

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.2667 of 2015
and
M.P.No.1 of 2015

R.Manoharan ... Petitioner

Vs.

S.Jayalatha ... Respondent

Prayer: Civil Revision Petition is filed under Section 25 of Tamilnadu Buildings (Lease and Rent Control) Act 18/60 as amended by Act 23/74 and Act 1 of 1980, to set aside the judgment and decree passed in RCA.No.388 of 2012 dated 22.02.2015 on the file of the VIII Judge, Small Causes Court, Chennai thereby set aside the order of eviction passed in RCOP.No.1302 of 2010 dated 24.01.2012 on the file of the X Judge, Small Causes Court, Chennai by allowing the CRP with cost.

For Petitioner

: M/s.V.V.Sairam

For Respondent

: Mr.Mukesh Kumaran
for M/s.Norton & Grant

ORDER

This Civil Revision Petition has been filed by the appellant/defendant against the judgment passed an appeal in RCA.No.388 of 2012 on the file of the Rent Control Appellate Authority (VIII Judge, Small Causes Court), Chennai dated 22.01.2015.

2.The respondent herein had filed RCOP.No.1302 of 2010 on the file of the Rent Controller (X Judge, Small Causes Court), Chennai under Sections 10(2)(i), 10(2)(iii), 10(2)(v), 10(2)(vii) & 14(1)(b) of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 (herein after referred to as 'Rent Control Act') for eviction of the petitioner herein from the petition mentioned premises, on the ground of wilful default, acts of waste, denial of title of ownership, causing nuisance and for demolition. The learned Rent Controller, by the order dated 24.01.2012, had allowed the said petition on the grounds of wilful default in paying the rent, denial of title of ownership and causing nuisance. However, he dismissed the petition on the grounds of act of waste and for demolition. Feeling aggrieved, the petitioner herein had filed an appeal in RCA.No.388 of 2012 on the file of the Rent Control Appellate Authority (VIII Judge, Small Causes Court), Chennai. The learned Appellate

Authority by a judgment dated 22.01.2015, had dismissed the said Appeal and thereby confirmed the order passed by the Rent Controller. Feeling further aggrieved, the appellant/tenant had filed the present Civil Revision Petition.

3.For the sake of convenience the parties are referred to as described before the Rent Controller.

4.The averments made in the Rent Control original petition are in brief as follows:

The petitioner is the absolute owner of the petition mentioned premises. She leased out the said property to the respondent as per the Lease Agreement dated 01.03.1995 for a period of 11 months and the monthly rent was fixed at a sum of Rs.925/- and a further sum of Rs.925/- was fixed for the amenities. It was also agreed that the respondent has to pay the enhanced rent at 10% on the existing rent as well as on the amenities on renewal after the expiry of the agreement. The respondent has also paid a sum of Rs.10,000/- as advance. Even, after expiry of the aforesaid lease period, the tenancy continues, but no written agreement has been executed. The respondent, though in the

beginning, paid rent regularly, subsequently, he used to pay rent belatedly on one pretext or the other. During the month of March 2009, the respondent stated that, he is going to vacate the premises and rent may be adjusted with the advance amount which was already paid to the petitioner. Accordingly, the entire amount was adjusted. Even, after lapse of three months, the respondent did not vacate the premises and on enquiry, he revealed that he could not find any suitable place for occupation and hence, he requested the petitioner to bear with the respondent and paid a sum of Rs.10,200/- (Rupees Ten Thousand Two Hundred only) being the rents for the months of April, May and June 2009. During the month of June 2009, the rent was further enhanced to Rs.4,500/- (Rupees Four Thousand Five Hundred only) per month and respondent refused to pay the said amount, but, however during August 2009, he has sent a Money Order for Rs.4,000/- (Rupees Four Thousand only) being the rent for the month of July 2009 and the same was received by the petitioner. Thereafter, the respondent did not pay rent. Further the respondent is creating much nuisance in the petition mentioned property and also refused to pay rent. The nuisance created by the respondent was to the extent that, the neighbours started complaining about the same to the Tamil Nadu Pollution Control Board.

Further, the respondent is doing his bureau manufacturing business and committed acts of waste in the premises by smearing paints on the wall and further, the floor premises was damaged due to the negligent moving of the Iron bureaus. The respondent has also filed a suit for declaration of title in respect of the petition mentioned property by claiming that, he perfected his title by way of adverse possession in O.S.No.12429 of 2009 on the file of the II Assistant Judge, City Civil Court, Chennai and the same is still pending. The respondent has denied the title of the petitioner. Further, the petition mentioned premises is more than 50 years old and is in a dilapidated condition and the same may fall down at any time and hence, the petitioner is entitled to demolish the said premises. Therefore, he requests to vacate the respondent on the grounds of wilful default in paying the rent, acts of waste and denial of title of ownership, causing nuisance and for demolition.

5.The averments made in the counter filed by the respondent are in brief as follows:

Since the respondent had already filed a suit in O.S.No.12429 of 2009 on the file of the II Assistant Judge, City Civil Court, Chennai for the declaration of his title, the Rent Controller is not having jurisdiction

to entertain the above petition. If any rent is due, the petitioner has to recover the same by filing Civil Suit. In so far as the allegation with regard to act of waste is concerned, the respondent was induced to make and sell steel bureau and all of sudden, she instigated her neighbours to send complaints to the Pollution Control Board and therefore, he prayed to dismiss the petition.

6. During enquiry on the side of the petitioner, the petitioner examined herself as P.W.1 and also marked Exs.P1 to P4 as Exhibits. On the side of the respondent, neither oral nor documentary evidence has been adduced.

7. The learned Rent controller, after considering the materials placed before him found that, the denial of title by the respondent is not bonafide and also found that, the respondent has committed wilful default in paying rent and also found that he caused nuisance. However, he found that, the petitioner failed to prove that building is required for demolition and reconstruction, and also act of waste. He allowed the said petition directing the respondents to vacate and deliver the vacant possession of the premises within six weeks. Feeling aggrieved, the

respondent/tenant had filed an appeal in R.C.A.No.388 of 2012 on the file of the Rent Control Appellate Authority (VIII Judge, Small Causes Court), Chennai. The learned Rent Control Appellate Authority by the judgment dated 22.01.2015 had dismissed the said appeal and thereby confirmed the order passed by the Rent Controller. Feeling further aggrieved, the appellant/tenant has filed the present Civil Revision Petition.

8.Heard Mr.V.V.Sairam, the learned counsel for the petitioner and Mr.Mukesh Kumaran for M/s.Norton & Grant, learned counsel for the respondent.

9.The learned counsel for the petitioner has submitted that, since the petitioner/tenant had already filed a suit claiming title over the petition mentioned property on the ground of adverse possession, the denial of title of the respondent is a bonafide one and in such a case, the Rent Controller has no jurisdiction to decide the issue with regard to the title over the petition mentioned property. He further submitted that the learned Rent Controller failed to consider that the respondent herein did not prove that the petitioner herein had paid any rent. He further

submitted that the alleged payment of rent by the tenant has been set up by the respondent herein and she herself sent the Money Order in order to create evidence and the same cannot be taken as that the petitioner had paid any rent. He further submitted that the Rent Controller failed to consider that there is no evidence with regard to causing nuisance and allowed the said petition on the ground that the denial of title by the respondent/defendant is not bonafide and also, he committed wilful default in paying rent and causing nuisance. He further submitted that the Rent Control Appellate Authority also had mechanically confirmed the order passed by the Rent Controller and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the Authorities below and dismiss the Rent Control Original Petition.

10.Per contra, the learned counsel for the respondent/landlord has submitted that in the counter filed by the petitioner herein, he has categorically admitted that he was inducted to the petition mentioned property only by the respondent and that being so, he cannot deny the title of the respondent during continuance of the tenancy. He further submitted that eventhough the petitioner herein has set up title over the petition mentioned property, by adverse possession, he did not enter into

the witness box and adduce any evidence in support of his case. He further submitted that, the denial of title by the respondent/defendant is not bonafide and that therefore, the Rent Controller has rightly allowed the eviction Petition. He further submitted that the respondent/tenant has committed wilful default in paying the rent, and causing nuisance and taking into consideration the aforesaid facts, the Rent Controller had rightly allowed the eviction petition and the same has been confirmed by the Appellate Authority and in the said concurrent findings this Court need not interfere and therefore, he prayed to dismiss this Civil Revision Petition.

11.A perusal of the typed set of papers filed by the petitioner shows that the respondent herein had filed the RCOP.No.1302 of 2010 on the file of the Rent Controller (X Judge, Small Causes Court), Chennai on the ground of willful default in paying the rent, committing acts of waste, denial of title of ownership, causing nuisance and for demolition of the petition mentioned premises. According to the respondent herein, the petition mentioned property was leased out to the petitioner herein as per the Lease Agreement dated 01.03.1995. To substantiate the said contentions, she examined herself as P.W.1 and also

filed the said lease agreement and marked as Ex.P.1. Denying the evidence of the respondent herein and also the Ex.P.1, the petitioner herein has not adduced any evidence. Further, in the counter filed by the petitioner herein also, he has not specifically denied the allegation made in the petition that on 01.03.1995 the petition mentioned premises was leased out to him and executed a lease agreement. Further, in para 3 of the counter, he has admitted that he was inducted to the petition mentioned premises only by the respondent herein. The relevant portion is extracted here under:-

"(3)As to the other grounds of acts of waste the petitioner knew that the respondent was inducted to make and sell steel Bureaus and all of sudden she is instigating neighbour to Pollution Control Board which came and enquired the respondent and on instigating that in making scales, cot and bureau which is only cottage industry did not contemplate any further action under environmental law as it involve sustainable development and livelihood."

12.From the aforesaid averments also, it is clear that he has admitted that, he was inducted into the petition mentioned premises only

by the respondent herein.

13.At this juncture it would be relevant to refer to Section 116 of the Indian Evidence Act, which reads thus:-

"116.Estoppel of tenant and of licensee of person in possession:-

No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

14.From the aforesaid provisions of law, it is clear that, no tenant of immovable property or person claiming through such tenant shall, during the continuance of the tenancy, be permitted to deny that, the landlord of such tenant had, at the beginning of the tenancy a title to such immovable property.

15.In this case, since the respondent has admitted that he was

inducted as a tenant in the petition mentioned property, he can not deny the title of the property. If he wants to set up title, that can be done only after terminating the said tenancy in the manner known to law. In this case, it is not the case of the respondent, that he terminated the said tenancy at any point of time. Therefore, the denial of title by the petitioner herein is not bonafide. So, merely because the petitioner herein had filed a suit before the Civil Court claiming title by adverse possession will not prevent the Rent Controller to decide the issue as to whether the denial of title is bonafide or not. If the Rent Controller comes to the conclusion that, the denial of title is bonafide, then only he can refer the parties to work out their remedy before the Civil Court. In this case, as already pointed out that the denial of title by the petitioner herein is not bonafide and therefore, the learned Rent Controller has rightly rejected the defence set up by the petitioner herein.

16.In so far as the ground for not paying the rent is concerned, admittedly, the petitioner herein has not produced any evidence to show that he paid any rent without default. Further, the Rent Controller based on the evidence adduced by the respondent came to the conclusion that since the petitioner herein is using compressor for pointing the steel cot,

bureau, etc, it would cause nuisance to the neighbours and the same has been confirmed by the Appellate Authority.

17.The Rent Controller has allowed the Rent Control Original Petition based on the evidence adduced by the respondent herein. Denying the evidence of the respondent herein, the petitioner herein has not adduced any evidence. Since, there is no contra evidence, the Rent Controller has allowed the Rent Control Petition on the grounds of there is no bonafide in denying the title of the respondent herein, wilful default in paying rent and also causing nuisance. The Rent Control Appellate Authority after considering the aforesaid facts, had rightly dismissed the Appeal, confirming the order passed by the Rent Controller. This Court does not find any irregularity or illegality in the said orders. Therefore, this Civil Revision Petition is liable to be dismissed.

18.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The petitioner herein is directed to vacate the premises within two months from the date of receipt of copy of this order.

30.11.2020

Index :Yes/No
Internet : Yes/No
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To

- 1.The VIII Judge, Small Causes Court,
Chennai
- 2.The X Judge, Small Causes Court, Chennai.

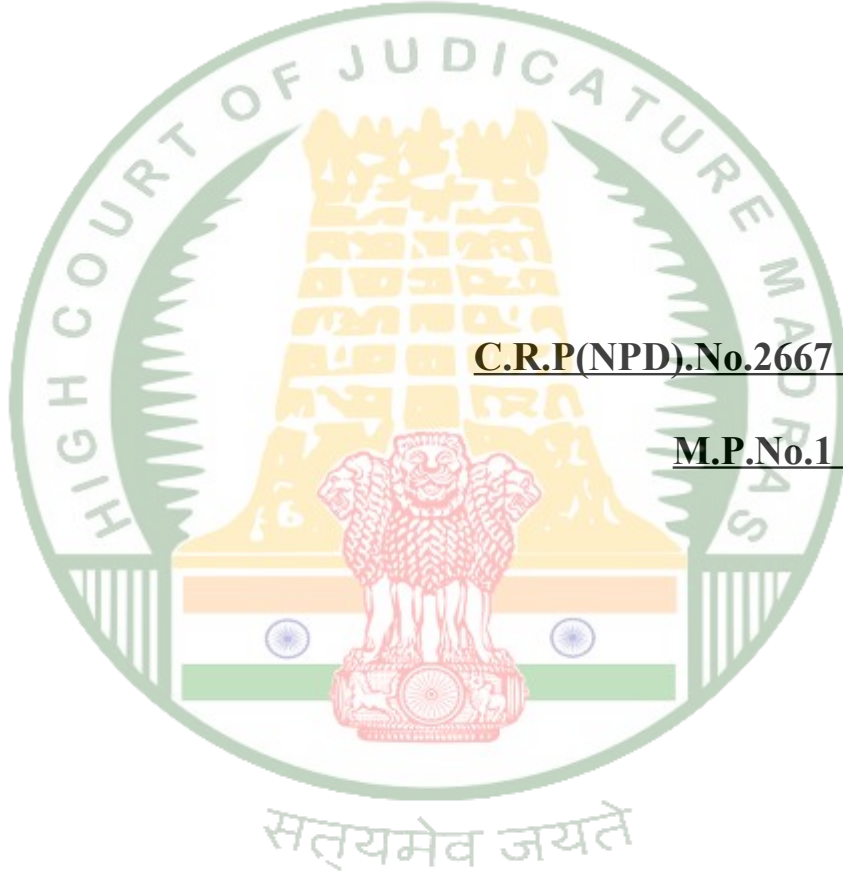


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CRP (NPD).No.2667 of 2015

P.RAJAMANICKAM.J.,

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