



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 12.02.2020
DELIVERED ON : 20.05.2020
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(MD)No.1573 of 2019

WEB COPY

1.Parvathavarthani
2.Venkateswaran

.. Petitioners/Tenants

Vs.

K.Uthiram Pillai

.. Respondent/Landlord

Prayer: This Civil revision petition has been filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the fair and decretal order passed by the learned Rent Control Appellate Authority (Sub-Judge), Palani in R.C.A.No.1 of 2019 dated 20.08.2019 confirming the fair and decretal order of the learned Rent Controller/District Munsif, Palani in R.C.O.P.No.8 of 2000 dated 11.02.2019.

For Petitioners

: Mr.M.Siddharthan

For Respondent

: Mr.M.P.Senthil

ORDER

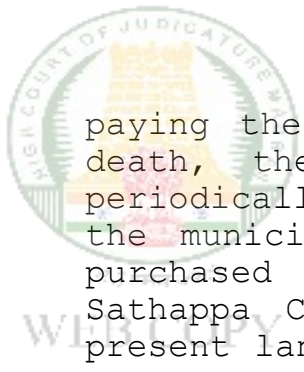
Heard learned counsel appearing on both the side.

2.This Civil Revision Petition has been filed against the order passed in R.C.A.No.1 of 2019 dated 20.08.2019 on the file of learned Rent Control Appellate Authority (Sub-Judge), Palani, confirming the fair and decretal order passed in R.C.O.P.No.8 of 2000 dated 11.02.2019 on the file of the learned Rent Controller/District Munsif, Palani.

3.The petitioners herein are the tenants and the respondent herein is the landlord. The landlord has filed a petition in R.C.O.P.No.8 of 2000 for a prayer of eviction. The petition was allowed by the Rent Controller, Palani. Against which, the tenants have preferred an appeal in R.C.A.No.1 of 2019. That appeal was dismissed by the Rent Control Appellate Authority, Palani. Against which, the tenants have preferred this revision petition.

4.The case of landlord in R.C.O.P.No.8 of 2000 is as follows:

The suit property is a commercial building in Palani Sanathi street. That property belonged to one Sathappa Chettiyar. During the year 1955 to 1956, the father-in-law of the first tenant and the grandfather of the second tenant by name Eswara Iyer got the property for rent and he was running a hotel, by name Devi Vilas for a rent of Rs.30/- (Rupees Thirty only) per month. After his death, the father of the first tenant by name Subramaniaya Iyer and his brother Viswanathan could not continue the business so they used the premises as their residence. Till his death, Subramaniya Iyer was



paying the rent in person and through Ramasamy Pillai. After his death, the second tenant was paying the rent. The rent was periodically enhanced till the death of Subramaniya Iyer. He paid the municipality tax from the rent amount. The present landlord purchased the property from Sathappa Chettiyar on 19.04.1999 and Sathappa Chettiyar directed the tenants to pay the rent to the present landlord. The tenants promised to vacate the premises on or before May 1999. The landlord directed the tenants to pay the rent until they vacate the premises but the tenants failed to pay the rent and also failed to vacate the premises. Notice was sent to the tenants to pay the rent and to hand over the possession. However, the tenants sent a reply notice with false allegations. The tenants are disputing the title of the vendor of the landlord and they filed a suit in O.S.No.258 of 1999. Hence, the tenants are to be vacated from the premises.

5. Brief substance of the counter in R.C.O.P.No.8 of 2000 is as follows:

The suit property and a similar property was purchased by one Kasi Chettiyar on 03.08.1944. Sathappa Chettiyar is the brother's son of Kasi Chettiyar. Both Kasi Chettiyar and Sathappa Chettiyar never enjoyed the property in person. For the past 50 years, the tenants and his predecessor were in possession and they run a business, by name Devi Vilas. Afterwards, Eswara Iyer continued to be in possession. Later his son Subramaniya Iyer continued the business. The municipal licence and E.B., connection were in the name of Rama Iyer. The property was continuously in the enjoyment of Rama Iyer and his family members. The municipal taxes were paid by them. The first tenant is the wife of Subramaniya Iyer. The second tenant is the son of Subramaniya Iyer and they have spent more than Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) for the maintenance. They constructed a bed room, kitchen, bathroom, toilet and hall and they renovated the ground floor. Even during the lifetime of Subramaniya Iyer, he converted the front portion into a vessels shops. Now the shop is being run by the tenants. Eswara Iyer and Subramaniya Iyer were never tenants under Sathappa Chettiyar. They never paid rent. It is false to state that the tenants are paying the rent to Sathappa Chettiyar. The statement that the tenants agreed to pay rent to the landlord are all false.

6. The landlord is aware that the tenants are in possession and he created the sale deed and through man power he tried to vacate the tenants. The tenants filed a suit in O.S.No.688 of 1999 and obtained a temporary injunction order in I.A.No.372 of 1999 against Sathappa Chettiyar. Sathappa Chettiyar never divided the property. Kasi Chettiyar is also entitled for whatever right claimed by Sathappa Chettiyar. Without filing a suit, the landlord cannot file this petition. The tenants are having adverse possession. There is no relationship of tenants and landlord between the petitioners and the respondent.



7.The learned Rent Controller/District Munsif allowed the petition. Against the order, the tenants preferred an appeal in R.C.A.No.1 of 2019 and the appeal was dismissed by the learned Rent Control Appellate Court. Against which, the tenants have filed this revision petition.

8.The case of the revision petitioners is that there is no relationship of landlord and tenants between the respondent and petitioners. The denial of title is bonafide. The landlord failed to mention the date of commencement of tenancy between the landlord and the tenants. During the year 1955 to 1956, Sathappa Chettiyar was not an exclusive owner. He was only a co-sharer having undivided half share in the property. It is not the case of the landlord that the tenancy agreement entered into by Sathappa Chettiyar is on behalf of his brother Kasi Chettiyar in the capacity of co-sharer. There is no averment whether Sathappa Chettiyar and his brother orally divided the properties. Sathappa Chettiyar was not entitled to sell the property in the absence of a partition. Sathappa Chettiyar and Kasi Chettiyar purchased a trust property and they have no right over the property. Since the property is a trust property, the application under Section 10 of Rent Control Act does not apply. The tenants never agreed to surrender the property at the end of April 1999. The landlord did not produce any sale deeds either in his favour or in favour of his predecessor in title.

9.The tenants are in continuous enjoyment of the property for more than the statutory period. Eswara Iyer spent more than a sum of Rs.2,50,000/- for the development of the property. When the rent is said to be Rs.300/- (Rupees Three Hundred only) per month, there is no possibility to purchase the property for a sum of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only). Ex.A7 is a certified copy and is inadmissible in evidence. Neither the present petitioners nor his predecessors in title were parties to the said document and that document was produced in the earlier case only to prove possession and that the contents were not accepted by the petitioners. Since there is no agreement of tenancy, question of payment of rent does not arise. There are two door numbers in the property. But only one door number is mentioned in the R.C.O.P. The description of the property is not proper.

10.On the side of the petitioners, it is stated that there is no evidence to prove the relationship of tenants and landlord. The respondent did not purchase the property from the absolute owner. The front portion of the property was enjoyed by one Velmurugan. The said Velmurugan filed a suit against the tenants for a portion of the property in O.S.No.387 of 1999 and he got a decree. The appeal against the decree in A.S.No.8 of 2005 was also dismissed. The rights of the third parties was not discussed by the Rent Controller. The landlord is eligible only for a portion of the suit



property. The revision petitioners obtained possession not as tenants. No rent was ever collected from them. Eviction cannot be ordered against the revision petitioner.

11. On the side of the respondent, it is stated that the petition for eviction was filed on the ground of wilful default. One Satappa Chettiyar leased the property to Eswara Iyer who run a hotel by name Devi Vilas. After his death, the husband of the first petitioner continued to be in possession as a tenant. On 19.04.1999, Sathappa Chettiyar sold the property to the present landlord. The petitioners filed the suit in O.S.No.258 of 1999 claiming adverse possession and that suit was dismissed by the learned District Munsif, Palani and the appeal ended against the revision petitioners. The SLP No.31697 of 2018 filed by the revision petitioners was dismissed by the Hon'ble Supreme Court. There is arrears of rent. Two letters written by Sathappa Chettiyar were marked as Exs.P2 and P6. As per Ex.P7, the respondent is having all the rights as the owner. The property does not belong to any Trust. Rama Iyer was a tenant. The document No.127 in O.S.No.258 of 1999 also reveals the same. The revision petitioners have admitted in their evidence that the property in their possession and the suit property are one and the same.

12. The learned counsel for the respondent would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Kasthuri Radhakrishnan and others v. M.Chinniyan and others** reported in 2016 (2) CTC 292, wherein it is stated as follows:

"High Court is entitled to satisfy itself as to correctness or legality or propriety of impugned decision or order - high Court shall not exercise its power as appellate power to re-appreciate or reassess evidence for coming to different finding on facts - revisional power is not and cannot be equated with power of reconsideration of all questions of fact as Court of first appeal."

13. The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of **R.V.Gurupatham v. Taiba Khanum and others** reported in 2018 (3) MWN (Civil) 683, wherein it is stated as follows:

"if tenant claims to be owner of property and fails to substantiate same, it would amount to denial of title which is not bonafide - tenant admits landlord - tenant relationship but denies title of landlord, same would amount to denial of title which is not bonafide."

14. The learned counsel for the respondent would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Suresh Kumar Kohli v. Rakesh Jain and another** reported in 2018 (6) CTC 86,





respondent, Kasi Chettiyar and his successors can take action and not the tenants.

19.It is seen that the first petitioner filed a suit in O.S.No.258 of 1999, which ended against her. The SLP filed by the first petitioner was dismissed by the Hon'ble Supreme Court. Now the revision petitioner cannot claim adverse possession as her claim was already negatived by the Hon'ble Supreme Court. The revision petitioners admitted that they have not paid the rent. Admittedly it is a wilful default on the part of the revision petitioners. The claim of the revision petitioners that no action was taken against one Velmurugan is not maintainable. A tenant cannot question why the landlord did not take action against another tenant.

20.In the above circumstance, there is no merits in this petition. This Civil Revision Petition is dismissed and the order passed in R.C.A.No.1 of 2019 dated 20.08.2019 on the file of learned Rent Control Appellate Authority (Sub-Judge), Palani, confirming the fair and decreetal order passed in R.C.O.P.No.8 of 2000 dated 11.02.2019 on the file of the learned Rent Controller/District Munsif, Palani is confirmed. The tenants are hereby directed to vacate the premises and to hand over vacant possession within a period of three months from the date of receipt of copy of this order. No Costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

- 1.The Rent Control Appellate Authority (Sub-Judge), Palani.
- 2.The Rent Controller/District Munsif, Palani.

Copy to: The Court Manager,
Madurai Bench of Madras High Court, Madurai.

C.R.P.(MD)No.1573 of 2019

SMA/04/06/2020/6P/4C

20.05.2020