

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.02.2021

Pronounced on :16.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(N.P.D).No.958 of 2007

T.A.Viswanathan (Died)

2.V.Poornachandran

...Petitioner

Vs

1.T.P.Subramani (Deceased)

2.S.Padmavathi

3.S.Gunasekaran

4.M.Uma Maheswari

5.M.Chitra

6.G.Nageswari

7.M.Poornima

...Respondents

(R2 to R5 brought on record as LR's of the deceased sole respondent viz., T.P.Subramani, vide this Court order dated 13.10.2011 made in M.P.No.1 of 2009 in C.R.P.(NPD).No.958 of 2007)

(2nd petitioner, R6 and R7 brought on record as LR's of the deceased sole petitioner viz., T.A.Viswanathan, vide this Court order dated 11.02.2021 made in C.M.P.Nos.11349, 11353 and 11354 of 2019)

Prayer: Civil Revision Petition filed under Sec.25 of the Tamil Nadu Building (Lease & Rent Control) Act,1960 to set aside the Judgment and decree dated 30.08.2006 made in R.C.A.No.12 of 2006 on the file of the

Court of the Subordinate Judge of the Nilgris at Uthagamandalam and restore the fair and final order dated 23.01.2006 made in R.C.O.P.No.43 of 2001 on the file of Forum of Rent Controller, Uthagamandalam.

For Petitioner : Mr.B.Soundarapandian

For Respondents : R1-Died

Ms.R.Ramya for R3 to R5

Mr.N.Sankaravadivel for R6 & R7

R2-Not ready in notice

ORDER

The Civil Revision Petition is directed as against the fair and decretal order dated 30.08.2006 made in R.C.A.No.12 of 2006 on the file of the Court of the Subordinate Judge of the Nilgris at Uthagamandalam and restore the fair and final order dated 23.01.2006 made in R.C.O.P.No.43 of 2001 on the file of Forum of Rent Controller, Uthagamandalam, thereby ordered eviction.

2.The petitioner is the landlord. The respondents are the tenants.

The petitioner filed a petition in R.C.O.P.No.43 of 2001 on the file of the learned Rent Controller, Uthagamandalam, for eviction on the ground of willful default and denial of title. The learned Rent Controller allowed the petition and ordered for eviction. Aggrieved by the same, the respondents

filed an appeal before the learned Rent Controller Appellate Authority in R.C.A No.12 of 2006. The learned Rent Controller Appellate Authority reversed the findings of the learned Rent Controller and dismissed the petition for eviction. Aggrieved by the same, the landlord filed the present Civil Revision Petition.

3.The learned counsel for the petitioner would submit that Ex.A4 is the sale deed executed in favour of the petitioner's grand father by one T.C.Sundaram Pillai, and it is categorically admitted by the tenants/respondents and as such, the respondents cannot deny the title of the petitioner in respect of petition premises. Admittedly, the petition premises as well as the adjoining premises Nos.452 and 453 were rented out and the rents were collected by the landlord's father and after his demise, the petitioner is collecting the rent for the petition premises. Ex.A6 is the rental agreement dated 01.09.1932, in which, the respondents grandfather had allegedly attorned his tenancy in favour of the petitioner's grandfather for the petition premises and therefore, it clearly proved before the learned Rent Controller that the respondents are inducted as tenants by the petitioner's grandfather for the premises. However, the learned Rent Controller

Appellate Authority only on the ground that Ex.A4 is not a valid document and conditional sale deed. There was a conditional mortgage deed and whether the conditions were fulfilled or not, is not proved by the petitioner. In so far as the learned Rent Controller Appellate Authority, has held that Ex.A6 is not a valid one, as per Ex.A6, the petitioner could not claim any landlordship, since the respondents are not tenants under the petitioner, at any point of time.

4.Per contra, the learned counsel for the tenants/respondents submitted that there is no relationship of landlord and tenant between the petitioner and the respondents herein. In so far as Ex.A6 is concerned, it pertains to Door No.453. At any point of time, the respondents never occupied the portion at Door No.453. Therefore, the eviction petition is not maintainable and the learned Rent Controller Appellate Authority has rightly dismissed the petition for eviction. He further submitted that the sale deed which was marked as Ex.A4 is not a sale deed at all, since, it is a conditional mortgage deed and the conditions was not fulfilled by the petitioner and as such, the petitioner is not at all the owner of the petition premises. He further submitted that originally, the entire property was

owned by the landlord's/petitioner's grand father. He had three sons, viz., T.C.Sundaram Pillai, T.C.Ponnusamy Pillai and T.C.Andia Pillai and the present landlord is the grandson of T.C.Andia Pillai and the tenants are the grandchildren of T.C.Ponnusamy Pillai. The said T.C.Sundaram Pillai died without any issues. All were living under one roof as joint family. Therefore, the landlord himself is not the owner of the petition premises and the eviction is not maintainable. He further submitted that according to the landlord, the tenants failed to pay the monthly rent from 01.03.2000 at the rate of Rs.1400/- per month, whereas, the petitioner failed to prove that even before 01.03.2000 whether the tenants paid the rent for the petition premises.

5.Admittedly, no rental receipts produced by the landlord to prove his contention. Therefore, the learned Rent Controller Appellate Authority has rightly dismissed the eviction petition.

6.Heard Mr.B.Soundarapandian, learned counsel for the landlord; Ms.R.Ramya learned counsel for the tenants 3 to 5 and Mr.N.Sankaravadivel, learned counsel for the tenants 6 & 7.

7.The tenants have not paid the rent from 01.03.2000 onwards and also denied the title of the petitioner in respect of the petition premises. As such, the landlord filed a petition for eviction on the ground of wilful default and denial of title. The landlord caused notice on 03.07.2001 to the tenant for claiming rental arrears. The same was received by the tenants. On receipt of the same, the tenants sent a reply notice dated 13.06.2001 and on receipt of the same, the landlord also issued rejoinder.

8.Now, the points for consideration are that

(i)whether the denial of title of the petitioner in respect of petition premises by the tenants is bonafide or not ?

(ii)whether there was any relationship of landlord and tenant between the parties ?

9.According to the landlord, his grandfather purchased the petition premises, which is marked as Ex.A4. On perusal of Ex.A4, it could be seen that the petition premises and other two houses were purchased by his grandfather from one T.C.Sundaram Pillai, who is none other than his grandfather's own brother. The vendor derived title over the petition premises by the partition deed dated 14.07.1928, held between the brothers.

According to the landlord, the petition premises was orally purchased by his grandfather, viz., T.C.Andia Pillai, from his own brother. In the year 1928 itself and Ex.A4 is not at all a sale deed and it is only a mortgage. Infact, the tenants did not produce any piece of evidence to substantiate their claim except oral evidence. Further, the landlord's grandfather discharged his vendor's debt by paying his creditors. Whether the said conditions were fulfilled or not ?, Ex.A4 stands good, since there is no dispute for non fulfilling the said conditions, the landlord's grandfather had valid title over the petition premises.

10.In so far as the relationship of the landlord and tenants between the parties, the landlord marked Ex.A6. Accordingly, the tenants grandfather had attained his tenancy under the landlord's grandfather. Further, in which, their brother T.C.Sundaram Pillai, who is the vendor of the petition premises is the one of the witness. Infact, the signature of the witness T.C.Sundaram Pillai was disputed and as such, it was referred for expert's opinion. The expert's opinion is marked as Ex.B12 and it revealed that the signature of the said T.C.Sundaram Pillai is similar to his admitted signature, which are marked as Ex.B3 and Ex.B5. However, the signature

of respondents grandfather is concerned, experts were not able to give a reliable opinion with regard to Ex.A6. Infact, Ex.A6 was executed on the date of sale deed. Therefore, the said T.C.Sundaram Pillai himself attested as one of the witness in the deed of attornment of tenancy. Infact on the very same day, the said T.C.Sundaram Pillai and his another brother T.C.Ponnusamy Pillai have drawn their tenancy for attorned premises in favour of the landlord's father viz., T.C.Andiya Pillai, which is marked as Ex.A8. Therefore, the landlord, tenants relationship is proved by Ex.A6, between the petitioner and the respondents.

11.In so far as the ground of wilful default, admittedly, the tenants denied the title of the petition premises and as such, the tenants did not pay any rent to the landlord. Without considering the above fact, the learned Rent Controller Appellate Authority reversed the findings of the learned Rent Controller.

12.The learned Rent Controller Appellate Authority without any substance, concluded that Ex.A4 is not a valid and complete sale deed. When there was a conditional provisions, whether the conditions fulfilled or not ? and whether the sale deed executed in favour of the landlord's

grandfather in respect of the petition premises along with two other house portions. As far as Ex.A6 , though Door Number of the petition premises differs, subsequently, it was amended and the landlord, tenants relationship is proved. In fact the signature of T.C.Sundaram Pillai also proved by the Handwriting experts.

13.In view of the above discussions, the fair and decretal order dated 30.08.2006 made in R.C.A.No.12 of 2006 on the file of the Court of the Subordinate Judge of the Nilgris at Uthagamandalam, is set aside and the order 23.01.2006 made in R.C.O.P.No.43 of 2001 on the file of Forum of Rent Controller, Uthagamandalam, is confirmed.

14.Accordingly, this Civil Revision Petition stands allowed. The respondents are directed to vacate and handover the vacant possession of petition premises, to the petitioner, within a period of three months from the date of receipt of a copy of this order. No costs.

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Index:Yes/No

Speaking Order:Yes/No

To

1.The Subordinate Judge of the Nilgris at Udhagamandalam.

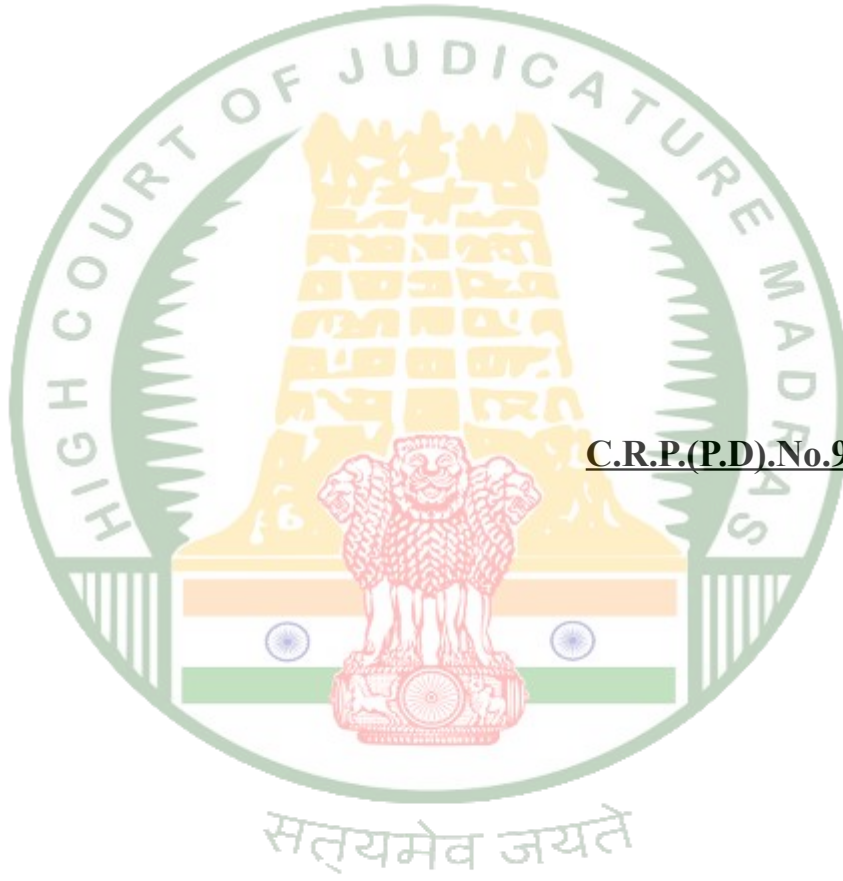
2.The Rent Controller, Udhagamandalam.

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G.K.ILANTHIRAIYAN.J,

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