



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 06.10.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.R.P(MD) No.736 of 2020

and

C.M.P(MD) No. 4920 of 2020

WEB COPY

R.Raju (Died)
1.Ashok Kumar
2.Kishok
3.Seenivasan

: Petitioners/Lrs of the deceased
Appellant/Lrs of the deceased
Respondent-Tenant

Vs .

1.Devaki
2.Parimaladevi
3.Sangareswari

: 1st Respondent/Respondent/
Petitioner-Landlord

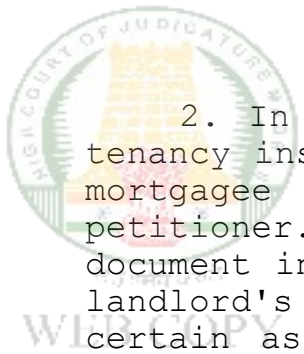
: Respondents 2 and 3/Lrs of
thereafter Deceased Appellant/
Lrs of the Deceased Respondent-Tenant

PRAYER: This petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act No.18 of 1960 as amended by Act No.23 of 1973 and Act No.1 of 1980) against the fair and decreetal order dated 6.1.2020 passed in R.C.A. No.51 of 2017 on the file of the Principal Subordinate Judge (Appellate Authority), Madurai, confirming the order of eviction dated 19.09.2017 passed in R.C.O.P.No..238 of 2008, on the file of the Principal District Munsif (Principal Rent Controller), Madurai Town.

For Appellant : Mrs.P.Jessi Jeeva Priya

O R D E R

The legal heirs of the deceased tenant in R.C.O.P.No.238 of 2008 before the Rent Controller (Principal District Munsif), Madurai have come forward with this revision having suffered successive orders directing eviction on the ground of willful default in the matter of payment of rent. The landlord of the property is certain Devaki. Her husband Ganesan and the deceased tenant are brothers. The said property was purchased by Devaki some time in 1994 under Ex.P.1. She claims that her tenant was paying Rs.2000/- as rent which later came to be increased to Rs.3000/-. However, he did not care to pay any rent from June 2004. It was about the time some civil dispute arose between her husband and his brothers which include the tenant himself.



2. In his counter statement, the deceased tenant disputed the tenancy instead would say that he has been inducted as a possessory mortgagee pursuant to he advancing a loan of Rs.4 lakhs to the petitioner. He would also assert that the landlord had executed a document in his favour. It was also his further contention that the landlord's husband has laid O.S.No.531 of 2004 seeking partition of certain assets and that he along with the landlord's husband and another brother Periyasamy jointly run a business and purchased the properties out of the income generated by the business. The suit however was decreed challenging which the tenant along with his brother have moved this Court in A.S.No.16 of 2007.

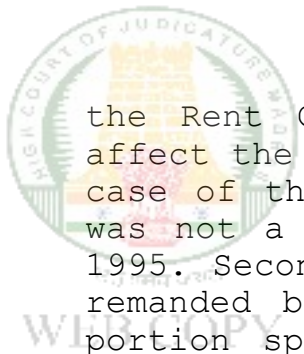
3.1 During the enquiry by the Rent Controller and during cross examination of the tenant as R.W.1, he was confronted with his testimony given as D.W.1 in O.S.No.531 of 2004. In his testimony he has admitted that upto 1995, he was a tenant of the property. He also made a positive statement about the Otti Deed executed by the landlord.

3.2 The Rent Controller has disbelieved the theory of Otti as propounded by the revision petitioner/tenant since except his self serving statement, he has not produced any Otti Deed, even though he had pleaded it in his counter. Since contrary to his stands in the present litigation the revision petitioner has admitted that he was a tenant of the petitioner till 1995, the Rent Controller concluded that the revision petitioner is the tenant of the property.

4. Since even according to the revision petitioner, he had not paid rent for several years, the Rent Controller concluded that the revision petitioner is in willful default and ordered eviction. This was confirmed by the Rent Control Appellate Authority.

5. The learned counsel for the revision petitioner would argue that the foundation for the Tribunals below to hold that the revision petitioner is a tenant of the respondent was Ex.P.2. Ex.P.2 is the oral testimony of the revision petitioner in O.S.No.531 of 2004. The right procedure for marking a testimony is to confront that portion which the party relies on to establish a contradiction and only that portion of the evidence needs to be recorded. In this case, the entire evidence itself has been marked and that has prejudiced the revision petitioner. If Ex.P.2 is eschewed, then, the very theory about the existence of a landlord-tenant relationship between the parties goes.

6. Valiant are the efforts of the learned counsel but still not adequate enough to convince this Court. While it is true that the right procedure for marking a previous statement of a witness is to confront that portion of the document where he had made a contradictory statement to the one he now made should be pointedly brought to his notice only that portion has to be marked. However, the failure of the revision petitioner to adopt the procedure which the court must adopt and the failure of



the Rent Controller to follow this procedure should not fatally affect the rights of the party. *De hors* this position, it is not the case of the revision petitioner that he had never deposed that he was not a tenant of the building involved in this litigation till 1995. Secondly even otherwise the matter at the best may have to be remanded back to the Rent Controller to enable him to mark that portion specifically to the tenant to confirm the tenant to the specific statement he had made as D.W.1 in O.S.No.531 of 2004. But is it going to produce any result different from the one which the Tribunals below have now arrived at? Now that since the tenant is dead it may not be possible, but the evidence will be now admissible under section 33 of the Indian Evidence Act.

7. This Court does not find any error in approach of the Tribunals below and hence does not consider that this case is fit enough for this Court to exercise its revisional jurisdiction.

8. In conclusion, there is no merit in this petition and the same is dismissed. The revision petitioner is directed to deliver vacant premises on or before 31.03.2021. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

CM/Msa

To

1. The Principal Subordinate Judge (Appellate Authority),
Madurai,
2. The Principal District Munsif (Principal Rent Controller),
Madurai Town.

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