

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.10.2021

PRONOUNCED ON : 02.11.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(N.P.D)No.302 of 2020 and
C.M.P.Nos.4532 &1563 of 2020**

K.Rajan

...Petitioner

Vs.

C.R.Yogiswaran

...Respondant

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the judgment and decree passed in R.C.A.No.582 of 2018 dated 31.10.2019 by the learned VII Small Causes Court, Chennai reversing the fair and decreetal order passed in R.C.O.P.No.1293 of 2016 dated 06.07.2018 by learned XI Small Causes Court, Chennai.

For Petitioner : Mr.M.Balasubramanian for

M/s.V.Meenakshi Sundaram

For Respondent : Mr.S.Mukunthan for

R.Ganesh Babu for Caveator

ORDER

This Civil Revision Petition is filed challenging judgment passed in R.C.A.No.582 of 2018 by the learned VII Small Causes Court, Chennai, reversing the order of the learned XI Small Causes Court, Chennai in R.C.O.P.No.1293 of 2016.

2.The respondent/landlord filed R.C.O.P.No.1293 of 2016 under Sections 10 (2) (i), 10 (2) (vii) & 14 (1) (b) of the Tamil Nadu Buildings (Lease and Rent) Control Act, for evicting the petitioner. It is seen from the averments made in the petition that the respondent/landlord is the owner of the petition mentioned property. It originally belonged to Krishnasami Naicker. Krishnasami Naicker died intestate leaving his class II legal heirs Loganathan, Suryaprakash and Sarangapani, who succeeded to his estate. Respondent's father Rajesekar is son of Suryaprakash. He was allotted the property in door No.76, 77 & 78, Kappapalu street, Old Washermenpet, Chennai. Sarangapani died without issues and he executed a will dated 14.12.1970 in favour of respondent and his brothers Mathiazhagan and Chandrababu. After the execution of family arrangement between the legal heirs on 05.04.1990,

respondent's mother was exclusively allotted portion of door No.76/3 to an extent of 2 ground and 107sqft. Respondent was allotted 2156sqft., with common usage of passage. C.R.Varadammal was administering the properties as elder member of the family. In 1976, petitioner approached C.R.Varadammal and requested her to lease a portion of the property for running a school. Petitioner was inducted as a tenant in the ground floor to an extent of 6718sqft., in door No.76/2 & 76/3, on a monthly rent of Rs.3,000/-. Subsequent to the death of mother C.R.Varadammal, release deed dated 15.02.2010 was executed in favour of the respondent by other co-sharers. Thus respondent became absolute owner of the property in door No.76/2 & 76/3 measuring 7878sqft. Civil Suit in C.S.No.209 of 2001 was pending before this Court among the family members. Taking advantage of the dispute between the legal heirs, petitioner has not paid the rent from April 2001. Despite several request to the petitioner to vacate the property, petitioner has not vacated the premises. Petitioner is running the school without getting proper recognition from Directorate of School Education. Petitioner filed O.S.No.3467 of 2007 against the respondent and other legal heirs for permanent injunction, not to

interfere with his possession, except by due process of law. The issues between the legal heirs had been settled and compromise decree was passed in C.S.No.209 of 2001. Respondent sent notice dated 13.06.2016 requiring the petitioner to vacate the premises since there is arrears of rent from May 2001 to July 2016. After receiving the notice, petitioner sent the reply dated 26.07.2016 refuting the contents of the notice and denied title of the respondent in the schedule property. The building is more than 100 years old and it is in dilapidated condition. If the building is demolished and a new building is constructed, respondent would get handsome money as rent. There is arrears of rent from May 2001. Petitioner malafidely denied the title of the respondent in the petition mentioned premises. Therefore, this eviction petition.

3. Petitioner filed counter alleging that respondent is not the only legal heir of late Sarangapani, C.R.Varadammal and Loganathan. After the death of C.R.Varadammal, none of the legal heirs came to claim rent for the school premises from the petitioner. Respondent is not the absolute owner of the property and he has not produced any

documents in support of his claim that he is absolute owner of the property and entitled to claim rent. Respondent has no locus standi to file eviction petition. Petitioner is not able to find out who is the real legal heir. There are 750 students studying in the Primary and Higher Secondary School at the premises door Nos.76/2 and 76/3. Petitioner came to know that there are other legal heirs namely 1)C.Mathialagan, 2)Chandrababu 3)Thilagavathy 4)Sarvothaman and 5)Mrs.Parimala. They were also claiming rent from the petitioner. C.R.Varadammal died long before. Petitioner admits that monthly rent is Rs.3000/- per month. There is no wilful default on the part of the petitioner. There is a will of late Sarangapani Naicker dated 14.12.1970. Without probating the will, no claim can be made on the basis of the will. The suit in O.S.No.3467 of 2007 was filed when the defendants in that suit tried to interfere with the petitioner's possession. The case in C.C.No.368 of 2016 was also filed for defamation. Petitioner has also filed O.S.No.1700 of 2016 for injunction. Petitioner is properly maintaining the building and the building is in a good condition. It is not correct to state that the school is being run without proper recognition. Petitioner is prepared to pay rent

to the respondent, if he is able to prove his title. There is no question of denial of title, there is no wilful default and the building does not require demolition.

4. During the enquiry before the learned Rent Controller, PW1 was examined and Exhibit P1 to P18 were marked on the side of the respondent/landlord. RW1 was examined and Exhibit R1 to R12 were marked on the side of the petitioner. On considering the rival submissions, the learned Rent Controller dismissed the petition on the grounds that respondent has not proved the case of denial of title, wilful default and the petition premises requires demolition and reconstruction. Against the order of the learned Rent Controller, the respondent/landlord filed appeal in R.C.A.No.582 of 2018. On considering the submissions of counsel appearing for parties and re-appreciation of evidence, learned Rent control Appellate Authority found that respondent has proved that there is wilful default, denial of title and the building requires for demolition and reconstruction. In this view of the matter, the learned Rent control Appellate Authority reversed the finding of the learned Rent

Controller and allowed the eviction petition on all the three grounds. Against the judgment of the learned Rent control Appellate Authority, this Civil Revision Petition is preferred.

5.The learned counsel for the petitioner submitted that the respondent was not able to prove that he was the landlord entitled to claim rent from the petitioner and therefore, the learned Rent Controller found that respondent failed to prove the case of denial of title. The claim of wilful default and dilapidated condition of the building was also not established by the respondent. Therefore, the learned Rent Controller dismissed the eviction petition on all the three grounds. However, the learned Rent control Appellate Authority has wrongly reversed the finding of the learned Rent Controller and allowed the eviction petition. The petitioner was not able to pay the rent for the reason that there were rival claimants claiming rent from the petitioner. Respondent has not produced any material to show that he is the owner of the property and a landlord entitled to receive the rent. When he has not produced any material and when rival claimants claimed rent, petitioner was in

dilemma as to whom he should pay the rent. Therefore, there was default of payment of rent and that default cannot be construed as wilful default. The denial of title was a result of failure on the part of the respondent to establish his claim for rent. Therefore, the denial of title cannot be considered as malafide denial of title, but it is only bonafide denial of title. Except the oral evidence of respondent there is no material produced to show that building is in dilapidated condition and requires immediate demolition. Even assuming that the building is 100 years old, mere oldness of the building is not the ground for demolition and reconstruction. Without considering all these aspects, learned Rent control Appellate Authority wrongly reversed the order of the learned Rent Controller and allowed the eviction petition. Therefore, the learned counsel for petitioner prayed for setting aside the order of the learned Rent control Appellate Authority and for dismissing the eviction petition.

6. In response, learned counsel for respondent submitted that, of course, there are some dispute between the legal heirs of the owners of the property and Civil Suit in C.S.No.209 of 2001 came to be filed.

That suit ended in compromise and a compromise decree was passed. As per inheritance and compromise decree respondent has become absolute owner of the petition mentioned property. Only thereafter, legal notice dated 13.06.2016 was sent to the petitioner claiming arrears of rent from May 2001 to July 2016. In the reply dated 26.07.2016, petitioner denied the title of the respondent and refused to pay the rent. When it is admitted by the petitioner that he was inducted as a tenant by the mother of the respondent C.R.Varadammal, and when respondent makes claim for the rent, petitioner did not pay rent to the respondent. Petitioner not only refused to pay the rent but denied the title of the respondent. This denial of title is a malafide denial of title.

7.It is further submitted that petitioner admitted that he has not paid rent from May 2001. This non payment of rent for this long period can only be considered as a wilful default. The building is more than 100 years old and in a dilapidated condition. Respondent also filed photographs showing the present condition of the building. Only after going through the evidence produced, considering the submissions of the

counsel appearing for the parties, the learned Rent Control Appellate Authority reversed the finding of the learned Rent Controller and ordered eviction. Therefore, the learned counsel for the respondent prayed for confirming the order of the learned Rent Control Appellate Authority and for dismissing this Civil Revision Petition.

8.Considered rival submissions and perused the records.

9.There are certain things admitted by both the parties. They are,

i)Petitioner is a tenant in respect of petition mentioned property,

ii)He was inducted by C.R.Varadammal, mother of the respondent.

iii)Monthly rent at the time of induction was Rs.3000/-.

iv)Only after the death of the C.R.Varadammal, the issues between the parties had started.

v).It is admitted case of the petitioner that he has not paid rent

to the petition premises.

vi)According to the petitioner, the reason for non payment of rent is that there were rival claimants claiming rent from the petitioner, and it is submitted that he is prepared to pay the rent to the respondent, if he establishes his claim for rent.

10.Though the petitioner claims that there are rival claims to collect rent from him, he has not produced any material before the learned Rent Controller or the learned Rent Control Appellate Authority to show that who are the rival claimants who claimed rent from him. On the other hand, it is seen from his counter that he filed two suits in O.S.No.3467 of 2007 and O.S.No.1700 of 2016 against the petitioner and others. It is seen from the plaint filed in O.S.No.3467 of 2007 that the petitioner admitted that he was a tenant under C.R.Varadammal. The respondent, son of the C.R.Varadammal used to come and collect rent on behalf of his mother. Claiming that they threatened to vacate him from the property, he filed a suit for permanent injunction not to evict

unless by due process of law. The suit in O.S.No.1700 of 2016 was filed admitting that he is a tenant in respect of the petition property and there is a dispute between legal heirs of Sarangapani with regard to ownership and collection of rent. It is claimed that they tried to disturb his possession and that necessitated the filing of O.S.No.3467 of 2007.

11. Petitioner admitted that he used to pay rent to C.R.Varadammal and respondent used to collect rent on behalf of C.R.Varadammal, as her son. As per the release deed dated 15.02.2010 and compromise judgment dated 10.03.2016 in C.S.No.209 of 2001 executed by other legal heirs, respondent became the absolute owner of the petition mentioned property. After the dispute between the legal heirs have been resolved by compromise, respondent sent legal notice dated dated 13.06.2016, claiming arrears of rent. It was replied by the petitioner on 26.07.2016 stating that other legal heirs of Kovalam Krishnasamy Naicker are also claiming rent and therefore respondent has to prove his title by producing relevant documents. As already stated the petitioner has not produced any material to show that other legal heirs

especially the legal heirs of Kovalam Krishnasamy Naicker claimed rent from the petitioner. When it is admitted by him that he was inducted as a tenant by C.R.Varadammal and respondent used to collect rent on behalf of C.R.Varadammal in his capacity as her son and when respondent sent legal notice demanding arrears of rent, petitioner is expected to pay rent to the respondent. Without paying rent and claiming the respondent to prove his title, is nothing but malafide denial of title.

12.It is seen from the evidence of petitioner that he admitted being inducted as a tenant by C.R.Varadammal on a monthly rent of Rs.3000/- per month. It is his submission that he has not paid rent from 2001. Assuming that there is a genuine doubt as to whom should he pay the rent, petitioner is required to take steps to deposit the rent in the Court. He has not done that. Thus it is clearly proved by the respondent that the petitioner had malafidely denied the title of the respondent to claim rent to the petition property as the owner/landlord and that petitioner did not pay rent from May 2001, except paying certain sum after the filing of M.P.No.157 of 2017. Thus, this Court, finds that the

eviction ordered by the learned Rent Control Appellate Authority on the grounds of wilful default and denial of title needs no interference and confirmed.

13.In so far as the eviction ordered on the ground of demolition and reconstruction, except the oral evidence of the parties and certain photographs, no material has been produced to show the condition of the building. That is, the building is in a dilapidated condition and requires immediate demolition and reconstruction. Mainly because, the building is 100 years old, it cannot be ordered to be demolished, for the asking. There must be materials produced to show the structural stability and condition of the building to show that it requires immediate demolition and reconstruction. When that evidence is missing, this Court, finds that ordering eviction on the ground of demolition and reconstruction by the learned Rent Control Appellate Authority cannot be sustained.

14.In view of this matter, this Court, confirms the judgment

dated 31.10.2019, passed by the learned Rent Control Appellate Authority in ordering eviction of the petitioner from the petition premises on the grounds of wilful default and denial of title. The eviction ordered on the ground of demolition and reconstruction is set aside.

15. In fine, this Civil Revision petition is dismissed in so far as the eviction ordered on the grounds of wilful default and denial of title and allowed on the ground of demolition and reconstruction. The petitioner has to pay cost of the proceedings to the respondent.

Ep

02.11.2021

Index: Yes/No

Internet: Yes/No

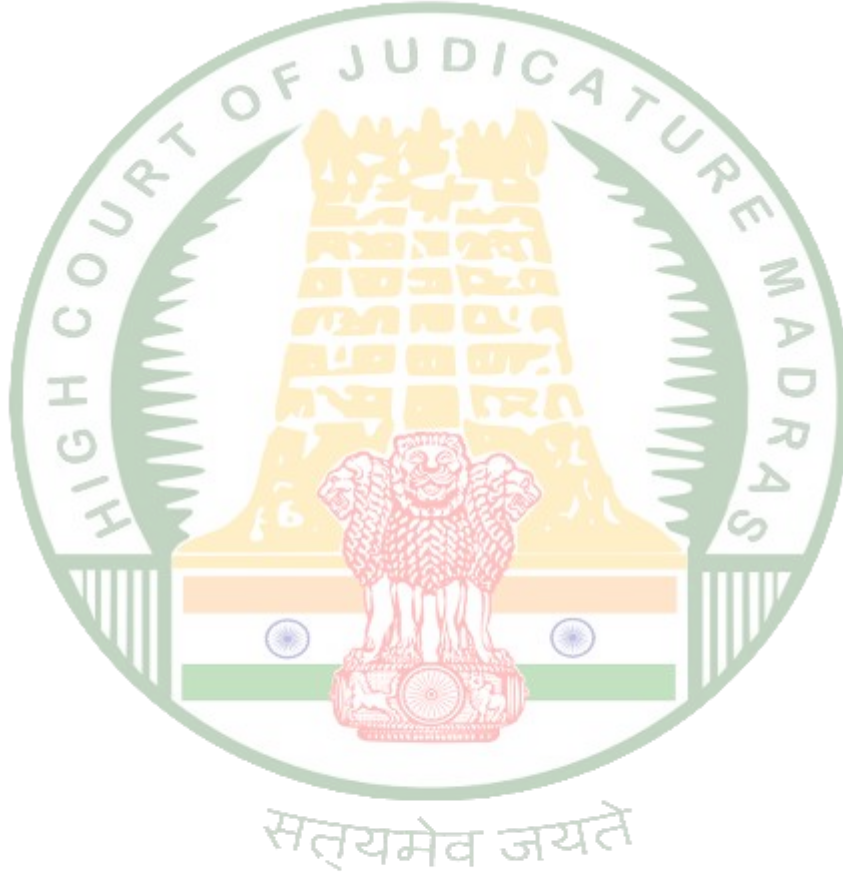
Speaking Order: Yes/No

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To

- 1.The VII Judge,
VII Small Causes Court,
Chennai.
2. The Section Officer,
VR Section,
High Court of Madras.

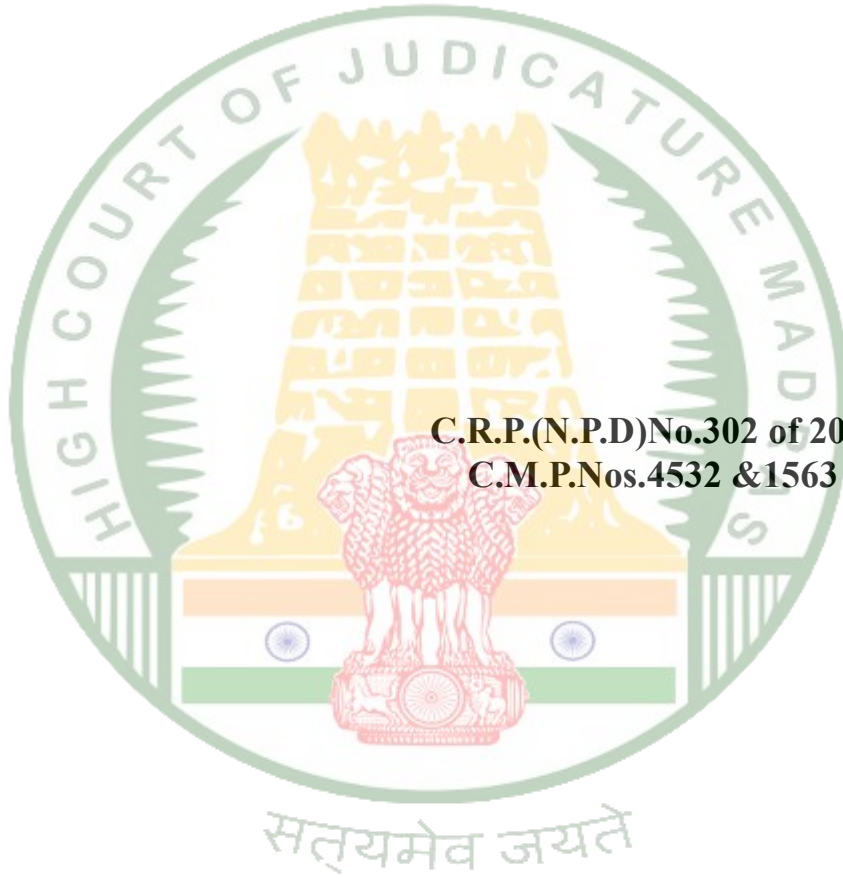


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