



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.R.P (MD)No.2000 of 2019

and

C.M.P. (MD)Nos.10306 & 11237 of 2019

M.Mumthaj

... Revision Petitioner / petitioner/
first respondent/tenant

Vs.

S.G.Inbavalli Aachi

...Respondent /respondent/
petitioner / landlady

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the Executable Order and Fair order dated 25.09.2019 in I.A.No.162 of 2019 in R.C.O.P.No.223 of 2014 passed by learned Additional District Munsif, Madurai Town, in dismissing the application filed under Section 151 of the Code of Civil Procedure to dismiss the main R.C.O.P.No.223 of 2014 as infructuous.

For Petitioner : Mr.N.Murugesan

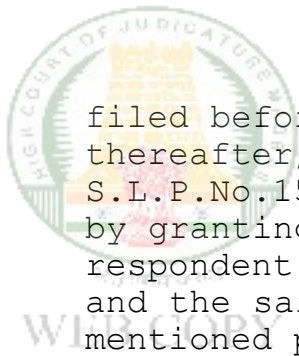
For Respondent : Mr.D.Nallathambi

ORDER

This Civil Revision Petition is filed against the order dated 25.09.2019 made in I.A.No.162 of 2019 in R.C.O.P.No.223 of 2019 on the file of the learned Additional District Munsif, Madurai Town.

2. The petitioner herein is the tenant and the respondent herein is the landlady. The respondent herein / landlady filed R.C.O.P.No.197 of 2013 before the learned Additional District Munsif, Madurai Town, seeking a prayer of eviction and filed another petition in R.C.O.P.No.223 of 2014, seeking for fixation of fair rent. In R.C.O.P.No.223 of 2014 the petitioner herein / tenant has filed an application in I.A.No.162 of 2019 to reject the petition in R.C.O.P.No.223 of 2014.

3. On the side of the petitioner / tenant, it is stated that the petition in R.C.O.P.No.197 of 2013 was dismissed by the Court on 10.07.2019, but, appeal in R.C.A.No.62 of 2017 was allowed. Against the same, Civil Revision Petition in C.R.P. (MD)No.303 of 2019 was



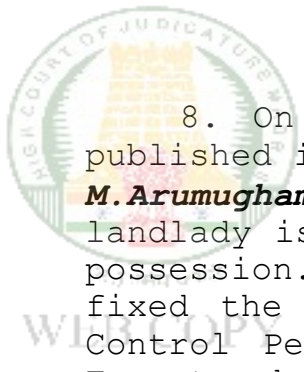
filed before this Court and the same was dismissed on 27.04.2019 and thereafter, the petitioner approached the Apex Court in S.L.P.No.15695 of 2019 and the same was also dismissed on 23.07.2019 by granting three months time to vacate the premises. The landlady/respondent herein preferred an E.P for delivery in E.P.No.28 of 2019 and the said Execution Proceeding was terminated, since the petition mentioned property was handed over to the respondent / landlady.

4. The allegation against the tenant is that she sublet the property to the second respondent / M/s.Mydeen Stores and the sub-tenant is not liable to face any proceedings and the respondents 2 and 3 are to be exonerated in proceedings in R.C.O.P.No.223 of 2014. Since the property was already handed over, there is no relationship of tenant and the landlady prevailing as on date and hence, the petitioner has to be exonerated from the proceedings in R.C.O.P.No.223 of 2014 and R.C.O.P.No.223 of 2014 is liable to be dismissed.

5. On the side of the respondent / landlady, it is stated that the main R.C.O.P.No.223 of 2014 was filed on 18.07.2014 and the petitioner side evidence was closed on 18.06.2019. After providing sufficient opportunities, the respondent side evidence was closed by the Court on 26.07.2019 and the matter is posted for arguments. Thereafter, on 13.07.2019, a re-open petition in I.A.No.148 of 2019 was allowed with the condition to record evidence on 13.08.2019. Though delivery was effected, the petitioner herein / tenant is liable to pay fair rent for the period of occupation. The landlady is entitled for fair rent from the date of petition, till the tenant vacates the premises. The relationship of landlady and the tenant ceases to exist only from the date of handing over the possession until then the relationship was in force and hence, the petitioner / tenant is liable to pay fair rent. A judgment of this Court published in **2006 (4) CTC 322 [N.Kuberan Vs. Indian Bank, Tindivanam Branch]** is cited.

6. On the side of the revision petitioner, it is stated that the lower Court did not give any finding as to the relationship of landlady and tenant. On the side of the revision petitioner, it is further stated that the citation pointed out by the respondent is not applicable to the present case, as the citation is relating to properties sold by the landlady, where the tenancy continued.

7. On the side of the respondent, it is stated that only after approaching the Hon'ble Supreme Court, the revision petitioner handed over possession on 13.08.2019, in the E.P proceedings. Even after vacating the premises the fair rent petition can be dealt with as the relationship of the tenant and the landlady exists until the date of handing over the possession.

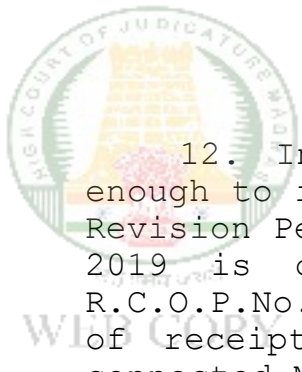


8. On the side of the respondent, a judgment of this Court published in **2007 (3) LW 639 [Parijatham Ammal (died) & 5 others Vs. M.Arumugham Mudaliar]** is cited, wherein it is held that the landlady is entitled for fair rent till the date of taking over the possession. It is further stated that the Rent Controller has fixed the fair rent as Rs.3,200/- payable from the date of Rent Control Petition i.e. 15.02.1986. It is quite obvious that the Tenant has vacated the premises on 20.11.1997, nearly 11 years after the filing of the petition. The contention of the Tenant that she has vacated the premises and is not liable to pay the difference in the fair rent is to be rejected.

9. On the side of the revision petitioner, it is stated that the fair rent was already fixed in the above cited case, whereas the fair rent was not fixed in this case and the petitioner cannot be treated as a tenant.

10. It is seen that the respondent is the landlady and she filed two R.C.O.Ps. (1) R.C.O.P.No.197 of 2013, for vacating the tenant on the ground of subletting the property and for act of causing waste on the premises and the same was dismissed by the trial Court. Against the same, an appeal was filed by the landlady in R.C.A.No.62 of 2017 and the same was allowed. Against which, the revision petitioner / tenant filed Civil Revision Petition (C.R.P. (MD)No.303 of 2019) and the same was also dismissed by this Court. Thereafter, Special Leave Petition filed by the revision petitioner / tenant before the Hon'ble Supreme Court in S.L.P.No.15695 of 2019 was also dismissed. There is no doubt that the respondent is the landlady.

11. It is seen that the respondent / landlady filed a petition for delivery of possession in E.P.No.28 of 2019 and eviction was ordered. The case of the revision petitioner is that she handed over the possession to the respondent / landlady. In the meanwhile, the respondent / landlady filed another petition in R.C.O.P.No.223 of 2014 for fixing fair rent and the same was pending. During the pendency of that petition, the petitioner / tenant preferred an application in I.A.No.162 of 2019 to dismiss the R.C.O.P.No.223 of 2014. The claim of the revision petitioner is that the relationship of tenant and the landlady does not exist, as the petitioner / tenant handed over possession to the respondent / landlady. The case of the respondent / landlady is that fair rent is to be fixed for the period of occupation by the petitioner / tenant until the date of delivery of possession. The R.C.O.P.No.223 of 2014 was filed for fixing fair rent for the period of tenancy. Till the date of handing over possession, the relationship of tenant and landlady exist between both the parties. Hence, the question raised by the revision petitioner / tenant is not sustainable and the revision petitioner / tenant is liable to pay fair rent till the date of eviction.



12. In the above circumstances, there is nothing sufficient enough to interfere in the order of the Tribunal. Hence, this Civil Revision Petition is dismissed and the order passed in I.A.No.162 of 2019 is confirmed. The Tribunal is directed to dispose of R.C.O.P.No.223 of 2014 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The Additional District Munsif,
Madurai Town.

COPY TO:

The Section Officer,
VR Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.N.MURUGESAN, Advocate (SR-1048[F] dated 09/01/2020)

C.R.P (MD)No.2000 of 2019
07.01.2020

LS

TK/SAR./18.03.2020/4P/5C