

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 23.01.2020]

[ORDERS PRONOUNCED ON : 28.02.2020]

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.R.P.[NPD] Nos.93 and 3661 of 2010

and

M.P.Nos.1 and 1 of 2010

1. R.Alamelu
2. P.Ravichandran
3. P.Singaravelu

... Petitioners in both
C.R.Ps./Tenants

.. Vs ..

1. Kavitha
2. Subhashree
3. Vijaya Maharajan

... Respondents in both
C.R.Ps./Landlords

Prayer in C.R.P.No.93/2010:- Civil Revision Petition is filed under Section XXV of Tamil Nadu Buildings (Lease and Rent Control) Act, [Act 18 of 60 as amended by Act 23/78 and Act 1/80], against the judgment and decree dated 06.11.2009 made in R.C.A.No.6 of 2008 on the file of the Rent Control Appellate Authority (Sub Court), Nagapattinam, partly allowing the judgment and decree dated 14.02.2008 made in R.C.O.P.No.8 of 2006 on the file of the Rent Controller (District Munsif), Nagapattinam.

Prayer in C.R.P.No.3661/2010:- Civil Revision Petition is filed under Section XXV of Tamil Nadu Buildings (Lease and Rent Control) Act, [Act 18 of 60 as amended by Act 23/78 and Act 1/80], against the judgment and decree dated 06.11.2009 made in R.C.A.No.3 of 2008 on the file of the Rent Control Appellate Authority (Sub Court), Nagapattinam, confirming the judgment and decree dated 14.02.2008 made in R.C.O.P.No.8 of 2006 on the file of the Rent Controller (District Munsif), Nagapattinam.

In both C.R.Ps.

For Petitioners : M/s.Srinath Sridevan
For Respondents : Mr.S.Sounthar

COMMON ORDER

The unsuccessful respondents before the R.C.O.P.No.8 of 2006/tenants are the revision petitioners herein.

2. The respondents 1 to 3 herein/landlords have filed a petition in R.C.O.P.No.8 of 2006 seeking an order of eviction of respondents 1 to 3 therein/revision petitioners herein/tenants on the ground of wilful default in payment of rent and requirement of the petition premises for personal occupation and on the ground of sub-

letting the petition premises by the first respondent therein/first petitioner herein to the respondents 2 and 3 therein/petitioners 2 and 3 herein without prior permission of the petitioners therein/landlords.

3. Brief averments in the petition filed in R.C.O.P.No.8 of 2006, are as follows:-

[i] The petitioners are the owners of the petition mentioned building. The first respondent is the tenant and second and third respondents are the sub-tenants under the first respondent. Therefore, petitioners are the landlords, the first respondent is the tenant and the second and third respondents are the sub-tenants under the first respondent.

[ii] The monthly rent for the petition mentioned building is Rs.1000/- and the first respondent/tenant has subleased the petition mentioned building to the second and third respondents from the month of June 2005 without permission from the landlords and the first respondent/tenant after that had left Mayiladuthurai and the

respondents know that the petitioners have purchased the petition mentioned building on 16.03.2006.

[iii] The petitioners/landlords for their own occupation asked the first respondent/tenant to vacate the petition mentioned building for which, the first respondent/tenant told that second and third respondents are her subtenants and so three months time is required for her to vacate them and that she will surrender possession by the end of June 2006 and till then, she will pay a sum of Rs.1000/- as monthly rent to the petitioners/landlords.

[iv] But, as accepted by the first respondent/tenant, rent was not paid to the landlords. Further, the petition mentioned property was also not vacated and when the petitioners/landlords asked to vacate the second and third respondents, they disputed the title of the petitioners/landlords.

[v] The petitioners/landlords have required the petition mentioned building for their own occupation and respondents/tenants

have committed wilful default in payment of rent and without permission of the landlords, the first respondent/tenant subleased the petition mentioned property to the second and third respondents and hence, on the above grounds, the respondents 1 to 3/tenants may be evicted from the petition mentioned property.

4. The claim of eviction by the landlords was resisted by the tenants and the first respondent in R.C.O.P.No.8 of 2006/tenant has also filed counter affidavit inter alia contended that the petition mentioned building is the ancestral property of the first respondent/tenant. The first respondent/tenant through his power agent Muthukumaran sold away the eastern half of the petition mentioned building to one Ilancheran and the western half of the petition mentioned building to the second respondent Ravichandran on 21.03.2006 through Sale Deeds registered before the Nagapattinam District Registrar Office and after the sale, the first respondent went to Mayiladuthurai. The second respondent and Ilancheran's brother third respondent are now residing in the petition mentioned building with their family and the house tax assessment also were changed in

their names. The petitioners/landlords claimed to have purchased the petition mentioned property on 16.03.2006 and hence, disputed the relationship of landlord and tenant. The first respondent/tenant sold away her property and settled at Mayiladuthurai and so she is not a necessary party to this case and there is no landlord and tenant relationship between the petitioners and the first respondent.

5. The second respondent in R.C.O.P.No.8 of 2006 has separately filed counter affidavit alleging that the petition mentioned building is the ancestral property of first respondent and on 21.03.2006, the second respondent and the third respondent's brother Ilancheran each have purchased half of the petition mentioned building from the first respondent through her power agent Muthukumaran and from the date of purchase, second and third respondents are residing in the petition mentioned building along with their family members and the property tax assessment were also changed in the names of the second respondent in R.C.O.P.No.8 of 2006 and Ilancheran.

6. Before the Rent Control Court, on behalf of the landlords, third petitioner examined himself as P.W.1 and one Ragukumar was examined as P.W.2 and documents Exs.P.1 to P.12 were marked and on behalf of the tenants, power agent of the first respondent was examined as R.W.1 and second respondent examined himself as R.W.2 and documents Exs.R.1 to R.4 were marked.

7. (i) The learned Rent Controller, after considering the oral and documentary evidence adduced on either side, has held that the petition mentioned building is not required for the own occupation of the petitioners/landlords and the first respondent/tenant had not sublet the petition mentioned building to the second and third respondents without the permission of landlords and aggrieved over the same, petitioners in R.C.O.P.No.8 of 2006 have preferred an appeal in R.C.A.No.6 of 2008 before the learned Rent Control Appellate Tribunal.

(ii) The learned Appellate Authority under the Rent Control Act also held that the respondents/tenants have committed wilful

default in payment of rent to the petitioners/landlords and so, they are liable to be evicted and aggrieved over the same, the respondents in R.C.O.P.No.8 of 2006 have preferred the present civil revision petitions.

8. Heard the learned counsel for the revision petitioners and the learned counsel appearing for the respondents and perused the materials available on record.

9. Mr.Srinath Srideven, learned counsel for the revision petitioners/tenants would contend that the relationship of landlord and tenant has not been established and there is no lease agreement between the respondents herein/landlords and the first petitioner/tenant and hence, prayed for allowing of both the civil revision petitions by setting aside the order dated 06.11.2009 passed by the learned Rent Control Appellate Authority (Subordinate Judge), Nagapattinam, in R.C.A.Nos.6 and 3 of 2008 respectively.

10. Per contra, Mr.S.Sounthar, learned counsel appearing for the respondents/landlords drawn my attention to the Xerox copy of the sublease agreement dated 18.06.2005, which was marked as Ex.P.11, executed between the first petitioner with the revision petitioners 2 and 3. The learned counsel for the respondents/landlords also has drawn my attention to the evidence of R.W.1, who in his cross-examination, has admitted about the truthfulness of the said document and also through the document Ex.P.5, the respondents herein/landlords have proved that the first petitioner herein alone was main tenant and R.W.1-Muthukumaran also has accepted the same in his cross-examination. Considering the said facts, the learned Rent Controller ought to have come to the conclusion that the petition mentioned building was subleased by the first petitioner herein/tenant to the revision petitioners 2 and 3 and should have allowed the R.C.O.P.No.8 of 2006 on the ground of sublease. Under such circumstances, the learned counsel for the respondents/landlords prayed for dismissal of both the civil revision petitions.

11. Points that arise for determination in both the civil revision petitions are that

[i] Whether there is a landlord and tenant relationship between the respondents herein and the revision petitioners herein?

[ii] Whether the plea of wilful default in payment of rent is made out?

[iii] Whether the plea of personal occupation is proved in the manner known to law?

[iv] Whether the plea of sub-letting is proved in the manner known to law?

12. On a perusal of the Exhibits filed before the learned Rent Controller and also the evidence of P.W.1/third respondent herein and R.W.1-Muthukumaran, power agent of the first petitioner herein and R.W.2, the second petitioner herein, this Court finds that no document was filed by the first petitioner herein to prove that the petition mentioned building is her ancestral property. Actually, the petition mentioned building belonged to one Kuppan Chettiar and

others and through their Power Agent Ragukumar, who was examined as P.W.2, they have sold the petition mentioned building to the respondents herein/landlords and hence, the respondents herein are the present owners of the petition mentioned building and the tenancy of first petitioner herein continued with the respondents' predecessors-in-title and so, the first petitioner herein alone is the tenant in the petition mentioned building and she only had subleased the petition mentioned building to the revision petitioners 2 and 3.

13. As could be seen from the oral evidence of P.W.1 and P.W.2 and documentary evidence of Ex.P.4, registration copy of partition deed dated 09.04.1937 entered between Kuppan Chettiar and his two brothers, it reveals that in the said partition deed, 'D' Schedule was allotted for pasumada Tharmam and doing seer for Kuppan Chettiar's aunt and his sisters and in the 'D' schedule only, the petition mentioned building also finds place. Under Ex.P.1-Sale Deed from the legal heirs of Kuppan Chettiar and his brothers, the respondents herein/landlords have purchased the petition mentioned building on 16.03.2006 through the power agent of Kuppan Chettiar

heirs and other legal heirs. Hence, the landlords claimed title to the petition mentioned building through Ex.P.4 and Ex.P.1 title deed and thus, the finding rendered by the learned Rent Controller that the first respondent has obtained title over the property having purchased under Ex.D.1 is well founded and well merited.

14. At this juncture, it is relevant to state that though the respondents 2 and 3 in R.C.O.P.No.8 of 2006 set up title upon themselves, to substantiate their right and title over the property, they marked Ex.R.2 and in respect of Ex.R.2, no parent document was referred. There is no recital in Ex.R.2 regarding any parent title and the same also throws serious doubt as to the coming into existence and the nature of the document nor any parent title deeds were marked on behalf of the tenants also assumes significance. When the tenants/revision petitioners herein claimed that the petition mentioned property is the ancestral property, in the absence of any parent document being marked or parental title deeds being referred to, the learned Rent Controller has rightly come to the conclusion that Ex.R.2 is a document cooked up for the purpose of the case. Besides,

R.W.1 has admitted in the cross-examination that the petition mentioned building is not the ancestral property of the first petitioner herein and only through her possession, she has right over the same and hence, this Court determines that the petition mentioned building is not the ancestral property of first petitioner herein and so, by accepting the documentary evidence of Ex.P.4 and Ex.P.1, this Court further determines that the respondents herein/landlords only have title to the petition mentioned building and hence, this Court holds that the title set up by the revision petitioners 2 and 3 on themselves is not proved in the manner known to law.

15. On the contrary, by oral and documentary evidence of P.W.1 and P.W.2 and Ex.P.1, the respondents/landlords have demonstrated that they are having right and title over the property. As to the coming into the question of how the first petitioner herein/tenant before the Rent Controller was inducted in the possession, the evidence of P.W.2 is clear that he himself and his brother Sukumar made oral arrangement with Kuppan Chettiar Vagaiyarah for the purchase of their properties and they have

appointed him as a Power Agent and at that time, he informed about his proposal of purchasing the petition mentioned building to the first respondent in R.C.O.P. during the month of December 2004 and at that time, the first respondent therein, towards maintenance of petition mentioned building done by her throughout the period, has demanded a sum of Rs.1,15,000/- and the said amount was paid through one cheque which was encashed for Rs.25,000/- by the first respondent therein and through another cheque for Rs.90,000/- was returned and hence, the said sum of Rs.90,000/- was paid in cash to the first respondent in R.C.O.P. and all those transactions are revealed in the undertaking letter executed by the first respondent therein.

16. On a perusal of Ex.P.5, the recital also goes to show and substantiate the oral evidence of P.W.2 and on combined reading of the evidence of P.W.2 coupled with the recital in Ex.P.9 goes to show that the evidence of P.W.2 regarding how the first respondent in R.C.O.P. was inducted into possession of the petition mentioned building and the first respondent therein has occurred to vacate the

premises on payment of amount mentioned therein towards developments made by her and issuance of two cheques were in the preceding paragraphs demonstrated that only the possession of the first respondent therein as the tenant since she was a tenant under the erstwhile owner continuous to be tenant under the first respondent herein and agreed to vacate the building on payment of charges towards improvement made by her. The said fact is also duly corroborated with the answer elucidated in the cross-examination of R.W.1 that the first respondent therein has informed him that she has executed a document agreeing to vacate the petition mentioned building after receiving the amount from the previous landlord and so, the above answer of R.W.1 in his cross-examination itself proves the document Ex.P.5 and so when in the document Ex.P.5, the first respondent therein has admitted her tenancy over the petition mentioned building goes against her and she is estopped from claiming title to the petition mentioned property and so, this Court determines that from the oral evidence of P.W.1, P.W.2 and R.W.1, coupled with the documentary evidence of Ex.P.5, it is established that the first respondent in R.C.O.P. is the tenant of the petition mentioned

building under the petitioners' predecessors and so quite naturally, as per Rent Control Act, the first respondent in R.C.O.P. is also a tenant of petitioners in R.C.O.P. Therefore, the similar finding arrived at by the learned Rent Control Appellate Authority as to the jural relationship between the respondents herein and the petitioners herein as that of landlords and tenants and recognition of tenancy of the first petitioner herein, who was a tenant under the predecessor-in-title was acknowledged by the landlords after purchase of the property and subsequently, inducted by her after receipt of the amount has also been clearly spoken to by P.W.1 which stands corroborated by the answer elucidated in the cross-examination of R.W.1 and hence, the jural relationship between the respondents herein and the petitioners herein as that of the landlord and tenant has been established in the manner known to law.

17. Regarding the plea of sub-tenancy, though the revision petitioners 2 and 3 would contend that they have purchased the property from the first respondent herein, the same stands negatived, in view of the reasons stated in the preceding paragraphs. The answer

elucidated in the cross-examination of R.W.1 about the signature in Ex.P.11 and P.12 goes to show that the petition premises was sub-leased by the first petitioner herein in favour of the revision petitioners 2 and 3 herein. Therefore, when the sub tenancy was admitted by R.W.2, who was the power agent of the first petitioner herein and in view of the clear recitals in Ex.P.12, the Appellate Authority has rightly come to the conclusion that there was a sub letting and possession of the property viz., the petition premises was handed over without prior permission of the first respondent landlord and hence, the plea of sub tenancy was proved in the manner known to law.

18. The original tenant viz., the first petitioner herein is not entitled to sublet the petition mentioned building without permission of landlord and so when the fact of subleasing of petition mentioned building by the first petitioner herein to the revision petitioners 2 and 3 is proved through Ex.P.12, the learned Rent Controller was wrong in declining the relief of eviction on the ground of subletting the petition mentioned building and so due to the foregoing reasons, this Court

answers for this point that the subletting the petition mentioned building by first petitioner herein to the revision petitioners 2 and 3 without permission of landlord is established through Ex.P.12.

19. In view of the specific plea in the petition and also the specific averments made by P.W.1 regarding his requirement of the building for his own occupation which was not denied by the tenant in the cross examination, this Court determines that the learned Rent Controller was not right in denying the eviction on the ground that the petition mentioned building is required for the landlords' own occupation and thus, this Court finds that the respondents herein/landlords only having title to the petition mentioned building and there exists landlord and tenant relationship between the respondents herein and the petitioners herein. All the points are answered in negation against the revision petitioners/tenants. The order passed by the learned Rent Control Appellate Authority is sustained in law and hence, both the Civil Revision Petitions are liable to be dismissed.

20. In the result,

[i] Both the Civil Revision Petitions are dismissed.

[ii] The order passed by the learned Rent Control Appellate Authority is confirmed.

[iii] There shall be no order as to costs.

[iv] The connected miscellaneous petitions are closed.

28.02.2020

Internet :Yes
Index : Yes/No
Jrl

To

1. The Sub Judge,
Rent Control Appellate Authority,
Nagapattinam.

2. The District Munsif,
Rent Controller,
Nagapattinam.

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Order made in
C.R.P.[NPD] Nos.93 & 3661 of 2010

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