



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 05.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.1759 of 2019

Thangamuthu

... Petitioner/Appellant/Respondent
Tenant

Vs.

Brammanayakam

... Respondent/Respondent/Petitioner/
Landlord

Prayer : This Civil revision petition is filed under Section 25 of the Tamilnadu Building Lease and Rent Control Act 1960, to set aside the fair and decreetal order dated 26.08.2019 passed in R.C.A.No.5 of 2018 on the file of Principal Sub ordinate Judge (Rent Control Appellate Authority), Nagercoil, confirming the fair and decreetal order dated 01.08.2018 passed in R.C.O.No.31 of 2013 on the file of the Principal District Munsif (Rent Controller), Nagercoil, and allow the present civil revision petition.

For Petitioner : Mr.M.Saravanan

For Respondent : Mr.M.P.Senthil

ORDER

This petition has been filed against the order dated 26.08.2019 passed in R.C.A.No.5 of 2018 on the file of Principal Sub ordinate Judge (Rent Control Appellate Authority), Nagercoil, confirming the fair and decreetal order dated 01.08.2018 passed in R.C.O.No.31 of 2013 on the file of the Principal District Munsif (Rent Controller), Nagercoil.

2.The petitioner herein is the tenant and the respondent herein is the land lord.

3.The respondent has filed a Petition in R.C.O.No.31 of 2013 for a prayer of eviction. That petition was allowed by the Rent Controller against which, the tenant preferred an appeal in R.C.A.No.5 of 2018 before the Sub Court, Nagercoil, that appeal was dismissed. Against which, the petitioner preferred this revision petition.

4.The case of the respondent is that the petitioner entered into a rental agreement with one Bhagavathi Ammal, who is the original owner of the suit schedule property. After the death of the said Bhagavathi Ammal, the respondent/landlord was getting rent till March 2010. The construction is in a very delabitated condition and the landlord wanted to demolish the building for constructing a new building. Therefore, he filed a suit for



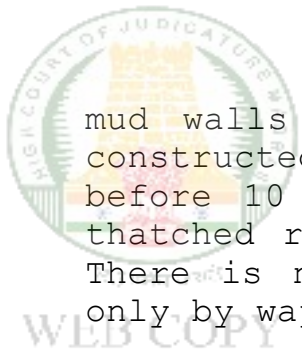
5.The case of the tenant is that only after promising that the tenant can enjoy the property till his life time, the owner of the building Bhagavathi leased out the building. After the death of Bhagavathi Ammal, the petitioner and the respondent entered into a lease agreement that the petitioner gave a sum of Rs.5,000/- to the respondent as advance and the monthly rent was fixed as Rs.150. The tenant made a construction in the suit schedule property and he built four small rooms, toilet, bath rooms and compound walls. He spent a sum of Rs.1,00,000/- for the above said constructions and he obtained Electricity connection in the name of the uncle of the respondent. The property was used as a shop and resident by the tenant. The note book for payment was received by the landlord two years ago and the same was not handed over to the tenant/petitioner. There is no necessity to demolish the building or to evict the tenant.

6.The Rent Controller allowed the petition in R.C.O.No.31 of 2013 and the First Appellate Court confirmed the same. Against which, the revision petitioner filed this appeal.

7.The case of the revision petitioner is that the Appellate authority failed to consider the statement of R.W.1 and at the time of cross examination, the petitioner categorically stated that the respondent has leased out only the site and the tenant has put up construction in the vacant place by spending his own money and there was no relationship of landlord and tenant. The respondent failed to prove his *bonafide*. Except Ex.P.4, the respondent did not file any document to prove the ground for demolition and reconstruction. The Commissioner Report stating that the buildings were constructed 10 years ago falsifies the claim of the respondent.

8.On the side of the respondent, it is stated that the petitioner has admitted that he is a tenant and that in his evidence, it is stated that the respondent leased out the property before 40 years and that after the demise of one Bhagavathi Ammal, he paid rent to the respondent and that even at the time of taking possession of the property, there was a building and the electricity connection was in the name of the uncle of the respondent and he has also admitted that he did not file any document regarding the upgrading of the building at his cost.

9.On the side of the petitioner, it is stated that the petitioner was handed over the vacant possession of the land and the petitioner constructed the super structure and the case under the Rent Controller Tribunal is not maintainable under Section 26 of the TamilNadu Rent Control Act. It is further stated that in the Commissioner's report, it is clearly stated that there were



mud walls with thatched roof and that the super structure was constructed before 20 years and some portions were constructed before 10 years. As the super structures is only mud walls and thatched roof, there is no question of the building to collapse. There is no Pakka building. Remedy available to the landlord is only by way of filing a suit and not by filing R.C.O.P.

10. On the side of the respondent it is stated that the petitioner was not permitted to make any constructions. The petitioner himself has admitted in his evidence that there was a building at the time of lease agreement and that house tax was in the name of the uncle of the respondent and that the building is 50 years old. It is further stated that the building is old and in a dilapidated condition and the respondent wanted to demolish the building and to re-construct. The petitioner has paid only a sum of Rs.200/- p/m as rent and the petitioner stated in his evidence that the building after re-construction may fetch a sum of Rs.30,000/- per month as rent. It is stated that if the building is collapsed, the respondent/landlord will be responsible for the building and that demolishing the building and re-constructing the same is necessary.

11. It is seen that the petitioner is only a tenant and the petitioner has admitted in his evidence that the building was 50 years old and that there was a building at the time of lease and the petitioner has not produced any documents to show that he constructed the super structures and that he was permitted to construct the super structures. There cannot be a life time rental agreement as alleged by the petitioner.

12. In the above circumstances, there is nothing sufficient enough to interfere in the orders of the rent control Appellate Authority, who in turn confirmed the order of the Rent Controller. Hence, this Civil Revision Petition is dismissed. No costs.

13. The petitioner is directed to hand over the possession of the property to the landlord within a period of two months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



WEB COPY

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

2.The Principal Sub ordinate Judge
(Rent Control Appellate Authority), Nagercoil,

copy to
The Record Keeper,-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.SUBRAMANIAN, Advocate (SR-5003[F] dated
06/02/2020)

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-5033[F] dated 06/02/2020)

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