

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 27.02.2020
Judgment Pronounced on : 19.06.2020

CORAM:
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P. (NPD) No.3567 of 2011

R.Balasubramaniam Chettiar (died)
1.B.Santhana Gopal ..1st Petitioner/1st Appellant/2nd Petitioner
2.B.Radhakrishnan
... 2nd Petitioner/2nd Appellant/
3rd Petitioner/Landlord
Vs.

M.Magesh ... Respondent/ Respondent/Respondent/Tenant

Prayer: This Civil Revision Petition is filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23/1973, against the fair order and decreetal order dated 02.06.2011 in R.C.A.No.5 of 2009, on the file of the Rent Control Appellate Authority (Subordinate Judge), Vellore, confirming the fair and final order dated 29.01.2009 made in R.C.O.P.No.38 of 1998 on the file of the Rent Controller (Principal District Munsif), Vellore.

For Petitioners: Mr.S.V.Jayaraman
Senior Counsel
For Mr.K.Thangavelu

For Respondent : Mr.Velayutham Pichaiya

ORDER

The unsuccessful Landlords are the revision petitioners herein. The first petitioner(deceased)/landlord has filed the R.C.O.P.No.38 of 1998 before the learned Principal District Munsif-cum-Rent Controller for an order of eviction under Section 10(2)(ii)(a) and 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23/1973 to evict the respondent/tenant from the petition mentioned property on the ground of sub-letting and for own use and occupation.

2. Brief averments that are necessary for determining of this Civil Revision Petition are as under:

The petitioners are the owners of the building. The first petitioner let out the same to the respondent for non-residential purpose of carrying on brass vessel business on a monthly rent of Rs.4,000/-.The first petitioner (deceased) has two sons namely, B.Santhana Gopal, the second petitioner and one B.Radhakrishnan, the third petitioner herein, who are carrying on business as shorraff merchant pawn brokers along with the first petitioner in a rented premises. They have licence for carrying on the said business and the only building belonging to the petitioner and which is let out to the respondent is available. The first petitioner has no other building of his own to provide a separate business premises for his sons, who are carrying on business. Therefore the first petitioner requires the petition mentioned building for his sons' business. They want to carry on pawn broker business independently in the petition mentioned building. The petitioners requirement is bonafide. The respondent/tenant has sublet the petition mentioned building to one R.Vijayalakshmi without the consent of the owners. Therefore the respondent is liable to be evicted from the petition mentioned building.

(2.1) In the counter, the respondent stated that the building consists of three floors in the Ground floor occupied by this respondent, first floor which has been recently leased out to a textile business and the second floor is in the occupation of the petitioners and vacant. Therefore the requirement of the petitioners on the ground of own use and occupation is not at all bonafide. The respondent is carrying on business for a number of years. He has renovated the premises by spending huge amounts. He has invested heavily in the business. If he is asked to vacate the premises, he will be put to very great loss and hardship. The very factum that the first petitioner has filed a petition for fixation of fair rent for the petition premises claiming an alleged fair rent of Rs.18,924/- per month, will go a long way to show that the present petition is not at all bonafide.

(2.2) In the additional counter, the respondent stated that this respondent has not sub-let the petition premises to the alleged R.Vijayalakshmi as claimed and the said Vijayalakshmi is not in possession of the petition premises. Ever since the inception of the tenancy this respondent alone is in possession and enjoyment of the same.

3. Before the learned Rent Controller, on the side of the petitioners/landlords, Exs.A1 to A5 were marked and on behalf of the respondent/tenant Exs.B1 to B6 were marked. PWs.1 and 2 were examined and RW.1 was also examined.

4. On consideration of both oral and documentary evidence, the learned Rent Controller, Vellore has dismissed the RCOP holding that the sub tenancy pleaded by the petitioner is not

true and the petitioner/landlord has not proved that he is ready with new business as alleged for his own occupation. Aggrieved against the said fair order and decreetal order, the landlord has filed R.C.A.No.5 of 2009 before the learned Sub Judge(Rent Control Appellate Authority), Vellore. Pending appeal, the landlord filed a petition under Order 41 Rule 27 of CPC., for receipt of additional evidence and hence Exs.A6 to A27 were marked. They are all income tax and commercial tax transaction orders produced by the department officials. The Rent Control Appellate Authority has observed that there is no immediate requirement to the landlord to occupy the building, and accordingly rejected the RCA and confirmed the RCOP and hence the present Civil Revision Petition.

5. Heard Mr.S.V.Jayaraman, learned Senior Counsel appearing for the petitioners and Mr.Velayutham Pichaiya, learned Counsel appearing for the respondent and perused the records.

6. Mr.S.V.Jayaraman, learned Senior Counsel for the petitioners made submissions in support of the petition. The revision petitioners are the landlords. During the pendency of the trial, the first petitioner, namely, R.Balasubramaniam Chettiar died and his sons were impleaded as petitioners 2 and 3. R.C.O.P.No.38 of 1998 was filed before the learned Principal District Munsif (Rent Controller), Vellore on the ground that the tenant has sub-letted the building to one R.Vijayalakshmi and the building is required for owners occupation for non-residential purpose and accordingly, filed a petition under Section 10(3)(a) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. He further submitted that in the counter affidavit, the tenant has taken a specific plea that the petitioners have not carrying on business and the alleged requirement is not bonafide and though there was no plea in the sub-tenancy, but in the additional counter affidavit the alleged sub-tenancy by the tenant has been specifically denied. The original petitioner namely, R.Balasubramaniam Chettiar was examined as P.W.1 and cross-examination was completed. At this time, he died and his Legalheirs were brought on record. Subsequent to the death, the third petitioner was examined as P.W.2 and cross-examination was going on and on behalf of the petitioners' side, Exs.A1 to A5 were marked. On behalf of the tenant, the tenant examined himself as RW.1 and Exs.B1 to B6 were marked.

7. On consideration of both oral and documentary evidence adduced on either side, the learned Rent Controller has come to the conclusion that on the date of filing of the RCOP, the petitioners/landlords have not demonstrated that they were carrying on business and the alleged sub-tenancy is not proved in the manner known to law. Observing so, the learned Rent Controller rejected the R.C.O.P.No.38 of 1998. As against the

said order, the landlords have preferred R.C.A.No.5 of 2009 before the learned Subordinate Judge, Vellore.

8. During the pendency of R.C.A.No.5 of 2009, the landlords have filed a petition in I.A.No.104 of 2009 under Order 47 Rule 27 of CPC praying to mark certain documents issued by the Sales Tax and Income Tax officials in connection with the alleged business said to have been carried on and in the above said miscellaneous petition and in RCA arguments were heard together and disposed of by a common order whereby after allowing the interlocutory application filed under Order 47 Rule 27 of CPC., Exs.A6 to A27 were marked and they have been taken into consideration.

9. The learned Rent Control Appellate Authority has come to the conclusion that the petitioners/landlords have carried on business in the petition premises. However, there is no immediate requirement for keeping the building and also held that the bonafideness is not satisfied in accordance with law and also concurred upon the finding rendered by the learned Rent Controller.

10. The learned Senior Counsel for the petitioners has drawn my attention to the reply notice wherein, RW.1 has admitted about the fact of the landlords have been carrying on business. He has also submitted that the finding of the learned Rent Controller that no document has been filed to demonstrate the landlords carrying on business is bad in law. Furthermore, the learned Senior Counsel has also drawn my attention to the finding of the learned Rent Control Appellate Authority that on the date of filing of RCOP the petitioners/landlords have carrying on business, however their requirement is not immediate and also stated that the finding rendered by both the Authorities under the Tamil Nadu Buildings (Lease and Rent Control) Act is not perverse. The learned Senior Counsel for the petitioners also has relied upon the following decisions:

- (i) 2010(2)MWN(civil)371 (I.A.Ramesh vs. P.Kalyani)
- (ii) 2010(3)TLNJ 225 (Civil) (S.Selva Singh vs. V.Ganesh)
- (iii) (1997) 11 SCC 411 (Raj Kumar Khaitan and others vs. Bibi Zubaida Khatun and another)
- (iv) (2010) 1 SCC 503 (Uday Shankar Upadhyay and others vs. Naveen Maheswari)

11. Admittedly though a pleading of sub-tenancy was raised, the alleged sub tenant was not added as a party and there was no evidence in this regard. RCOP was rejected by the learned Rent Controller on the ground that on the date of filing of RCOP, the landlord is not carrying on the alleged business. Though additional documents were allowed to be marked before the Appellate Authority, such as Exs.A6 to A27, the Appellate

Authority has rendered a finding that on the date of filing of the RCOP, the revision petitioners/landlords is carrying on the business, however, the requirement is not immediate.

12. It is to be stated that when a petition under Section 10 (3) (a) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act is filed, the pleading with regard to the owners occupation has to be looked into. Before the Appellate Authority I.A.No.104 of 2009 was filed and the same was allowed and Exs.A6 to A27 were marked.

13. On perusal of these additional documents, which were filed on the appeal stage, it goes to show that the petitioner/landlord was carrying on business even prior to the filing of the eviction petition and also continues to do so, thereafter these documents were issued by the commercial tax as well as income tax departments to show the proposed business of the landlords at the time of the RCOP and a permission has been taken to do the said business. It is to be stated that the petitioners/landlord have carrying on a business at No.51, Main Bazar Vellor (Jewelery and Pawn Broking) as per the above Exs.A6 to A27 and hence on the date of the petition, they are carrying on the business in the rented premises so is the evidence of PWs.1 and 2 even in the cross-examination. Furthermore, PW.2 has categorically stated that they are carrying on the business in the rented building and hence the petition for eviction is filed with bona fide requirement to carry on business in their own premises since they are carrying on their business in a rental building. Ex.A5 is a series of receipt issued by the landlords in the stay of the rented premises occupied by the petitioners also lend support to the plea of the landlord. The fact is that the petitioners are renewing the licenses for the past number of years and they are not asking the tenant to vacate the premises, only proves their bonafide that since it was not required earlier, the petitioners did not want the tenant to vacate them but since they they require the premises now and the fact that they did not ask earlier is not a ground regarding the bonafide. Since the license is renewed every year, it cannot be taken that the petitioners require the premises bonafide for getting that to obtain license itself so many formalities are there and if it is not renewed he may not be given again and the renewal of license only prove and established his bonafideness.

14. In view of the fact that the business is now in a rented premises, and since for the purpose of business they require license which they have got and since for all these years they did not ask the tenant to vacate and only when they gained some experience in the said business they requested the tenant to vacate and on his failure filed the petition goes to show that

the bonafide in the petition. The first floor portion is not suitable for pawn broking business and that was the reason why it was let out after construction to another tenant that too when the second petitioner was not then confident to do independently the Pawn Broking business assumes significance.

15. Thus, this Court finds that the petitioners/landlords have made preparation for their business and their requirement is bonafide and viewing the additional evidence, the petitioners are carrying on the said business and it is not for the tenant to dictate which building the landlord has to chose to run the business, accordingly, this Court holds that the petitioners/landlords have made out the case of bonafideness in requiring the petition premises.

16. In the result, this Civil Revision Petition is allowed. The fair order and decretal order dated 02.06.2011 in R.C.A.No.5 of 2009, on the file of the Rent Control Appellate Authority (Subordinate Judge), Vellore and the fair and final order dated 29.01.2009 made in R.C.O.P.No.38 of 1998 on the file of the Rent Controller (Principal District Munsif), Vellore are hereby set aside. No Costs. The respondent/tenant is directed to vacate and hand over the petition premises to the petitioners/landlords within a period of two months from the date of receipt of a copy of this order. Two months time is granted since it is a non-residential building.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

PJL
To

1. The Subordinate Judge, (Rent Control Appellate Authority) Vellore.
2. The Principal District Munsif, (Rent Controller) , Vellore.
3. The Section Officer, Vernacular Records, Madras High Court, Madras.

C.R.P. (NPD) No.3567 of 2011

GJ(CO)
SP(18/09/2020)