order of eviction.

(iii) Landlord cannot prove by direct evidence, contracted agreement or understanding between his tenant and sub-tenant and

landlord would not be in a position to prove that sub-tenant has paid monetary consideration to his tenant and though payment of rent is essential element of lease or sub lease, landlord is not required to prove such payment by affirmative evidence and the Court could draw inference on proved facts about payment of rent by such sub-tenant to tenant as also delivery of exclusive possession.

14. It is a specific contention that after dissolution of partnership if one of the partner commenced a new firm then it will not amount to sub-lease and from the inception the said Ugamchand is Managing the R1 business and in the earlier proceedings RCOP 828-91 the petitioner wantonly omitted to include the third respondent in the above petition and the fixation of the fair rent petition filed by the petitioner itself would show that the respondent admitted the third respondent as representative of first respondent and therefore there is no question of sub-letting and relied upon Hon'ble Supreme Court in 2007 4 SCC 306 wherein their Lordship of Hon'ble Supreme Court held as follows:-

"Rent Control and Eviction and subletting-Eviction sought on the ground of – Tenant while denying the allegation of sub-letting submitting that a partnership firm was originally the tenant consisting of four partners – As some dispute arose amongst the partners, a

suit was filed and all the matters were settled by compromise – Consequently the firm was dissolved with one of the partners being given all the assets of the firm who formed another firm with himself as one of the partners – It was averred that unless the tenancy was transferred by such partner to a third party, it would not amount to sub-letting–Held, herein one of the partners of the firm which was the original tenant has continued in legal possession of the premises as a partner of another firm constituted after dissolution of the original firm – Thus, the legal possession is retained by a partner who was one of the original tenants – Hence, High Court was right in holding that there was no sub-letting of the premises – Therefore the eviction suit deserved to be dismissed.

15. Plea of sub-letting:- The core point that is to be decided at this juncture is that Whether the first respondent is a proprietary concern or a partnership firm and whether the first respondent had subletted the premises, to R2 and R3 without any prior consent.

16. Admittedly, there was earlier proceedings between the petitioner and first respondent in RCOP 828-91 which is evidenced from

Ex.P7,P8 and P3. On perusal of the records the landlord/petitioner filed the RCOP by stating the first respondent as Sha Ganshmal Nathmal Jain—a partnership firm represented by partner Kundanmal. The above said RCOP went upto Hon'ble High Court and ended in favour of first respondent/tenant. The petitioner is mainly relying Ex.C1 the assessment certificate which is dated 5.5.1959. On perusal of Ex.C1 there is mention that Sha Ganeshmal Nathmal Jain is a partnership firm. Ex.C1 relates to No.12, Perumal Mudali street, Chennai.

17. The petition premises is situated at No.58, Perumal Mudali street, Chennai and thus from the above documentary evidence coupled with Exs.P7,P8 and P3 even from same landlord has filed the petition showing the third respondent herein representing the firm and it is elicited in the cross-examination that the petitioner has not filed any document to show that the first respondent is a partnership firm or proprietary concern. For both ground and II floor of building the petitioner filed eviction petition. The petitioner has not filed any document to show that for and behalf of the first respondent, one Kundanmal paid rent to the petitioner.

18. It is the admission made by P.W.1 during cross examination that there is no document to show Kundanmal paid the rent to the

petitioner. It is also admitted by P.W.1 that in Ex.P5 only the third respondent signed. PW1 also admits the filing of RCOP by the third respondent against the petitioner for restoration of water supply and the same was ordered.

19. From the above evidence of P.W.1 it reveals that the third respondent herein invoked the provision of Rent Control Act against the petitioner and the relief sought for was also granted in the RCOP filed for restoration of amenity of water. P.W.1 during cross-examination had deposed that from 1992 he know Ugamchand who is doing business in the petition premises but don't know under what capacity he is doing business the petition premises. This evidence shows that even from the year 1992 the third respondent is doing business in the petition premises.

20. Hence, the admission of P.W.1 in the cross-examination is to the effect that the petitioner has not filed any documents to show the first respondent is a partnership firm or a proprietary concern and furthermore even in Ex.P5 the third respondent is only signed the document and contested the case earlier filed. Furthermore, earlier R.C.O.P filed by the third respondent herein against the very same landlord for restoration of water supply and the same was ordered and

furthermore the third respondent is doing business in the petition premises even from 1992 however chosen to evade is to answer as what is the nature of the business is carried on.

21. On a combine reading of the evidence of R.W.1 coupled with R1, this Court finds that the name of the third respondent as a representative of the first respondent was shown in Ex.R16 and there is no pleading in the petition as well as in the evidence of P.W.1 that there was a parting of exclusive right by the first respondent in favour of second and third respondent in lieu of compensation of rent and P.W.1 no where deposed that third respondent is paying rent to the first respondent as a sub-tenant.

22. On the other hand in the cross-examination of P.W.1 admits for first respondent Ugamchand (R3) is paying the rent. So the documents filed on the side of the respondent shows that R3 is also connected with R1 business and he is not a third party.

23. Thus, this Court finds that on the above factual matrix coupled with ratio laid down in the above decision of the Supreme Court and in the absence of any positive evidence to show the exclusive possession was parted away in favour of a third party in lieu of

remuneration or rent and coupled with the admission of P.W.1 in the cross-examination, as extracted supra, goes to show that the third respondent who was represented by the partnership firm on resolution has become the proprietary ship and was running the business as a sole proprietary ship in the petition premises since 1992 and he also filed R.C.O.P, Ex.P5 for restoration of electricity and water connection and even in the earlier rent control proceedings, the very same landlord as a petitioner filed the petition whereby the tenant was represented none other than very same third respondent herein and all the documentary evidence Ex.R1 to R15 namely issued by the commercial Tax Department and the Income Tax Department goes to show that the third respondent alone has been continuing the job after dissolution of the partnership firm as a proprietary concern and in view of the decision of the Hon'ble Supreme Court, I have no hesitation to hold that there is no sub-tenancy and petitioner has failed to prove the same. Hence, a similar finding arrived at by the first Appellate Authority does not suffer from any irregularity or illegality warranting interference at this revision stage. Accordingly, the plea on the ground of sublet raised by the petitioner/landlord is stands negated.

24. Wilful Default:– This petition has been filed under Section 10 (2)(i) of the Act by alleging that there was a wilful default from January

2002 to May 2000. Admittedly, the rent for the ground floor for non-residential portion rent fixed at Rs.950/- and residential portion second floor rent fixed at Rs.1985/- Taking into consideration that the evidence of R.W.1 that an advance amount of Rs.30,000/- towards the second floor and an advance amount of Rs.20,000/- towards ground floor are still in the hands of the petitioner. The said factum was admitted by the P.W.1 during the cross-examination.

25. It is needless to show that when the advance amount exceeding the one month rent is available in the hands of the landlord as per Section 7 (2) of the Act, the landlord/petitioner is entitled to hold only one month rent as advance and the balance amount is to be refunded or adjusted towards arrears of rent. When that being the case if the advance amount is adjusted still there more amount is lying in the hands of the landlord. Furthermore, based upon the oral evidence of R.W.1, coupled with R1,R2,R3,R10 and R11 goes to show that the respondent/tenant has offered the rent to the petitioner. But the same was returned as refused.

26. Hence, this Court is of the considered view that in view of the settled legal preposition of law on the point and also factum that the respondent/tenant have remitted the rent by way of Demand Draft and

the same was refused to be received by the landlord and the landlord is holding the amount over and above, the one month rent as an advance and even as per the admission in the cross-examination of P.W.1, Rs.30,000/- advance for the second floor and Rs.20,000/- advance for the ground floor is still in vacant. When it is adjusted, there is no default and hence a similar finding arrived at by Appellate Authority does not warrant any interference and hence, based upon the evidence, the Appellate Authority has held that the respondent has not committed default and the first respondent not parted with exclusive position to the third party in lieu of remuneration or rent and hence, allowed the appeal and dismissed the revision such a finding rendered by the Rent Control Appellate Authority does not warrant any interference at the appellate stage.

27. In the result, this Civil Revision Petition is dismissed.

No costs.

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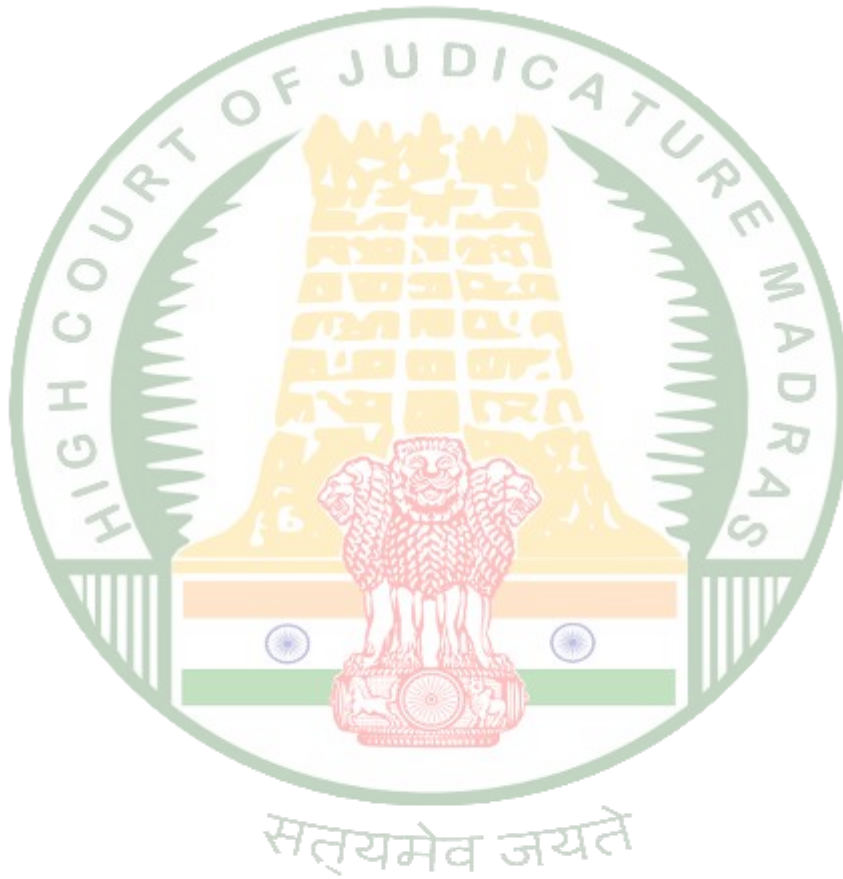
Index:Yes/No

Internet:Yes/No

Speaking Order:Yes/No

To

1. The VII Judge (Appellate Authority) Court of Small Causes, Chennai
2. The XI Judge (Rent Controller) Court of Small Causes, Chennai.

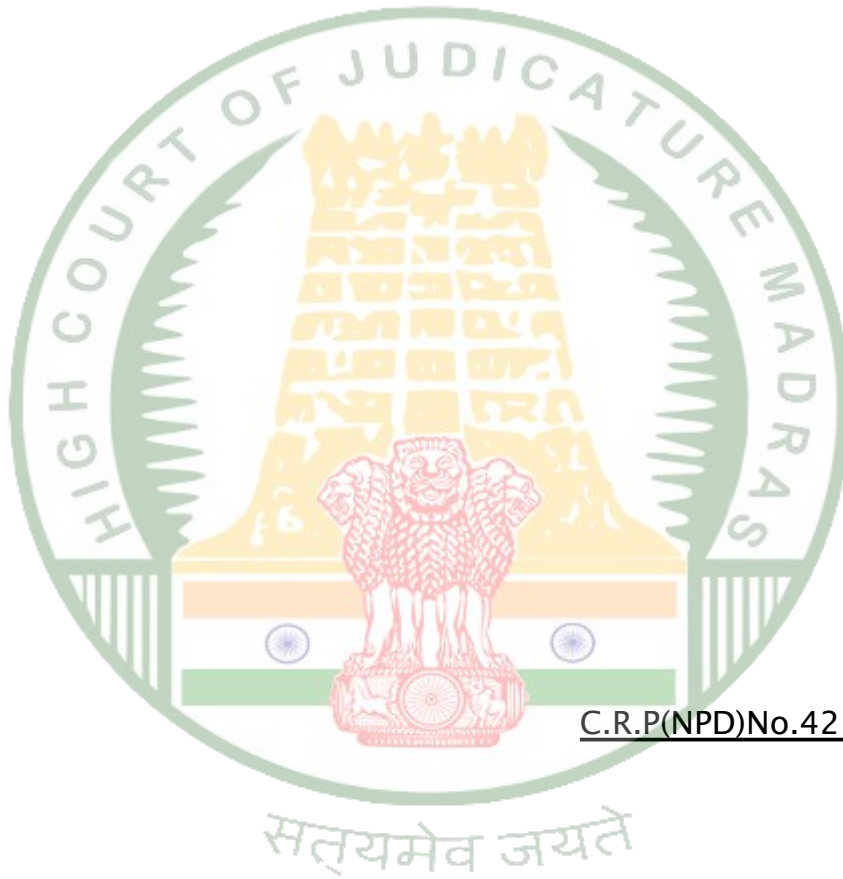


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