

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 30.01.2020

Judgment Pronounced on : 06.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD)No.4700 of 2014

and

M.P.No.1 of 2014 and

C.M.P.No.18841 of 2016

Farwood Industries Limited,
Represented by M.P.Farook
S/o Late Mammoo,
No.61-A, L.B.Road,
Adyar, Chennai-20.

.. Petitioner /Appellant /
Respondent

Vs.

M.K.Kumar

.. Respondent/ Respondent/
Petitioner

Prayer: This Civil Revision Petition is filed under Section 25 of the Tamilnadu Lease and Rent Control Act, 1960, against the decree and judgment dated 21.08.2014 passed in R.C.A.No.632 of 2012 by the learned Judge, IX-Small Causes Court, Chennai, confirming the order passed in R.C.O.P.No.186 of 2010, dated 06.09.2012 by the learned Judge, X-Small

Causes Court, Chennai.

For Petitioner : Mr.Ravi Kumar Paul
for Mr.D.Muthukumar
For Respondent : Mrs.N.Mala
For Implead Petitioner : Mr.ARL.Sundaresan
for Mr.P.R.Thiruneelakandam

ORDER

Aggrieved over the concurrent findings made in R.C.A.No.632 of 2012, on the file of the IX-Small Causes Court, Chennai, and in R.C.O.P.No.186 of 2010, on the file of the X-Small Causes Court, Chennai, the petitioner, who is the respondent in the RCOP preferred this Civil Revision Petition.

2. For the sake of convenience, the parties are referred to as, as described before the trial Court, ie., tenant/revision petitioner and landlord/respondent, though the present revision petitioner has denied the relationship of tenant and landlord.

3. The respondent filed R.C.O.P.No.186 of 2010, as against the revision petitioner for eviction on the ground of (i) willful default (ii)

owners occupation (iii) causing material damage to the property (committing Acts of Waste).

4. The landlord filed petition alleging that he is the landlord of the property and the revision petitioner is the tenant under him on a monthly rent of Rs.1,500/-. The tenancy is for non-residential purpose. The respondent failed and neglected to pay the monthly rent for a period 24 months, ie., March 2003 to January 2006 totaling an amount of Rs.42,500/-, and inspite of repeated demands, the tenant has failed and neglected to pay the monthly rents for the period from March 2008 upto February 2009. Further, the tenant demolished a portion of the Northern Wall, marked in Green in the sketch attached herewith of the demised portion without the consent either oral or written of the Landlord. The petitioner bonafidely requires the additional accommodation of the demised portion under the occupation of the tenant for expanding the business. Hence this petition.

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5. The revision petitioner/tenant resisted the above claim by filing counter statement contending that

(a) he entered into an agreement of tenancy with one late

Mr.Krishnamurthy in the year of 1980 for using the vacant Land with the consent to build and to put up the necessary superstructure. The object behind the agreement was to use the place as godown and to run the business.

(b) Initially, the revision petitioner/tenant paid a sum of Rs.400/- as rent, gradually, it was increased by Late Krishnamurthy. Thereafter, the respondent entered an agreement with Late Krishnamurthy in the year of 1995 for ten years tenure. While the agreement was in force Late Krishnamurthy approached the revision petitioner/tenant and requested him to give a sum of Rs.2,00,000/- for his urgent family need, further he said that the rental basis of the schedule premises can be converted into the lease basis.

(c) Based on the above mentioned mutual understanding, the respondent paid a sum of Rs.2,00,000/- and the rental basis has been converted into lease basis.

(d) In the year of 2006, the respondent herein requested a further sum of Rs.25,000/- for his urgent family needs and the revision petitioner/tenant has accepted his request on the humanitarian ground and has given a further sum of Rs.25,000/- on 21.07.2006. If anybody comes

forward with the proper, document from Late Krishnamurthy's family, the revision petitioner/tenant was willing to renew the agreement with them, as a statutory tenant and the respondent is entitle to continue in the schedule premises.

(e) The agreement entered in the year of 1995 between Late Krishnamurthy and the revision petitioner/tenant creates reasonable doubt about the right of the respondent herein/landlord and the stand, which he has taken in the original petition. The revision petitioner/tenant, using the scheduled premises in a proper manner, without causing any damage to the structure. The landlord made the baseless allegation without any substance and he never informed to the revision petitioner/tenant about expanding the business and requested him to vacate the place. Therefore, the ground of owners occupation also will not arise in this case. As already stated above, the landlord is bound to prove his ownership before this Court, and then only the question of owners occupation would arise.

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6. During the trial, on the side of the landlord P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.11 were marked. On the side of the tenant/revision petitioner, no oral evidence has been let in. However,

Ex.R.1-sale deed was marked during the cross-examination of P.W.1.

7. Based upon the oral and documentary evidence, the learned Rent Controller has accepted that the respondent herein is the landlord of the petition premises and held that there exists the relationship of landlord and tenant between the parties and came to the conclusion that the plea of willful default is made out. However, alleged committing of act of Waste has been negatived and the plea of additional accommodation for owner is also allowed.

8. Aggrieved against the said order of eviction, the revision petitioner/tenant has preferred R.C.A.No.632 of 2012 and pending RCA, he filed M.P.No.195 of 2012 and RCA was dismissed and hence, this Civil Revision Petition is filed by the revision petitioner/tenant.

9. Pending Civil Revision Petition, one P.Srinivasan, S/o. Late Pitchainathan filed C.M.P.No.18841 of 2016 to implead him as a second respondent in the Civil Revision Petition. The counter is also filed by both the parties and the above said CMP and the CRP are taken up together for

disposal.

10. Heard the learned counsel for the revision petitioner/tenant, the learned counsel for the respondent/landlord and the learned Senior Counsel Mr.ARL.Sundaresan for the proposed party in C.M.P.195 of 2012 and perused the materials placed on record.

Ownership:

11. After perusal of the records placed before this Court and also going through the rival contentions made, it is seen that the RCOP is filed by the petitioner/landlord on the ground of willful default, acts of waste and additional accommodation. The landlord and tenant relationship between the petitioner and the respondent is not admitted by the revision petitioner. Admittedly, the respondent is the tenant under the father of the petitioner, viz., N.K.Kumar. To prove the ownership, the petitioner filed Ex.P1-legal heir certificate of M.Krishnamurthy, under whom the respondent admitted his tenancy. It shows that there are five co-owners for the petition premises. Pending RCOP, M.P.No.195 of 2012 was filed by the respondent for maintainability and it was ordered to be posted along with

RCOP. Hence, by filing Ex.P.1-legal heir certificate and notice dated 02.03.2006, it is clear that the petitioner is the co-owner for the property and the fact is very well known to the respondent. Hence, the petition filed by this petitioner is held to be maintainable and thus, this Court finds that by pleadings, the revision petitioner herein/tenant has admitted that he was let in to possession of the property by none other than the said Krishnamurthy and the petitioner is the son of the said Krishnamurthy. Furthermore, PW.2 is the brother of PW.1/the petitioner and in chief-examination, he has categorically stated that after the dissolution of the partnership, the share of Krishnamurthy was allotted to him and in the cross-examination, there was no denial of the said version of P.W.2. Furthermore, the brother of PW.1 (landlord) has categorically stated that in the family partition among the brothers and the widowed mother, this property was allotted to PW.1, namely the petitioner before the Rent Control Court.

12. Yet another point is that when RCA was pending before the Appellate authority, a counter affidavit was filed by M.K.Kumar touching upon the plea of the alleged ownership by reason of certain sale deed, the facts are Late Pitchainathan, M.Devarajan and the respondent's father Late

M.Krishnamurthy were three brothers having joint family engineering trade, under the name and style of M.S.P.Engineering. That business was dissolved and the assets of the said business and family were divided under family arrangement/dissolution deed and the property in dispute came to be allotted to the share of the respondent's father. On his demise, the respondent's joint family members have succeeded to his estate and also tenancy with the respondent's father Late M.Krishnamurthy, and hence the tenant having been admitted the tenancy under his father and he will not be allowed to change his stand during his cross- examination.

13. In view of the above submissions, this Court finds that the manner of devolution of the property to the hands of M.K.Kumar, the revision petitioner herein, he as P.W1 has been clearly deposed through the affidavits and he was also cross-examined at length by the respondent/tenant, though a picture has been projected as if there is a dispute between the family members, however from the evidence of PW.2, it is clearly dispelled and demonstrated that there is no cloud over the title of the property. Further more, the revision petitioner/tenant in the pleading has admitted the tenancy under the father of the respondent herein, namely,

M.Krishnamurthy, he having admitted the tenancy under the respondent's father, the revision petitioner cannot be allowed to change his stand. Further more, he was not examined himself by entering into witness box nor examined any oral evidence in support of his case also assumes significance.

14. Yet another point is that after the death of the original owner as mentioned in the Ex.P1-legal heir certificate, there was a family partition and there was a Muchalica and the property was allowed and allotted to Krishnamurthy. Eventhough the reference has been made in the evidence of PW.2 and even it is stated in the proof affidavit as Ex.P8, it appears that the Muchalica was not marked.

15. It appears to be stated that Ex.P5 and P6 are respective acknowledgments. The respondent herein/landlord has served a legal notice calling upon the revision petitioner herein/tenant stating that he is in arrears of rent, from March 2003 to January 2006 totaling a sum of Rs.42,500/- and after sending legal notice dated 02.03.2006, on 21.07.2006, the respondent/ tenant has paid a sum of Rs.25,000/- by way of cheque and

10/18

assured to pay the arrears. Thereafter, the respondent/tenant failed to pay the balance arrears amount of Rs.40,000/- and also rent of Rs.2000/- p.m., which is enhanced and accepted by the respondent from 01.08.2006 to 04.07.2009 totaling a sum of Rs.72,000/-.

16. Per contra, the tenant in his counter has taken the plea that on 02.03.2006, due to financial problem Rs.25,000/- was lend to the landlord and futher stated that if anybody come forward with the proper document, the respondent/tenant is willing to renew the agreement. Further, on 02.03.2006, after sending a notice, Rs.25,000/- has been paid on 21.07.2006, by the tenant and the respondent/tenant has not sent any reply notice denying the averments stated in the 02.03.2006 and 17.08.2009 legal notices. Hence, this court finds that if the rent is paid regularly, no prudent man will sit quietly without denying the allegations in the legal notice and it remains to be stated that for the above said legal notices ie., Exs.P3 and P5, no reply was given and in the counter, nothing is stated thereto.

17. Further, it is seen from the lower Court records that the RCOP was allowed to be decreed exparte twice and thereafter it was restored and

counter statement has been filed. In the counter statement, the revision petitioner herein admitted his tenancy having let in to possession by Krishnamurthy (namely the father of the respondent herein). However, in the end of the counter statement though not he directly denied the title, on the contrary it was admitted.

18. Thus, this Court finds that the revision petitioner is the person, who was let in to possession of the petition premises by the father of the landlord, he having accepted his title and also paid the rent as per the pleadings, however, as per the legal notice, he cannot agitate or dispute the title of the said person. Though at the end of the penultimate paragraph, he indirectly questioned the title of the father of the respondent herein ought to have entered into the witness box to depose in support of his plea and he having failed to do so under Section 116 of the Indian Evidence Act, he cannot dispute the title of the respondent herein. Further more, the tenant also admitted that he is handed over Rs.25,000/- after the legal notice under Ex.P3 also assumes significance. From the evidence of the P.W.1 and P.W.2 coupled with the admission in the pleadings by the tenant and also Exs.P.8, P9, P10 and P11, both the Courts below are concurrently held that the

12/18

respondent herein is the landlord of the building and such a finding does not warrant any interference at this revisional jurisdiction in the absence of any irregularity or illegality and hence the same is hereby confirmed.

19. On the point of commission of Acts of Waste, the Rent Controller negatived the claim. However, on the point of owners occupation relying upon Ex.P7 and coupled with the evidence of P.W.1, the learned Rent Controller upheld the same.

20. After hearing the rival submissions and also taking note of the contents of Ex.P7, the certificate of registration and having regard to the evidence of P.W.1 and P.W.2 coupled with absence of any contra evidence on behalf of the revision petitioner/tenant and also of the fact that there is nothing elicited in the cross-examination of P.W.1 regarding the owner's occupation, I find that there is necessary pleadings as to the requirements of the landlord for explanation of his business and for the said purpose, he requires the petition premises for additional accommodation and his evidence in the witness box is sufficient to infer. The said requirement is a bonafide requirement and hence the similar finding recorded by the Courts

below is found to be just and reasonable and hence the same is hereby confirmed.

C.M.P.No.18841 of 2016:

21. This civil miscellaneous petition is filed by the petitioner to implead himself as a second respondent in the Civil Revision Petition, on the ground that he was the son of the Late Pitchainathan, who is one of the partner of M.S.P.Engineering and based upon the release deed registered on 15.03.1999, he claimed that he had succeeded to the property and hence seeks to implead himself as proposed second respondent on the ground that he is the owner of the property and hence the CMP.

22. The learned Senior Counsel ARL.Sundaresan appearing on behalf of the present petitioner/proposed party in this CMP also relied upon 1968 sale deed Ex.R1 and contended that the said sale deed in the year 1968 was in favour of the said partnership firm, wherein the father of the petitioner was shown as one of the partner. He died in the year 1972 and after that partnership firm was dissolved on 19.03.1981 and thereafter, in the family partition, his mother and sister have relinquished their share in his favour

and hence seeks to implead himself in this Civil Revision Petition.

23. Per contra, the learned counsel for the contesting respondent/landlord, namely, the petitioner in RCOP stated that the so called release deed dated 15.03.1999 does not contend any schedule of the property at all and further all that what was mentioned is without any schedule of the property much less the petitioner's property.

24. After hearing both the parties, this Court finds that the said petition appears to be handy-work of the revision petitioner herein for the reasons recorded hereunder. The RCOP was filed in the year 2010. The RCA was filed in the year 2012. CRP is filed in the year 2014. When the case is taken up after the settlement of pleadings in the year 2016, the CMP was filed by this petitioner claiming title upon himself on the strength of release deed dated 15.03.1999. It remains to be stated that for more than 30 years, he has not raised his claim of title and right over the property. That apart, in the sale deed-Ex.R1, dated 1968, the property was purchased in the name of MSP Engineering (not in the name of the present petitioner's father but as one of the partner. Admittedly, the same was dissolved). Thereafter,

the petitioner herein pleads that there was a release deed in his favour.

25. On perusal of the release deed, it is curious to note that for the property situated at Adyar, Chennai, the documents seems to be registered at the Villivakkam Sub Registrar Office, Chennai, for the reasons best known, and it was not the jurisdictional Sub Registrar Office. It was captioned as release deed, however there is no schedule of the property was mentioned in the said release deed, whether the petitioner's property was the property of the father of the petitioner in this CMP, (namely, Late Pitchainathan). Had it be, the property of Late Pitchainathan, it could have very well been reflected in the schedule of the property in the alleged release deed, dated 15.03.1999, but no plausible explanation much less than any explanation is forthcoming as to the absence of any schedule of the property in the release deed, which is normal procedure and practise adopted in releasing deed documents and hence this Court is of the considered view that it is a fabricated document.

26. Yet another angle is that in the absence of any schedule of the property showing the petition property as a property relates to

Pitchainathan, he cannot claim himself to be the landlord of the property and thus, thus viewing from any standpoint, I find that it is vexatious and frivolous petition and hence, this Civil Miscellaneous Petition is liable to be dismissed.

27. The learned Rent Control Appellate authority has concurred with the findings of the Rent Controller, in my view, it is so correctly decided and hence, this Civil Revision Petition is devoid of merits and liable to be dismissed. In the result, this Civil Revision Petition stands dismissed and the decree and judgment, dated 21.08.2014 passed in R.C.A.No.632 of 2012 by the learned Judge, IX-Small Causes Court, Chennai, confirming the order passed in R.C.O.P.No.186 of 2010, dated 06.09.2012 by the learned Judge, X-Small Causes Court, Chennai, is hereby confirmed. Consequently, connected M.P.No.1 of 2014 is closed. C.M.P.No.18841 of 2016 is dismissed with cost of Rs.3,000/-.

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06.03.2020

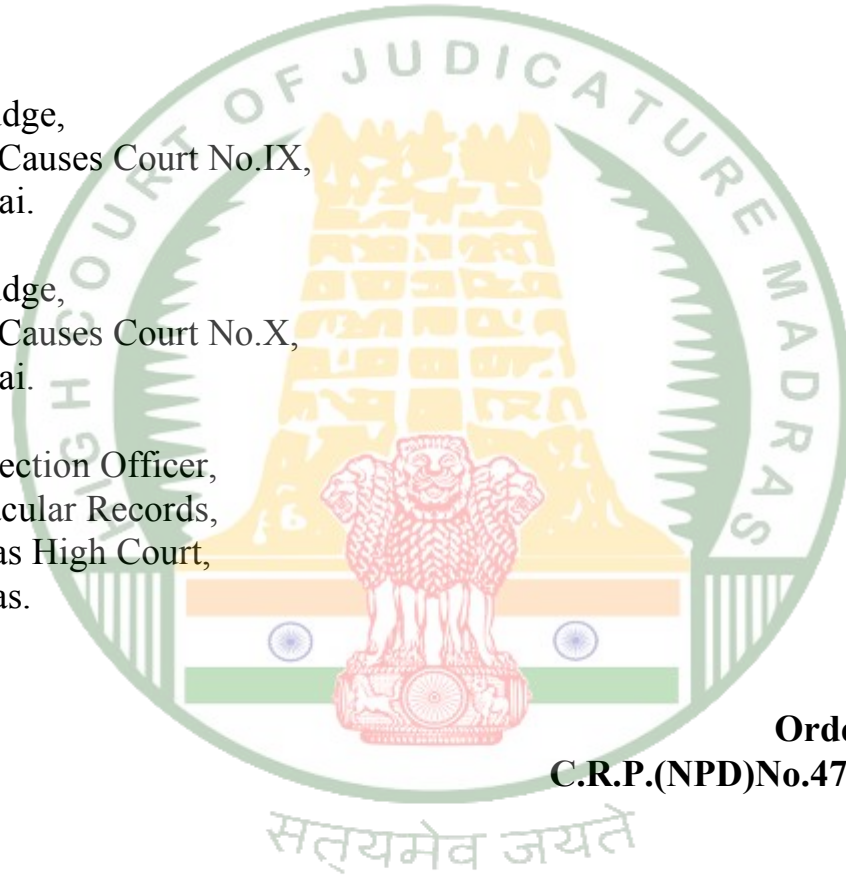
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RMT.TEEKARAMAN, J.

PJL

To

1. The Judge,
Small Causes Court No.IX,
Chennai.
2. The Judge,
Small Causes Court No.X,
Chennai.
3. The Section Officer,
Vernacular Records,
Madras High Court,
Madras.



**Order made in
C.R.P.(NPD)No.4700 of 2014**

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06.03.2020