

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.(PD) Nos.157 and 158 of 2019

and

C.M.P.No.1333 of 2019

M.Wahid Ali

..Petitioner/Petitioner/Defendant
(in both C.R.Ps)

Vs

Logabai

..Respondent/Respondent/Plaintiff
(in both C.R.Ps)

These Civil Revision Petitions filed under Article 227 of Code of Civil Procedure to set aside the order dated 13.11.2018 passed in M.P.No.173 of 2018 and M.P.No.174 of 2018 in R.C.O.P.No.1754 of 2016 on the file of XV Small Causes Court, Chennai.

For Petitioner

..

Mr.M.Babu Muthu Meeran

For Respondent

..

Mr.R.Lakshmi Narayanan

ORDER

Both these Revision Petitions has been filed by the respondent in R.C.O.P.No.1754 of 2016 which now pending on the file of the XV Small Causes Court, Chennai. The said Rent Control Original Petition has been filed under Section 10(2)(i) and 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act, 23 of 1973, seeking eviction of the present petitioner.

2.Even in the petition it had been stated that there had been arrears of rent from February 2016 to November 2016 for the period of 11 months and after adjusting the advance amount, it had been stated that arrears of Rs.1,58,000/- was due and payable by the present petitioner / respondent in the Rent Control Original Petition. It had also been stated that the petition premise is required for owners occupation for which the ground under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act, 23 of 1973, had been filed.

3.A counter had been filed. Right through the counter, it had been mentioned that the property originally belonged to one Radha Krishnan and that the petitioner herein had approached Radha

Krishnan for renting out the property for running business. Thereafter, the rent was fixed and advance was also paid. Further averments were made stating that the legal representatives of Radhakrishnan namely, Ramesh, Selvi, Padmavathy and Praba along with henchmen had attempted to dispose the present petitioner. The petitioner claimed that he was a lawful tenant. He also stated that respondent's son Ramesh was residing at No.1, Muthuraja Street, Velacherry, Chennai, which had been acquired by the respondent's husband through partition and that he is in possession and enjoyment and that he has refused to maintain the present respondent and therefore, the requirement of the respondent for usage of the premises for her own use and occupation was not the correct reason.

4.The crux of the case is that, nowhere in the counter, the petitioner had stated that during the transactions he had with Radhakrishnan who is the deceased husband of the respondent herein / landlady / petitioner in the RCOP that the son Ramesh was present during the transactions. It has also not been stated that Ramesh knew about the various agreements entered into between the present petitioner and Radhakrishnan.

5.On the basis of the averments made in the counter, the

parties were invited to adduce evidence. The petitioner in the RCOP was examined as witness and was also cross-examined. The present petitioner / respondent in RCOP also entered the witness box and was also cross-examined. The respondent herein / petitioner's counsel in RCOP also advanced arguments. The matter is now posted for advancing arguments on behalf of the present petitioner / respondent in the RCOP.

6.At that stage, the present petitioner herein had filed two applications namely M.P.No.173 of 2018 and 174 of 2018 seeking permission to reopen the evidence in R.C.O.P.No.1754 of 2016 and to summon Ramesh for tendering evidence as RW-3.

7.In the affidavit filed in support of the said applications, it had been stated that the said Ramesh, son of deceased Radhakrishnan had accompanied the petitioner during all the transactions and has personal knowledge of the agreement executed by Radhakrishnan. It is to be mentioned that this fact was not mentioned in the counter filed to the main Rent Control Original Petition.

8.A counter had been filed to the said applications by the petitioner in the Rent Control Original Petition denying the statements.

9.The learned Judge in the course of his order dated

13.11.2018 had given a very strange reason stating that the burden was on the present petitioner to actually call the Ramesh to come and give evidence and on his failure, approach the Court with a petition seeking to issue subpoena. That reasoning may not be correct. To that extent, I would agree with M.Babu Muthu Meeran, learned counsel for the respondent.

10. But on facts, to even summon a 3rd person as a witness particularly who is a son of the landlady, there must be some basis for filing necessary application to issue subpoena quite apart from the fact he was called to give evidence and that he had refused.

11. In the counter filed to the RCOP there is mention that transactions were settled by Radhakrishnan. It is not mentioned that Ramesh was also present during the said transactions. It is also informed by Mr.R.Lakshmi Narayanan, learned counsel for the respondent herein that even when PW-1 was in the witness box during cross-examination, no questions were put stating that Ramesh was in the knowledge of the transactions. I do not have copy of the evidence, I go with the statements made by the learned counsel. But even otherwise a roving enquiry cannot be made by the Rent Controller to determine the nature of the transaction.

12.The facts are simple. The petitioner in the RCOP is the landlord. The respondent in the RCOP is the tenant. There is an allegation that there has been default in the payment of rent. It is for the tenant to now prove that even if there is a default, it is not willful. He has to establish his own case. He cannot rely on a 3rd party, to give credence to his side, particularly when the evidence has been recorded. Witnesses has been cross-examined and the matter is at argument stage. Reopening evidence would be stretching the matter too far, and I am not prepared to give that leverage to the petitioner.

13.In view of the above reasonings, the Civil Revision Petitions are dismissed. No order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

08.04.2021

Internet:Yes/No
Index:Yes/No
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To
The XV Small Causes Court,
Chennai.

C.V.KARTHIKEYAN,J.

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