



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 16.07.2020

DATE ON WHICH PRONOUNCED : 23.07.2020

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.R.P. (PD) (MD)No.781 of 2014

Mr.M.Paulraj ... Petitioner/Appellant/Petitioner/Respondent

Vs.

A.Ganesan ... Respondent/Respondent/Respondent/Petitioner

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decretal order passed in R.C.A.No.11 of 2013 on the file of the Principal Subordinate Judge, Nagercoil, dated 11.10.2013 confirming the fair and decretal order passed in I.A.No.33 of 2013 in R.C.O.P.No.3 of 2010 on the file of the learned Rent Controller (Principal District Munsif Court), Nagercoil, Kanyakumari District, dated 03.07.2013.

For Petitioner : Mr.M.P.Senthil
For Respondent : Mr.Niranjan S.Kumar
for Mr.V.Balaji

ORDER

This Civil Revision Petition has been filed by the tenant against the dismissal of the R.C.A.No.11 of 2013 on the file of the learned Rent Control Appellate Authority (Principal Sub-Judge), Nagercoil, dated 11.10.2013.

2.The respondent herein had filed R.C.O.P.No.3/2010 on the file of the Rent Controller (Principal District Munsif), Nagercoil for fixation of fair rent under Section 4(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred as Rent Control Act), stating that the petition mentioned property measuring 21.41 cents in area was leased out by his adopted father Sri. S.V.A.Arumuga Nainar to the father of the petitioner herein in or about 1956. He further stated that the monthly rent for the said property is Rs.500/- and the said rent is very low and hence, a fair rent has to be fixed. The petitioner herein opposed the said petition by filing counter. He also stated that the respondent herein entered into a sale agreement with him agreeing to sell the entire 21.41 cents, but the respondent herein has not come forward to execute the sale deed and hence, he was constrained to file a



suit for specific performance in O.S.No.173/2009 on the file of the District Judge at Nagercoil.

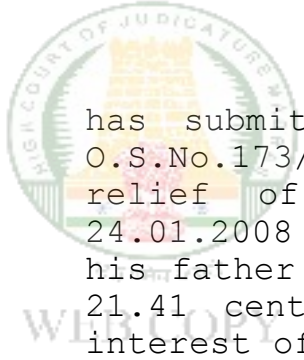
3. In the said R.C.O.P, an Advocate Commissioner was appointed to value the building. Accordingly, the Advocate Commissioner had inspected the said property with the assistance of an Engineer and filed his report. Thereafter, the matter was taken up for enquiry. During enquiry, the respondent herein examined himself as P.W.1. It appears that the Advocate Commissioner and the Engineer, who assisted the Advocate Commissioner were examined as C.Ws.1 & 2. Thereafter, the matter was posted for respondent's side evidence. The petitioner herein has filed chief examination by way of proof affidavit as R.W.1 and when the matter was posted for his cross-examination, he has filed a petition in I.A.No.33 of 2013 under Order 6 Rule 17 of Civil Procedure Code seeking permission of the learned Rent Controller to amend his counter statement as only 7 cents was leased out. The respondent herein has opposed the said petition by filing counter. The learned Rent Controller, after considering the rival submissions and materials placed before him, by the order dated 03.07.2013, has dismissed the said petition. However, he gave a liberty to the petitioner to prove his case through oral and documentary evidence and that will be considered at the time of disposing of the main R.C.O.P. Aggrieved by the same, the petitioner herein has filed an appeal in R.C.A.No.11 of 2013 on the file of the Rent Control Appellate Authority (Principal Sub Judge), Nagercoil. The learned Rent Control Appellate Authority, by the order dated 11.10.2013, has dismissed the said appeal with costs, and thereby confirmed the order passed by the Rent Controller. Feeling aggrieved, the tenant (petitioner herein) has filed the present civil revision petition.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the documents carefully.

5. The learned counsel for the petitioner/tenant has submitted that only 7 cents was given on lease to his father and the said fact was known to the petitioner only at the time of preparing proof affidavit in Tamil. He further submitted that the petitioner is an illiterate and since the counter statement in main R.C.O.P was prepared in English, he could not read and understand the contents of the same. He further submitted that the respondent's adopted father late Sri.Arumugam Nainar had issued a receipt dated 13.06.1963, in which, it is clearly stated that only 7 cents was given on lease and hence, the petitioner has filed a petition to amend the counter statement. He further submitted that the Rent Controller has not properly considered the said facts and dismissed the said petition and the same has been mechanically confirmed by the appellate authority also and therefore, he prayed to allow the revision and set aside the orders passed by the Rent Controller and Rent Control Appellate Authority and allow the I.A.No.33 of 2013.

<https://hcservices.ecourts.gov.in/hcservices/>

6. Per contra, the learned counsel for the respondent/landlord



has submitted that the petitioner himself has filed a suit in O.S.No.173/2009 on the file of the District Court, Nagercoil for the relief of specific performance of the sale agreement dated 24.01.2008 and in the said suit, he has categorically admitted that his father took possession of the entire extent of the property i.e 21.41 cents on lease in the year 1956 with the predecessor in interest of the respondent herein. He further submitted that in the said suit, the petitioner herein has not stated that his father took only 7 cents on lease and possession for remaining property was given only in pursuance of the sale agreement. He further submitted that in the sale agreement, it is clearly stated that the petitioner's father was in possession of the entire extent of 21.41 cents as a tenant. In the pre-suit notice also, he has averred the same thing. He further submitted that in the proof affidavit also, the petitioner has not at all disputed the extent of the property, which was leased out. He further submitted that only with a view to cause loss to the respondent, as an after-thought, that too after filing the proof affidavit, the petitioner has filed the petition seeking to amend the counter affidavit. He further submitted that the learned Rent Controller, taking into consideration of the aforesaid facts, has rightly dismissed the said petition and the same has been confirmed by the appellate authority and in the said concurrent findings, this Court need not interfere and therefore, he prayed to dismiss the present civil revision petition.

7. Admittedly, the petitioner herein has filed a suit in O.S.No.173/2009 on the file of the District Court, Nagercoil for the relief of specific performance of the sale agreement dated 24.01.2008. A perusal of the copy of the said plaint shows that the petitioner herein has shown the entire extent of 21.41 cents as suit property. In paragraph No.2 of the said plaint, he has averred that his father Muthaiah Nadar has got possession of the plaint schedule property in the year 1956 by entering into a lease agreement with the predecessor in interest of the defendant and he was doing palmirah timber business there. He also stated that he was also with his father in the business for the past several decades. Nowhere in the said plaint, he has stated that only 7 cents was given on lease to his father and possession for the remaining extent was given to him only in pursuance of the said sale agreement. In the affidavit filed in support of the petition in I.A.No.33 of 2013 in R.C.O.P.No.3 of 2010, the petitioner herein has stated that he is an illiterate and has completed only Elementary Education and that the counter in main R.C.O.P was prepared in English and hence, he could not read and understand the contents of the same. He further stated that when he got chief-affidavit prepared in Tamil, he could understand the material fact pertaining to leasehold right over southern 7 cents was not properly pleaded in the counter.

8. At this juncture, it would be relevant to refer to Rule 40 of the Civil Rules of Practice, which reads thus:-

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40. Blind or illiterate deponent:-

When an affidavit is sworn or affirmed by any



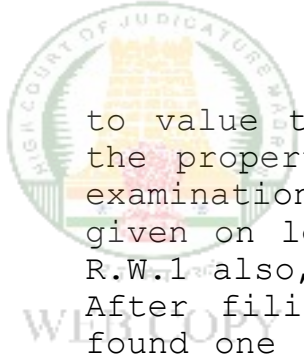
person who appears to the person taking the affidavit to be illiterate or blind or unacquainted with the language in which the affidavit is written that person shall certify that the affidavit was read, translated or explained in his presence to the deponent and that the deponent seemed to understand it and made his signature or mark in his presence, as in Form No.15 otherwise the affidavit shall not be used in evidence."

9.A bare reading of the aforesaid rule would show that when an affidavit is sworn by any person, who appears to be illiterate or blind or unacquainted with the language, in which the affidavit is written, it has to be certified that the affidavit was read, translated or explained to him and that he understood the same and made his signature or otherwise, the affidavit shall not be used in evidence.

10.It is pertinent to note that in this case, the affidavit filed in support of I.A.No.33/2013 in R.C.O.P.No.3 of 2010 is in English language. Though the petitioner has stated that he could not read and understand the contents of the counter because it was prepared in English, he has not stated that the said affidavit was read over and translated into Tamil and only thereafter, he has signed. Therefore, strictly speaking, the said affidavit cannot be taken into consideration. Since the petitioner has signed in English and no certificate has been enclosed as contemplated under Rule 40 of Civil Procedure Code, it has to be presumed that the petitioner has signed in the counter statement and also in the affidavit only after knowing the contents of them. Therefore, the contention of the petitioner that he does not know English and without knowing the contents, he signed in the counter statement cannot be accepted.

11.As already pointed out that the petitioner has filed a suit in O.S.No.173/2009 praying the relief for larger extent of the property i.e 21.41 cents. But, when a Rent Control Original Petition is filed against him for fixing the fair rent, he took 'U' turn and pleaded that only 7 cents was given on lease. He cannot approbate and reprobate. The principle of estoppel will apply.

12.In **Ram Niranjana Kajaria Vs Sheo Prakash Kajaria and Others, 2016 (1) MWN (Civil) 540 : 2016-2-LW (1)**, a three Judge Bench of the Hon'ble Supreme Court has held that admission can be clarified or explained by way of amendment, but the party cannot be permitted to withdraw the admission made in pleadings. In this case, as already pointed out that the petitioner has filed a suit for specific performance claiming the relief for larger extent. But at the same time, when a Rent Control petition was filed against him for fixation of fair rent, he took a different stand that only 7 cents was given on lease. In the counter statement filed in the main R.C.OP, the petitioner has not disputed the extent of the property leased out i.e 21.41 cents. An Advocate Commissioner was appointed



to value the property and the Advocate Commissioner also measured the property and filed a report valuing the same. During cross-examination of P.W.1, nothing was suggested as to only 7 cents was given on lease. In the proof affidavit filed by the petitioner as R.W.1 also, he has not stated that only 7 cents was given on lease. After filing proof affidavit, it appears that the petitioner has found one receipt dated 13.06.1963 said to have been issued by the original landlord and in the said receipt, it has been mentioned as only 7 cents was leased out and relying upon the said document, the petitioner has filed the amendment petition. It is to be pointed out that in the said receipt, 7 cents with one house bearing door No.N.M.C/12/14 has been mentioned, whereas in the plaint filed in O.S.No.173/2009 and also in the petition filed in R.C.O.P.No.3/2010, two door numbers viz., N.M.C.Nos.59 and 60 were mentioned. So, it appears that the said receipt is pertaining to only one door number and taking advantage of the same, the petitioner cannot amend the counter statement.

13.It is also to be pointed out that though the learned Rent Controller has dismissed the amendment petition, he gave liberty to the petitioner to adduce evidence and prove that only 7 cents was leased out. Challenging the said finding, the respondent has not filed either appeal or cross-objection. Hence, the petitioner can avail the said opportunity and adduce evidence in support of his case. It is for the Rent Controller to decide the same in accordance with law. Therefore, this Court does not find any merit in this civil revision petition.

14.In the result, this Civil Revision Petition is dismissed. No costs. Taking into consideration the R.C.O.P is pending for the past 10 years, the learned Rent Controller (Principal District Munsif Court), Nagercoil, Kanyakumari District, is directed to dispose of the same as early as possible, uninfluenced by the observations made by this Court in this order.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vs

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To

1. The Rent Controller,
(Principal District Munsif Court),
Nagercoil, Kanyakumari District.

2. The Principal Subordinate Judge,
Nagercoil, Kanyakumari District

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-13223[F] dated 24/07/2020)

C.R.P. (PD) (MD) No.781 of 2014
23.07.2020

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