

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.03.2021

PRONOUNCED ON : 31.03.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(NPD)No.1266 of 2012

P.Rajagopal

... Petitioner

Vs.

R.Kathiravan

... Respondent

**Prayer :-** Civil Revision Petitions are filed under Section 25 of the Tamilnadu Building (Lease and Rent Control) Act, 1960, to set aside the judgment and decree dated 01.07.2011 made in R.C.A.No.8 of 2010 on the file of the learned Rent Control Appellate Authority (Principal Subordinate Judge) Salem.

For Petitioner : Ms.J.Prithivi

For Respondent : Mr.S.Saravana Kumar

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**ORDER**

This Civil Revision Petitions is directed as against the fair and decreetal order dated 01.07.2011 passed by the learned Rent Control Appellate Authority (Principal Subordinate Judge) Salem, in R.C.A.No.8 of 2010, thereby reversing the fair and decreetal order 19.08.2009 passed by the learned Rent Controller (I Additional District Munsif), Salem in RCOP.No.4 of 2003, thereby ordering eviction on the ground of willful default and sub lease.

2. The petitioner is the landlord and the respondent is the tenant. The petitioner filed petition for eviction on the ground of willful default and sub lease. The case of the petitioner is that he is the owner of the petition premises by virtue of sale deed dated 03.08.1975. The first respondent in RCOP.No.4 of 2003 viz., S.Gunaseelan was inducted as tenant for the monthly rent of Rs.600/- and he paid a sum of Rs.10,000/- as advance by the lease deed dated 14.03.2001. Thereafter, the first respondent sub-let the petition premises to the respondent herein without the knowledge and consent of the petitioner herein.

3. Whereas the case of the respondent is that the petitioner is not an absolute owner of the petition premises and the petition premises is a joint family property and the super structure put up from the income derived out of the joint family funds. The petitioner and the respondent's father are brothers, as such the respondent is neither a tenant nor a subtenant of the petition premises. Further the case of the respondent is that the petitioner and the respondent's father were jointly running the goldsmith work in the petition premises and after the death of his father the respondent alone is doing the gold smith work.

4. The petitioner had examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.3. On the side of the respondent, he examined R.W.1 and marked Ex.R.1 to Ex.R.7. Based on the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the learned Rent Controller ordered eviction on the ground of sub lease. Aggrieved by the same the respondent alone filed appeal in R.C.A.No.8 of 2009, before the learned Rent Control Appellate Authority, since the first respondent in the

RCOP died. The learned Rent Control Appellate Authority set aside the order passed by the learned Rent Controller and aggrieved by the same, the present Civil Revision Petition.

5. On perusal of records, it reveals that the petitioner filed petition for eviction based on the un-registered lease deed dated 14.03.2001, which was marked as Ex.P.3. On perusal of Ex.P.3, the signature contained only in the last page and first three pages no signature was found. Therefore, the petitioner failed to prove the landlord-tenant relationship between the petitioner and the first respondent in the RCOP. Further the respondent herein specifically took a stand that his father and the petitioner are brothers and petition premises was purchased from their joint family income and as such he is also having equal share in the petition premises, and no question of sub-lease. In fact, the first respondent in the RCOP was set up by the petitioner and filed RCOP for eviction on the ground of sub-lease, as if the first respondent in the RCOP sub-let the petition premises to the respondent herein.

6. It is also seen that already there was a dispute in respect of the petition premises between the petitioner and the respondent's father and the arbitrators were appointed to settle the issue. In that regard, the arbitrators passed award dated 09.05.1996, and the same was challenged before the District Court by the respondent herein and the same was allowed. Aggrieved by the same, brother of the petitioner herein filed Civil Miscellaneous Appeal in C.MA.No.1334 of 2011 and the same was also dismissed by this Court. Therefore, there is a dispute with regard to title of the petition premises and as such the learned Rent Controller has no jurisdiction to decide the issue of title.

7. That apart, the learned Rent Controller decided the title in favour of the petitioner invoking the jurisdiction of civil Court and observed that the respondent herein had failed to prove his occupation in the petition premises by producing proper documents. When the dispute is existing in respect of the petition premises, the learned Rent Controller ought not to have decided the title for the petition premises. Therefore, the learned Rent Control Appellate Authority rightly reversed the findings of

the learned Rent Controller and this Court finds no illegality or infirmity in the order passed by the Court below.

8. Accordingly, this Civil Revision petition stands dismissed.

There shall be no order as to costs.

31.03.2021  
(2/2)

Internet : Yes  
Index : Yes/No  
Speaking order/Non-speaking order

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To

1. The Rent Control Appellate Authority,  
Principal Subordinate Judge, Salem.
2. The Rent Controller,  
I Additional District Munsif,  
Salem.
3. The Section Officer,  
V.R. Section,  
Madras High Court,  
Chennai.



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**G.K.ILANTHIRAIYAN, J.**

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order in  
C.R.P.(NPD)No.1266 of 2012

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