

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 05..02..2020

Orders Pronounced on: 28..02..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.1701 of 2017
and

Civil Revision Petition No.2311 of 2019

&

C.M.P.No.15024 of 2019

N.Murugan

... Petitioner / Tenant in both CRPs

-Versus-

R.Chandrasekaran

... Respondent/ Landlord in both CRPs

Prayer in C.R.P.No.1701 of 2017: Petition filed under Section 25 of The Tamil Nadu Buildings (Lease and Rent Control] Act, 1960 praying to set aside the order dated 02.01.2017 made by the learned Subordinate Judge, Tambaram, in R.C.A.No.13 of 2013 confirming the order of eviction dated 28.06.2013 made by the learned Principal District Munsif, Alandur, in R.C.O.P.No.42 of 2009.

C.R.P.No.2311 of 2017: Petition filed under Section 115 of CPC praying to set aside fair and decreetal order of the Principal District Munsif Court, Alandur order dated 7.3.2019 made in E.A.197 of 2018 in E.A.206 of 2019 in E.P.No.175 of 2013 in R.C.O.P.NO.42 of 2009.

For Petitioner

: Mr.R.Subburaj for petitioner
in both CRPs

For Respondent

: Mr.P.R.Raman, Senior Counsel
for Mr.E.Ezhil Caroline

COMMON ORDER

The revision petition in C.R.P.No.1701 of 2017 has been preferred challenging the order dated 02.01.2017 made by the Rent Control Appellate Authority (Subordinate Judge), Tambaram,

dismissing the appeal in R.C.A.No.13 of 2013 and thereby confirming the order of eviction dated 28.06.2013 made by the learned Rent Controller (District Munsif), Alandur, in R.C.O.P.No.42 of 2009, while the order revision petition in C.R.P.No.2311 of 2019 has been filed against the order dated 07.03.2019 made by the learned Principal District Munsif, Alandur, dismissing the application in E.A.No.197 of 2018 in E.A.No.206 of 2017 in E.P.No.175 of 2013 in R.C.O.P.No.42 of 2009 filed by the petitioner under Order XXVI, Rule 9 r/w Section 151 of CPC seeking appointment of Advocate Commissioner to inspect the petition demised premises and note down the physical feature and to file report with rough plan.

2. The brief facts leading to the filing of the rent control proceedings are as follows:-

(i) The respondent is the land lord and the petitioner is the tenant under him. For the sake of convenience the parties in these revision petitions will hereafter be referred as per their jural relationship.

(ii) The landlord filed an original petition for eviction of the tenant on the ground of willful default in payment of rent and for demolition and reconstruction of the building in question. The landlord had purchased the petition demised property from one Mrs.Vasante Lucie for a valuable consideration by way of registered sale deed dated 05.03.2008. The petitioner herein was the tenant under the vendor of the petitioner herein. The respondent landlord immediately after the purchase of the petition demised property informed the same to the tenant. At that time, the tenant had promised that he would vacate and surrender possession of the premises within two months thereafter, or he would pay Rs.25,000/- towards monthly rent from April, 2008 onwards. But, the tenant neither vacated the premises nor paid any rent as undertaken by him and thereby he had committed willful default in payment of rent. The tenant has also been running an old age home without the permission from the land lord. Further more, the roof and the side of wall of the rented building are in a dilapidated condition and as such the building is required for demolition and reconstruction.

3. The tenant contested the eviction petition on the ground that the demised premises was leased out to him by the erstwhile owner in the year 2000 and he has been running an old age home therein. Earlier, the erstwhile owner represented by her Power of Attorney one Shri.Vasantee Jayakumar entered into an agreement of sale on 11.01.2008 agreeing to sell the demised property to him for a total sale consideration of Rs.18,00,000/- and had received an advance of Rs.7,00,000/- from him towards

part of sale consideration and the balance sale consideration of Rs.11,00,000/- was agreed to be paid at the time of registration of sale. Thereafter, the property was sold to the petitioner. The tenant further contended that he was not aware of the sale in favour of the landlord. Pursuant to the sale agreement, the tenant has been in possession of the property as an agreement holder and the jural relationship of the landlord and the tenant between the erstwhile landlord and the respondent had come to an end after the execution of the sale agreement. Hence, there is no need for the tenant to pay any rent. That apart, the building in question is not in a dilapidated condition and as such there is no bonafide in the eviction petition that the building is required for demolition and reconstruction.

4. During trial, before the rent controller, the landlord examined himself as P.W.1 and one Thiru.Natarajan as P.W.2 and adduced 7 documentary evidence as Ex.P.1 to Ex.P.7 and on the side of the tenant, he was examined himself as R.W.1 and adduced 3 documents as Ex.R.1 to R.3. The learned rent controller on considering the available materials ordered eviction of the tenant on the ground of willful default in payment of rent alone, however, dismissed the petition with respect to demolition and reconstruction. Challenging the order of eviction, the tenant had preferred an appeal before the Rent Control Appellate Authority and the same was dismissed. Further aggrieved by the same, the tenant is before this court with revision petition in C.R.P.No.1701 of 2017.

5. After the order of eviction, in the year 2013, the landlord had initiated an execution proceedings in E.P.No.175 of 2013 before the learned District Munsif, Alandur, for delivery of possession wherein the tenant filed an application in E.A.197 of 2018 seeking appointment of Advocate Commissioner for the purpose of noting down the physical features of the building in question and filing the report. That application came to be dismissed by the executing court by order dated 07.03.2019. Challenging the same, the tenant is before this court with the other revision petition in C.R.P.No.2311 of 2019.

6. I have heard Mr.R.Subburaj, learned counsel appearing for the petitioner (tenant) and Mr.P.R.Raman, learned senior counsel appearing for the respondent (landlord) and also perused the records carefully.

7. The learned counsel appearing for the tenant would vehemently contend that the petition for eviction itself is not maintainable as prior to the purchase by the landlord, the tenant had entered into an agreement of sale with the erstwhile

landlord and had paid substantial amount towards part of sale consideration and he was put in possession in part performance of the contract, therefore, the jural relationship of the landlord and tenant between the petitioner and the erstwhile landlord ceased to exist on the date of agreement of sale. Ever since the agreement of sale, the petitioner has been in possession and enjoyment of the property in question in part performance of the agreement and therefore, the petition under The Tamil Nadu Buildings [Lease and Rent Control] Act is not maintainable.

8. The learned counsel appearing for the petitioner would further submit that when there was no jural relationship of landlord and the tenant, the petitioner need not pay any rent and as such the question of willful default in payment of rent would not at all arise.

9. The learned counsel would further add that the tenant could mark only a copy of the sale agreement as Ex.R.1, as the original of the same was destroyed by the power of attorney of the erstwhile landlord, and upon a complaint, a criminal case was filed against him in this regard. The police after enquiry, submitted a report wherein it is clearly stated that the power of attorney had destroyed the agreement of sale. According to the learned counsel, Ex.R.1 to Ex.R.3 would support the case of the tenant. But, both the authorities below have brushed aside the contentions of the tenant and thereby rendered an erroneous finding that there was willful default in payment of rent and as such ordered for eviction and therefore, the orders of the both authorities below require interference at the hands of this court.

10. Per contra, the learned senior counsel appearing for the landlord would contend that the original sale agreement was not marked deliberately before the rent controller. Even assuming that there was an agreement of sale, there is no recital in the alleged sale agreement that the tenant expressly or impliedly surrendered the possession of the property to the landlord and thereafter, possession was handed over to him in part performance of the agreement of sale. In the absence of the same, the tenant cannot contend that the jural relationship of landlord and the tenant got ceased. That part, at the time when the landlord had informed the tenant by way of a registered post about his purchase of the petition demised property, the tenant did not come forward to give any reply. The tenant was fully aware of the purchase by the landlord. Despite the same, the petitioner had failed to pay the rent to the respondent. Therefore, the tenant is liable to be eviction from the premises on the ground of willful default in payment of rent.

11. I have considered the rival submissions carefully.

12. The rent controller had ordered eviction on the ground of willful default. It is the case of the landlord that he had purchased the petition demised premises from one Mrs.Vasante Lucie on 05.03.2008 for valuable consideration under a registered deed of sale. The petitioner was the tenant under his vendor. Immediately after the purchase, the landlord informed the tenant about his purchase of the petition demised property under Ex.P.1, Ex.P.2 and Ex.P.3 - Notice and the Postal Acknowledgment card and Ex.P.4 is the returned postal cover. But, there was no reply from the tenant. Admittedly, the tenant did not pay any rent to the landlord. The only contention of the tenant is that he had entered into an agreement of sale with the power of attorney of the original landlord on 11.01.2008 and he had paid substantial amount as part of sale consideration under the agreement and as such he was put in possession in part performance of the contract. When the tenant has been put in possession of the property pursuant to the agreement of sale, the jural relationship of landlord and the tenant ceased to exist and the petitioner cannot be treated as tenant. To substantiate his claim, the tenant has filed a xerox copy of an agreement of sale under Ex.R.1. According to the tenant, the original of Ex.R.1 was destroyed by the power of attorney of the erstwhile landlord. In order to substantiate his contention, the tenant had produced a copy of the enquiry report filed by the Sub Inspector of Police, Adambakkam Police Station wherein it is stated that Shri.Vasantee Jayakumar, the power of attorney of the erstwhile landlord had taken away the original sale agreement from the possession of the tenant and destroyed the same. From a perusal of the above, it could be seen that it is only a report based on a preliminary enquiry said to have been conducted by the Sub Inspector of Police, Adambakkam Police Station. This report is not accompanied by any statement of witnesses who are stated to have been examined by the police concerned. That apart, the enquiry report is also not admissible in evidence.

13. Be that as it may, from a careful perusal of the alleged agreement of sale, this court is unable to find any clause in the agreement in respect of surrender of tenancy by the tenant and that he was put in possession in part performance of the contract of agreement of sale.

14. The learned counsel appearing for the petitioner would, however, relying upon a clause in the alleged agreement of sale, make a feeble attempt to impress upon this court that the tenant has been running an orphanage from June 2002 in the premises in

question and that there are 40 inmates in the old age home. This contention of the tenant cannot be countenanced for the simple reason that the clause upon which much reliance has been placed by the learned counsel for the tenant would only go to show that it was nothing but an acknowledgment that the tenant was running an orphanage and there is no specific clause in the agreement of sale that the tenant was put in possession in part performance of the agreement of sale.

15. Very recently, the Hon'ble Supreme Court in H.K.Sharma v. Ram Lal reported in 2019(4) Supreme Court Cases 153 distinguishing the earlier judgement of the Supreme Court in Kanthimathi v. Mrs.Beatrice Xavier [2000 (2) L.W. 805] has held that unless the tenant surrenders the possession either expressly or impliedly pursuant to the sale agreement, the tenant cannot claim that the jural relationship of landlord and tenant ceased to exist. The relevant portion of the judgement reads as follows:-

"23. In other words, the question that arises for consideration is when the lessor enters into an agreement to sell the tenanted property to his lessee during the subsistence of the lease, whether execution of such agreement would ipso facto result in determination of the lease and sever the relationship of lessor and the lessee in relation to the leased property

29. Perusal of agreement to sell dated 13.05.1993 (Annexure P-1) shows that though the agreement contains 9 conditions but none of the conditions provides, much less in specific terms, as to what will be the fate of the tenancy. In other words, if the parties really intended to surrender their tenancy rights as contemplated in clauses (3) or (f) of Section 111 of the TP Act while entering into an agreement to sell the suit house, it would have made necessary provision to that effect by providing a specific clause in the agreement. It was, however, not done. On the other hand, we find that the conditions set out in the agreement do not make out a case of express surrender under clause (3) of implied surrender under clause (f) of Section 111 of the TP Act."

16. In view of the above, the petitioner continued to be the tenant under the respondent and, therefore, he is liable to pay rent to the respondent. As he had committed willful default in

payment of rent, on that ground he is liable to be evicted from the premises. Both the authorities below on considering the factual aspects of the case have rightly ordered for eviction in which this court finds no infirmity or irregularity. Thus, the revision in C.R.P.No.1701 of 2017 is devoid of merit and the same is liable only to be dismissed.

17. Coming to the other revision petition in C.R.P.No.2311 of 2019, pending execution proceedings, the application under revision was filed by the tenant for appointment of Advocate Commissioner to note down the physical features of the property in question on the ground that the respondent had purchased the property comprised in S.No.174/6 situated at Adambakkam village which has got no relevance to the property in which the petitioner is in possession as tenant and the petitioner is in possession of the property in S.No.175/2 which is totally a different property. In order to find out the identity of the property with the help of a qualified Town Surveyor, the petitioner had sought for appointment of Advocate Commissioner. That application was dismissed by the executing court as not maintainable holding that the eviction petition was based on the specific schedule of property as mentioned in the sale deed and therefore, now, it is not open to the petitioner to claim that he is the tenant in respect of a different property. Therefore, the executing court was of the view that there was no necessity for appointment of Advocate Commissioner. The executing court was of the further view that question as to whether the petitioner is in possession of the land comprised in S.No.176/4 or S.No.175/2 is immaterial as the property is identifiable and there is no dispute about the same and that the executing court cannot go beyond the decree. On going through the order impugned in the revision, this court finds no infirmity in the reasoning given by the executing court in dismissing the application for appointment of Advocate Commissioner. Thus, this revision petition is also devoid of merit and the same deserves only to be dismissed.

In the result, both the civil revision petitions are dismissed and the order passed by the authorities below and the executing court respectively stand confirmed. No costs. Consequently, connected CMP are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Tambaram, Chennai.

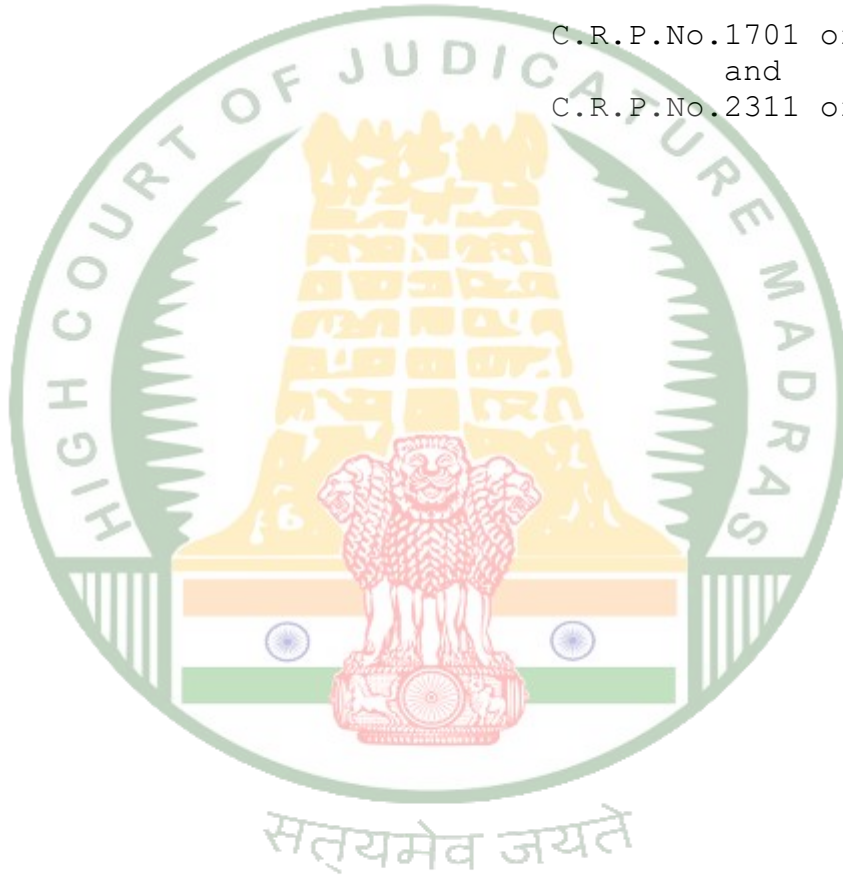
2.The Principal District Munsif,
Alandur, Chennai.

1 cc to M/s.E. Ezhil Caroline, Advocate, Sr. 17722

1 cc to M/s.R. Subburaj, Advocate, Sr. 17815

C.R.P.No.1701 of 2017
and
C.R.P.No.2311 of 2019

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