

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition(NPD) No. 4544 OF 2013
and
M.P.No.1 of 2013

1. Lakshmipathy (died)

2. L.Mani

(R2 brought on record as LR of the deceased
sole petitioner)

... Petitioner

Vs

J. Suresh

... Respondent

Prayer: Civil Revision Petition filed under Section 25(1) of the Tamil Nadu Buidlings (Lease and Rent Control) Act, 1960 as amended by Act 23 of 1973 and Act 1 of 1980) to set aside the judgment and decree dated 09.10.2013 made in R.C.A.No.809 of 2008 on the file of the Appellate Authority/VIII Court of Small Causes, Chennai, confirming the fair and final order dated 29.09.2008 made in RCOP No.476 of 2008 on the file of the Rent Controller/XII Court of Small Causes, Chennai.

For Petitioner : Mrs. Zeenath Begam

For Respondent : No Appearance
ORDER

The Civil Revision Petition has been filed to set aside the judgment and decree passed by the Appellate Authority/VIII Court of Small Causes, Chennai, in R.C.A.No.809 of 2008 dated 09.10.2013 .

2. The petitioner is the tenant. The respondent is the landlord. The respondent/landlord has filed a petition to evict the petitioner/tenant before the Rent Controller, Small Causes Court, Chennai in RCOP NO.476 of 2008 on the ground of additional accommodation under Section 10(3)(1) of the Tamilnadu Buildings (Lease and Rent Control) Act 18 of 1990 and the same was allowed by an order dated 29.09.2008 and the petitioner/tenant was directed to be vacated within a period of two months. Challenging the said order of eviction passed by the Rent Controller, the petitioner/tenant filed an appeal before the Rent Control Appellate Authority in RCA.809 of 2008. The Rent Control Appellate Authority, after hearing the argument and re-appreciating the entire evidence, dismissed the appeal by confirming the order passed by the Rent Controller. Challenging the said judgment and decree passed by the Rent Control Appellate Authority, the petitioner has filed the present revision before this Court.

3. Though notice was served on the respondent and his name is also printed in the cause list, none appeared on behalf of the respondent.

4. The learned counsel for the petitioner would submit that the eviction petition filed by the respondent under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 is not maintainable. Further he would submit that the respondent/landlord sought the premises for the purpose of additional accommodation for his father. The respondent/landlord during the cross examination has clearly admitted that his father did not attend his marriage and only his grand mother has performed his marriage and his father not even attended the funeral of his mother and his father is residing with the sister of the respondent. Hence, it is clear that the respondent's father has not even attended the funeral of his mother and he is residing only with his daughter and not with his son/respondent/landlord. Further it is also stated that there was a strange relationship between the respondent and his father.

5. He would further submit that the petitioner is residing in the ground floor and the respondent is residing in the first floor. There are so many portions in the ground floor and the petitioner is residing in one of the said

portions. Even during the pendency of the petition, some of the tenants had vacated from the said portions and if the requirement of the land is bonafide he should have accommodated his father in any one of the said portions. Therefore, the requirements of the respondent/landlord is not bonafide. The Rent Controller failed to consider the evidence adduced by the respondent and also failed to consider the strange relationship between the respondent and his father. The respondent's father is residing with his daughter and not with the respondent. Therefore, he filed the appeal and the Appellate Authority also failed to appreciate the evidence and simply dismissed the appeal and confirmed the order of the Rent Controller.

6. Heard the learned counsel for the petitioner and perused the materials available on records carefully.

7. Admittedly, the respondent is the owner of the building and the petitioner is the tenant. There is no dispute with regard to the relationship of the parties and the respondent /landlord filed a petition for eviction before the Rent Controller only on the ground of additional accommodation. The case of the respondent is that he was residing in the first floor, where as, the ground floor was let out to the petitioner. The said premises, which was

occupied by the petitioner is required to the respondent for accommodating his children and his father. They have made the averments in the eviction petition that the children grown up and father also residing with his sister and now, the relationship between the father and his daughter is not good. Therefore, now, his father, who is suffering with the ailments, wants to reside with his son/the respondent. He has also produced medical certificate to prove the same. Since he is residing in the first floor his father is not in a position to claim with the staircase and reside in the first floor. Though the father did not attend the marriage of the respondent and also not attended the funeral of his mother, and now because of some misunderstanding between the father and daughter, his father wants to reside with his son/respondent for some time. The respondent is also ready to accommodate his father and therefore, he filed a petition for additional accommodation for his children and his father and hence, he filed the petition for eviction.

8. In order to prove the case of the respondent before the Rent Controller, he himself was examined as P.W.1. Though he has admitted during the cross examination that there was a strange relationship with his father and his father even did not attend his marriage, then he has denied the suggestion that _in order to evict the petitioner he has filed the petition

eventhough his father is away from the respondent. Further the petitioner has clearly stated that earlier there was a strange relationship between the father and the son. But, after all, it is a father and son, passing of time, love and affection can be reunited at any point of time. Further the father of the respondent was also examined as P.W.2. Therefore, if the strange relation continues, the father of the respondent is not willing to reside with his son, definitely, and he would not have filed proof affidavit and come into witness box that itself shows that now there is no strange relationship between the respondent and his father. Therefore, the contention raised by the learned counsel for the petitioner is not acceptable. Therefore, the reason given by the respondent for the requirements of the additional accommodation is bonafide. The name of the respondent's father was found in the sister's ration card. Now, therefore, it shows that the father was residing with his daughter and evidence of the P.W.1 and P.W.2 shows that now there is misunderstanding between the father and the sister of the respondent. He has also produced the medical certificate of the father of the respondent, which also shows that he suffers ailment and he is not in a position to claim the first floor and therefore, the requirement of the respondent is bonafide. Further the contention of the petitioner that he is residing in the ground floor, other portions are vacant and the respondent let out to the new tenant. In this

regard, he has not established anything that which portions are let out to new tenant at what point of time, and who are the tenant subsequently occupied. Moreover, as owner of the building, the respondent, can use his own building if the additional accommodation is requires for bonafide. Therefore, the learned counsel for the petitioner has stated that the petitioner is aged 75 years and he paid the rent regularly. Even at one point of time, the respondent enhanced the rent and since he has refused to receive the rent, the petitioner filed a petition to deposit the rent. However, the petition was dismissed since the respondent accepted to receive the rent directly. That itself is not sufficient to show that the requirement of the respondent/landlord is not bonafide. The respondent/landlord has filed a petition for eviction on the ground of additional accommodation and produced oral and documentary evidence. The Rent Controller also appreciated the oral and documentary evidence and ordered eviction. Theareafter, Rent Control Appellate Authority, the fact finding Court re-appreciated the entire evidence and also given finding that the requirements of the landlord is bonafide and therefore dismissed the appeal and confirmed the order of the Rent Controller.

9. This Court does not find any perversity in the appreciation of the evidence by the Rent Controller and also the Appellate Authority. This

Court, on a careful perusal of the entire materials and also the order passed by the Rent Controller and the judgment passed by the Appellate Authority and the grounds raised by the revision petitioner and the submission made by the learned counsel for the petitioner, finds that there is no perversity in appreciation of the evidence. Even assuming that the provision is wrongly mentioned, that is not the sole ground to dismiss the petition. Therefore, the respondent, as the owner of the property, has let out the premises to the petitioner and the petitioner himself has admitted that they are occupying the land from the year 1972, after expiry of the tenancy period, the respondent filed a petition, that to, only for additional accommodation to accommodate his father. Further the respondent/landlord has filed a petition after expiry of the tenancy period of the petitioner/tenant and also need to accommodate his children and aged father. The age of the father is not disputed and though he has stated in his counter and cross examination regarding the strange relationship between the father and the son, now, since his father wants to reside with his son/respondent due some dispute arose between him and his daughter, the requirement of the premises is bonafide. Father was examined as P.W2 and he has clearly stated that he is willing to reside with his son and the respondent also ready to take his father in his custody. Therefore considering the facts and circumstances of the case, this Court also finds that

the requirement of the landlord is bonafide and this Court does not find any perversity in the order passed by the Rent Controller as well as the Appellate Authority and the Revision is liable to be dismissed as devoid of merits.

10. Accordingly, the Civil Revision Petition is dismissed. Petitioner is directed to vacate and hand over the vacant possession of the building within 3 months from the date of this order. No costs. Consequently, connected miscellaneous petition is closed.

26.08.2020

mrp

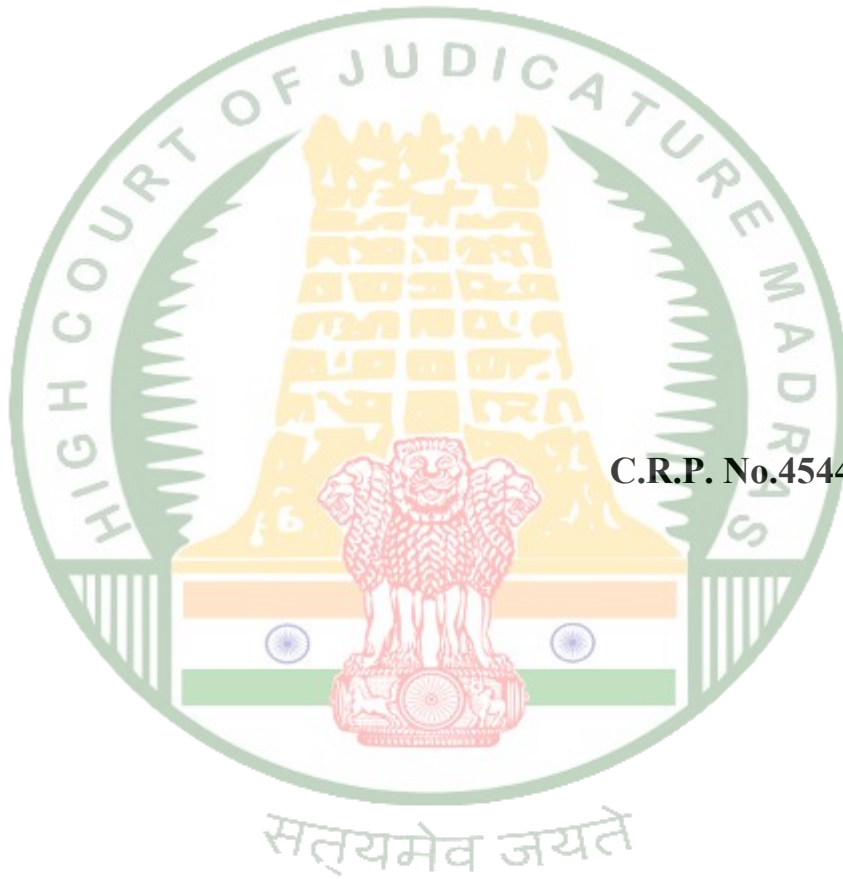
To

1. The Assistant Commissioner, Revenue Tribunal, Trichy,
3. The Section Officer, V.R. Section, High Court, Madras

C.R.P No.4544 of 2013

P.VELMURUGAN,J.

mrp



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