

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition No.3195 of 2010
and M.P.No.1 of 2010

1.M.Siva

2.Parvathyiyammal

..Petitioners/ Respondents

Vs

Mannu Pillai

..Respondent/Appellant

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act, 18/1960 as amended by Act 1/1980, against the Judgment and Decree dated 10.11.2009 passed by the Learned Rent Control Appellate Authority (Subordinate Judge, Vellore) made in RCA.No.7/2008 thereby reversing the order made in RCOP.NO.47/2004 by the learned Principal District Munsif Court, Vellore, Dated 17.07.2007.

For Petitioners : Mr.Richard Wilson for Mr.P.Wilson Asso.

For Respondent : Mr.K.Venkateswaran

ORDER

The respondent is a landlord and the petitioners are the tenant. The respondent filed an eviction petition against the petitioners under Sections 10(2)(i), 10(3)(a)(iii) and 14(1)(b) of Tamil Nadu Buildings (Lease and Rent Control) Act 18/1960, on the ground of wilful default, own use and occupation and for demolition and reconstruction, before the Rent Controller (Principal District Munsif, Vellore) in RCOP No.47 of 2004. After an enquiry, the eviction petition was dismissed by the Rent Controller stating that the petitioner has no bonafide in the petition and challenging the said order, the respondent herein filed a rent control appeal before the Rent Control Appellate Authority (Sub Judge, Vellore) in RCA No.7 of 2008. The learned Rent Control Appellate Authority, after hearing the counsel, re-appreciated the facts and allowed the appeal by setting aside the order passed by the Rent Controller. Challenging the same, the petitioners are before this Court by way of this revision petition.

2. The case of the respondent herein is that the petition mentioned property bearing No.82, Vellore Road, Dharapadavedu, Katpadi, Vellore, was originally let out for rent by the father of the respondent one Pachaiyappa

pillai to the petitioners in the year 1988. Originally, the monthly rent was Rs.300/- and there is no rental agreement, the tenancy is oral. While tenancy was in force, the father of the respondent died in the year 1991 and the respondent accepted the tenancy of the petitioners and the petitioners agreed to pay monthly rent of Rs.500/- per month as rent. There was a panchayat for enhancement of rent and subsequently, the respondent enhanced the rent from Rs.500/- to Rs.1000/- with effect from 01.10.2001. The petitioners also agreed to pay the above said rent. Thereafter, the petitioners failed to pay the rent and there was arrears of Rs.27,000/- towards the rent and hence, the petitioners are liable to be evicted on the ground of wilful default and own use and occupation.

3. Further, the case of the respondent is that the respondent wanted to perform marriage to his son and daughter and he is residing in rental premises and the subject premises requires for his own use and occupation and also the building is very old and in dilapidated condition and the respondent has sufficient means to demolish and re-construct the building. In spite of the respondent's demand, the petitioners neglected to vacate and hand over the premises. Therefore, the respondent filed an eviction petition to evict the petitioners.

4. The case of the petitioners is that the subject property originally belonged to one Arunachala pillai, son of Mariyappa Pillai. He lost his only daughter and hence bequeathed the petition mentioned property through a registered will dated 29.05.1957 in favour of the second petitioner Parvathy Ammal. The second petitioner and her mother Chinnammal were in possession and enjoyment of the property by virtue of the said will. The respondent is a distant relative and he has nothing to do with the property. The respondent has no title or interest in the said property. After the death of Arunachala pillai, the second petitioner has leased out two shops to third parties and she is also receiving the rent.

5. Further, the case of the petitioner is that the respondent has sent notice for eviction to the petitioners and after receiving the notice, the petitioners approached the respondent and at that time, the respondent stated that due to ill advice of the neighbours, he issued notice and he withdraw the notice. Therefore, the petitioners did not give any reply to his notice. The petition mentioned property stands in the name of the second petitioner and she also partitioned the property in favour of her son and she has paid panchayat tax and other taxes. There is no oral tenancy agreement between

the respondent and the petitioners. The petitioners never paid rent to the respondent. The electricity service connection also stands in the name of the petitioners. Therefore, the claim of the respondent lacks bonafide and liable to be dismissed.

6. After filing the counter during the enquiry, in order to prove the case of the respondent, three witnesses were examined as P.W.1 to P.W.3 and 24 documents were marked as Ex A1 to A24. On the side of the petitioners, one witness was examined and the second petitioner herein was examined as R.W.1 and four documents were marked as Ex.P1 to P4. After the enquiry and after considering the documents, the Rent Controller found that the requirement of the landlord is not bonafide and the landlord has not proved that he is the owner of the property. Therefore, the petition was dismissed. Challenging the said order, the landlord filed an appeal before the Rent Control Appellate Authority. The Rent Control Appellate Authority, after scrutinising the facts, allowed the appeal by setting aside the order of the Rent Controller. Challenging the said judgment, the petitioners are before this Court.

7. The learned counsel appearing for the petitioners/tenants submitted that the Rent Control Appellate Authority has gone into the question of title. The Rent Control Appellate Authority has no power to go into the dispute regarding the title, when the Rent Controller elaborately discussed and dismissed the petition that the landlord and tenant relationship was not established by the landlord. Therefore, in the absence of establishing the landlord and tenant relationship, the respondent landlord is not entitled to get the relief of eviction on the ground of wilful default and own use and occupation. Once the landlord filed the petition to evict the tenant under Tamil Nadu Buildings (Lease and Rent Control) Act and when the tenant has denied the relationship of the landlord and tenant and it is the duty of the landlord to first establish that there was a landlord and tenant relationship. Admittedly, in this case, there was no tenancy agreement. According to the landlord, it is an oral agreement and there is no evidence to show that there is an agreement and also there is no receipt or acknowledgment of the payment of rent. Therefore, neither the tenancy is proved nor the payment of rent is proved and therefore, the learned Rent Controller rightly dismissed the petition.

8. The learned counsel for the petitioner further submitted that for any denial of title, the Rent Control Appellate Authority cannot decide the title and also should refer the matter to the Civil Court. Therefore, the Rent Controller has gone into the deep of the title and dismissed. Therefore, the order of the Rent Controller does not warrant interference of this Court. He would also submit that in case this Court finds that the denial of the title is bonafide and the Rent Controller does not have the jurisdiction to decide the petition, both the order of the Rent Controller and Rent Control Appellate Authority may be set aside and matter may be referred to the Civil Court.

9. The learned counsel appearing for the respondent would submit that the denial of title is not bonafide. Therefore, the Rent Controller has not referred the matter to the Civil Court. Originally the father of the respondent let out the building to the petitioners for sum of Rs.300/- per month as rent and subsequently, his father died and the rent was enhanced from Rs.300/- to Rs.500/- and subsequently from Rs.500/- to Rs.1000/-, for which, there was a panchayat. In panchayat, the petitioners admitted the ownership and also agreed to pay the enhanced rent of Rs.1000/-. Subsequently, they failed to pay. Therefore, the respondent filed a petition for eviction on the ground of wilful default, own use and occupation and also demolition and re-

construction. Since the respondent is residing in a rental premises, he also wanted to settle his children and further the building is very old and he sought for eviction on the ground of demolition and re-construction also.

10. The learned counsel for the respondent would further submit that though the petitioners have stated that one Arunachalam pillai executed will in favour of the second petitioner, but, the original will was not submitted before the Rent Controller. As per Section 68 of Indian Evidence Act and Section 63 of Hindu Succession Act, the will has to be proved in the manner known to law, whereas, they have not proved the will. Further, the petitioners are claiming title from one Arunachalam pillai that the said Arunachalam pillai have executed a will in favour of the second petitioner herein in the year of 1957. Even before that, the said Arunachalam pillai executed settlement deed in favour of the mother of the respondent and the father of the respondent let out the premises for rent to the petitioners and the petitioners were in possession as tenant. After the death of the father of the respondent, the petitioners were continued to be as tenant under the respondent and agreed to pay the rent of Rs.1000/- per month. Therefore, when the Arunachalam pillai executed the will in favour of the mother of the respondent on 29.01.1949, the will alleged to have been executed by the said

Arunachalam pillai in favour of the second petitioner, has to be proved in the manner known to law. The original will was also not produced. Therefore, the denial of title by the petitioner is not bonafide.

11. The learned counsel appearing for the respondent would also submit that the petitioners are very conscious to state that there was landlord and tenant relationship before the Rent Controller and they have not insisted the Rent Controller to refer the matter to the Civil Court to decide the title. Further, notice was sent to the petitioners, the said notice was received by them. But, they have not sent any reply. But, in the counter, it is stated that they have not sent reply, since the respondent stated that due to ill advice of the relatives, he sent the notice and he would withdraw the notice. But, there is no evidence to show that the petitioners approached the respondent and the respondent stated that he would withdraw the notice. If the petitioners sent a reply to the respondent's notice, the respondent would have filed a suit for declaration and eviction. Since the petitioners have not filed any reply notice to the respondent's eviction notice, he has filed the petition for eviction and though the Rent Controller has stated that the respondent has not proved that he is the owner of the property and land lord and tenant relationship, whereas, the Rent Control Appellate Authority rightly discussed that the tenant has not

established the independent right that they are in possession and therefore, there is no need to interfere with the matter.

12. Perused the records and materials. Admittedly, the respondent herein filed an eviction petition against the petitioners herein before the Rent Controller(Principal District munsif, Vellore) in RCOP No.47 of 2004 on the ground of wilful default, own use and occupation and for demolition and reconstruction. The main case of the respondent/landlord is that one Pachaiyappa pillai is the father of the respondent who let out the premises to the petitioners for sum of Rs.300/- as rent per month. Thereafter, the said pachaiyappa pillai died and the petitioners agreed to continue to be a tenant and paid the monthly rent. Thereafter, the rent was enhanced from Rs.300/- to Rs.500/- then from Rs.500/- to Rs.1000/- from 01.10.2001 onwards. Subsequently, they failed to pay the rent and there was arrears of Rs.27,000/-. Therefore, the respondent issued notice to the petitioners for eviction on the ground of wilful default, own use and occupation and for demolition and reconstruction. Since the petitioners herein did not send any reply to the respondent, the respondent filed a petition.

13. According to the petitioners, they were not the tenant and there was no landlord and tenant relationship and actually the subject property originally belonged to one Arunachalam pillai. The said Arunachalam pillai have executed the will in favour of the second petitioner. Therefore, as per the will, the second petitioner is in possession of the property. The petitioners let out the building for rent to the third party and they receiving rent. Therefore, there is no landlord and tenant relationship. Therefore, the rent control petition is not maintainable.

14. A careful reading of the eviction petition filed by the petitioner, wherein it is clearly stated that one Mariyappa Pillai has got two sons viz., Annamalai Pillai and Arunachalam Pillai. The father of the respondent herein is Pachaiyappa Pillai who was the son of Annamalai pillai. The said Arunachalam Pillai had only one daughter and he lost his daughter. The genealogy and relationship were admitted by both the parties. The said Arunachalam pillai executed the settlement deed in favour of the mother of the respondent Pappathiammal on 29.01.1949, who is none other than the wife of Pachaiyappa pillai. In Ex.A13 itself it is stated that the Arunachalam pillai executed the settlement deed in favour of the wife of the Pachaiyappa pillai viz., Pappathiammal. The Pachaiyappa pillai said to have let out the

demised premises to the petitioners. The said pachaiyappa pillai has two sons viz., Tukaram and the respondent. Since Tukaram died, the respondent is the only legal heir of Pachaiyappa pillai. Therefore, the respondent is entitled to the petition mentioned property.

15. The Rent Control Appellate Authority has discussed about the relationship and also the title and decided that the denial of title by the tenant is not bonafide. The petitioners were claiming title from one Arunachalam pillai and the Arunachalam pillai said to have executed the will in favour of the second petitioner on 29.5.1957 and whereas, the said Arunachalam pillai already executed the settlement deed in favour of the wife of Pachaiyappa pillai and as well as the mother of the respondent. The said settlement was executed in the year 1949. It is more than 30 years old document. So, its genuinity cannot be questioned. while the settlement is in force, unless it is cancelled in the manner known to law, even assuming that the will executed in favour of the second petitioner is not valid, it is for the petitioners to prove that they have the right through the will. Therefore, for claiming right through the will, the will has to be proved in the manner known to law. But, the petitioners herein not proved the will in the manner known to law. Therefore, the denial of the title is not bonafide.

16. No doubt it is a well settled proposition of law that the Rent Controller has no authority to decide the title. When the denial of the title is bonafide, he has to refer the matter to Civil Court, but, whereas in this case, the Rent Controller has not referred the matter to the Civil Court. The petitioners herein also have not sought for the Rent Controller to refer the matter to the Civil Court. They know very well that there is landlord-tenant relationship and also the respondent herein has got the title and that was the reason why they have not asked the Rent Controller to refer the matter to Civil Court. The Rent Controller also felt that the denial of the title of the land lord is not bonafide. Therefore, he has not referred the matter to the Civil Court. Since the Rent Control Appellate Authority if at all find that the denial of title is bonafide, he should have referred the matter to the Civil Court. But, the Rent Control Appellate Authority also felt that the denial of the title of the landlord is not bonafide. Therefore, he did not refer the matter to the Civil Court.

17. Since the Rent Controller discussed elaborately regarding the title, in order to find out the fact as to whether denial of title is bonafide or not, the Rent Controller gone into deep about the title. The Rent Control Appellate

Authority also in order to testify the correctness of the finding of the Rent Controller, has gone into the title and elaborately discussed about the same. But one thing is clear that before filing the eviction petition, the respondent issued eviction notice to the petitioners and the petitioners admitted that they have received the notice and also they admitted that they have not sent any reply. But they have stated reason in their counter for not sending reply is that the petitioners approached the respondent and at that time, the respondent stated that due to ill advice of the relatives, he sent the notice and he informed that he would withdraw the notice. But there is no evidence to show that after receiving notice, the petitioners approached the respondent and respondent stated that he wrongly sent notice and he would withdraw the same. On the side of the petitioners, the second petitioner was examined as R.W.1. The petitioners have not proved that after receiving notice, they approached the respondent. Therefore, once they received the notice and not denied the title by sending reply notice and in subsequent filing of RCOP also they have not raised any preliminary objection that they are denying the title and their denial is bonafide and the Rent Control Authority has no jurisdiction to entertain and proceed with the rent control proceedings and he has to refer the matter to Civil Court. But, they have not done.

18. Therefore, at this stage the learned counsel for the petitioners cannot contend that the Rent Controller and Rent Control Appellate Authority should have referred to Civil Court to decide the title. The Rent Control Appellate Authority has not decided the title and the Rent Controller without referring the matter to the Civil Court, in order to find out the bonafides of denial of title dealt with the petition. The petitioners have not raised such objections and questioned the jurisdiction. Even in the grounds of revision, the petitioners/tenant have stated in ground C that the Rent Control Appellate Authority ought not to have interfered with the well considered order of dismissal of RCOP, when the RCOP petition lacks pleadings and does not disclose that the tenancy is one for non residential purpose. Further, in Ground D the Rent Control Authority went wrong in allowing the R.C.A since the revision petitioners herein have clearly proved that they are the owner of the petition mentioned property and the respondent herein is neither the owner nor the landlord within the meaning of Section 2(6) of the petition mentioned property. Therefore, the petitioners only justifying the order of the Rent Controller and therefore, they have not disputed the jurisdiction of the Rent Controller and now they cannot say that the Appellate Authority without jurisdiction, has decided the title.

19. No doubt, it is a settled proposition that the question of law need not be pleaded and it can be raised at any stage even before the Hon'ble Supreme Court of India. However, whether denial of title is bonafide or not, is the only question of fact. Once it is found that the denial of title is bonafide, then only it can be referred to Civil Court not otherwise. Therefore, at this stage, the revision petition cannot take a stand that the Rent Control Appellate Authority has no jurisdiction to decide the title in the rent control proceedings. It is already stated that the respondent filed eviction petition, before that, he sent a notice to the petitioners and reply was not sent by the petitioners. Though explanation was given in the counter, that was not established by examining and producing any evidence. The petitioners filed the counter and in the counter, they have claimed the title through the will. The Rent Controller stated that from the will, the petitioners have got the title and therefore, the respondent has not proved the ownership and landlord and tenant relationship. Whereas the document Ex.A13 Settlement deed clearly shows that in the settlement deed, the said Arunachalam pillai executed the settlement deed in favour of the wife of his brother's son pachaiyappa pillai. Unless challenges the settlement deed during the life time of the Arunachalam pillai, the petitioners cannot claim the title after the death of Arunachalam pillai. The eviction petition is filed in the year of 2004. the

petitioners have not questioned the jurisdiction of Rent Control Authorities at any point of time in earlier stage. Now, after 15 years, they cannot raise. However, the Rent Controller and Rent Control Appellate Authority have discussed regarding title only in order to find whether the denial is bonafide or not. Therefore, to meet the ends of justice, this Court need not refer the matter to Civil Court to decide the title. It is for the petitioners that they should have approached the Civil Court at the earliest point of time to declare their title, if at all they wanted.

20. There is no quarrel with the proposition that in the rent control proceedings, if tenant denied the title of land lord, if the said denial is bonafide one, the Rent Controller has to refer the matter to Civil Court. But, if the denial is not bonafide, then he can proceed further and decide the matter as to whether the tenant is liable to be evicted on the ground sought for in the eviction petition. In this case, even though the land lord has not produced any document to prove that there is arrears of rent and liable to be evicted on the ground of wilful default, however, the land lord has proved that the demised premises is required for his own use and occupation and demolition and re-construction.

21. Therefore, considering the facts and circumstances of the case, there is no merit in the revision petition and it is liable to be dismissed and accordingly dismissed. No costs. The petitioners are directed to vacate and handover the vacant possession within three months from the date of receipt of a copy of this order. Consequently, connected M.P., is closed.

28.07.2020

Index: Yes/No
Internet: Yes/No
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To

1. The Rent Controller, Vellore (Principal D.M.C.Vellore)
2. The Subordinate Judge, Vellore, Rent Control Appellate Authority.
3. The Section Officer, V.R. Section, High Court, Madras

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P.VELMURUGAN,J.

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