

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

**CRP.NPD.No.601 of 2012 and
S.A.Nos. 300 and 301 of 2012**

CRP.NPD.No.601 of 2012

Estate of M.A.Browne (Deceased)
by Administrator J.Prabhu
S/o. Anrade, Advocate Law Chambers,
Ootacamund, Nilgiris.

... Petitioner

Vs.

K.F.Jacob

... Respondent

PRAYER: The Civil Revision Petition is filed Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act 1960 as Amended by Act 23 of 1973 & Act 1/1980), praying to allow the above Civil Revision Petition by setting aside the Judgement and Decree dated 19.12.2011 passed in the Rent Appeal Suit No.15 of 2011 on the file of the learned Subordinate Judge and Rent Control Appellate Authority of Nilgiris at Uthagamandalam, and restore the fair and final order dated 27.01.2011 passed in RCOP.No.22 of 2005 on the file of the learned Rent Controller, Uthagamandalam.

For Petitioner : Mr.S.Parthasarathy
Senior Counsel for
: Mr.S.K.Rakhunathan

For Respondent : Mr.Babu Muthu Meeran

S.A.No.300 of 2012

Estate of M.A.Browne (Deceased)
by Administrator J.Prabhu
S/o. Anrade, Advocate Law Chambers,
Ootacamund, Nilgiris. ... Appellant

Vs.

K.F.Jacob ... Respondent

PRAYER: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree dated 19.12.2011 passed in A.S.No.36 of 2011 on the file of the learned Subordinate Judge of Nilgiris at Ootacamund reversing the Judgement and Decree dated 27.01.2011 passed in O.S.No.211 of 2005 on the file of the learned District Munsif of Ootacamund.

For Appellant : Mr.S.Parthasarathy
Senior Counsel for
: Mr.S.K.Rakhunathan

For Respondent : Mr.Babu Muthu Meeran

S.A.No.301 of 2012

Estate of M.A.Browne (Deceased)
by Administrator J.Prabhu
S/o. Anrade, Advocate Law Chambers,
Ootacamund, Nilgiris.

... Appellant

Vs.

K.F.Jacob

... Respondent

PRAYER: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree dated 19.12.2011 passed in A.S.No.37 of 2011 on the file of the learned Subordinate Judge of Nilgiris at Ootacamund reversing the Judgement and Decree dated 27.01.2011 passed in O.S.No.89 of 2008 on the file of the learned District Munsif of Ootacamund.

For Appellant : Mr.S.Parthasarathy
Senior Counsel for
: Mr.S.K.Rakhunathan

For Respondent : Mr.Babu Muthu Meeran

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COMMON JUDGMENT

The Civil Revision Petition is directed against the judgment and decree order passed in R.C.A.No.15 of 2011 dated 19.12.2011 on the file of

the (Sub Court), Rent Control Appellate Authority, Nilgiris at Uthagamandalam, thereby, reversing the fair and decretal order passed in RCOP.No.22 of 2005 dated 27.01.2011 on the file of the Rent Controller, Udhagamandalam, thereby, allowing the petition for eviction, on the ground of wilful default in payment of rent.

2. Both the Second Appeals have been directed against the judgments and decrees passed in A.S.Nos.36 and 37 of 2011 dated 19.12.2011 on the file of the learned Subordinate Judge of Nilgiris at Ootacamund, reversing the Judgements and Decree passed in O.S.No.211 of 2005 and O.S.No.89 of 2008 dated 27.01.2011 on the file of the learned District Munsif of Ootacamund.

3. In the Civil Revision Petition as well as both the Second Appeals, the petitioner/appellant is the landlord (hereinafter called as “the landlord”) The respondent in the Civil Revision Petition as well as both the Second Appeals is the tenant (hereinafter called as “the tenant”). The landlord filed a petition for eviction, on the ground of wilful default in respect of the petition premises. The learned Rent Controller allowed the petition and

ordered eviction as against the tenant herein. Aggrieved by the same, the tenant filed an appeal before the learned Rent Control Appellant Authority and the same was allowed and dismissed the petition filed by the landlord for eviction. Aggrieved by the same, the present Civil Revision Petition filed by the landlord.

4. The landlord filed a petition for recovery of rental arrears in O.S.No.211 of 2005 for the period from 01.06.2002 to 30.06.2005 and in O.S.No.89 of 2008 for the period from 01.07.2005 to 31.05.2008. Both the suits were decreed in favour of the landlord and aggrieved by the same, the tenant filed appeal suits and both the appeal suits were allowed and the suits filed by the landlord were dismissed. Aggrieved by the same, the landlord filed the above Second Appeals.

5. The case of the landlord is that the petition premises is ad-measuring 38 cents comprised in R.S.No.4086 of Ootacamund Town, forming part of Oriental Buildings Property, called as, the Orient Cottage. It originally belonged to late.M.A.Browne and under the agreement dated 26.11.1990, the tenant had taken the premises from the landlord on the

monthly rent basis, commencing from 01.12.1990. The said M.A.Browne represented by his Administrator, viz., J.Prabhu. He entered into the agreement with the tenant. Initially, the rent was fixed at Rs.300/- for the period from 01.12.1990 to 30.11.1991 and thereafter, enhanced to Rs.1,000/- per month. The tenant is duly permitted to carry out any improvement or renovation to the petition premises, at his own costs, if he so desires to carry out the said improvement. At the time of entering into the agreement, the tenant paid a sum of Rs.35,000/-, as security deposit. After repeated requests made by the landlord, the tenant failed to pay the rental arrears and sought time on the ground that he is in financial difficulty and also he desires to purchase the petition premises. Therefore, the landlord caused legal notice on 22.04.2005 calling upon the tenant to pay the arrears of rent of Rs.1,28,600/- due till 31.03.2005. On receipt of the same, the tenant also replied by the reply notice dated 26.05.2005. On receipt of the same, the landlord also sent a re-joinder for the reply notice dated 01.06.2005. Even then, the tenant failed to pay the rental arrears and as such, the landlord filed a petition for eviction on the ground of wilful default before the learned Rent Controller. Pending the eviction petition, the landlord also filed a suit for recovery of subsequent rental arrears for the

period from 01.06.2002 to 30.06.2005, for a sum of Rs.37,000/-, in O.S.No.211 of 2005. The landlord also filed another suit for recovery of rental arrears for the period from 01.07.2005 to 31.05.2008 in O.S.No.89 of 2008 on the file of the District Munsif Court, Udthagamandalam.

6. The case of the respondent is that the petition premises was originally belonged to one Mary Aline Browne and after his demise, one M.C.J.C.Longmore had given Power of Attorney to the landlord and as such, the said M.C.J.C.Longmore cannot delegate the administrative power to the landlord herein and as such, the landlord has no locus to file any petition in respect of the petition premises. The tenant also disputed the ownership of the petition premises, since one Elizebeth Antony has also got a Will, in respect of the petition premises. Therefore, without ascertaining the ownership of the petition premises, the landlord cannot file any legal proceedings, in respect of the petition premises.

7. Further, as per the agreement dated 26.11.1990, the tenant occupied the petition premises only to purchase the same. Whenever he approached the landlord for purchasing the property, the landlord kept

avoiding the sale consideration and requested to execute the sale deed in his favour. In fact, the petition premises was in a dilapidated condition and it was not fit for usage. Therefore, the tenant demolished the entire construction and put up new construction, due to which he spent huge sum towards improvement of the said property. The tenant also paid a sum of Rs.35,000/- to one Louis, who was an erstwhile tenant in the petition premises. Since the tenant is going to purchase the petition premises, he paid the said sum and the same was not paid, as security deposit. Further, the tenant took a specific stand that according to the landlord, the tenant did not pay the rent from the year 1990 onwards, when that being so, the landlord till today, did not initiate any eviction proceedings, that too for the long period of 16 years.

8. Therefore, the respondent is never a tenant and only with intention to purchase the petition premises, he occupied the petition premises. Therefore, there is no landlord and tenant relationship between the petitioner and the respondent and he need not pay the rent for the petition premises. Therefore, there is no arrears of rent and he is not liable to pay any future rents also. Before the learned Rent Controller, the landlord

examined himself as P.W.1 and Exs.A1 to A5 were marked on the side of the tenant, he himself was examined as R.W.1 and no document was marked. Before the learned District Munsif, the landlord in both the suits was examined as P.W.1 and Exs.A1 to A4 were marked. The tenant was examined as D.W.1 in both the suits and did not mark any document.

9. On a perusal of the evidence and documentary evidence produced by the tenant, the learned Rent Controller allowed the petition and ordered eviction. The learned District Munsif also decreed the suits in favour of the tenant. Aggrieved by the order passed by the learned Rent Controller, the tenant filed an appeal and the same was allowed and dismissed the petition for eviction. As against the decree passed in both the suits, the tenant filed appeal suits and both the appeal suits were allowed and dismissed the suits filed by the landlord. Aggrieved by the reversing order passed by the learned Rent Control Appellate Authority, the present revision petition and aggrieved by the reversing findings in the appeal suits, the landlord filed the present second appeals.

10. At the time of admitting the above second appeals, this Court

formulated the following substantial question law:-

“The second appeals are admitted on the following substantial questions of law:

- i) Whether Ex.A3 is the sale agreement or a lease arrangement between the parties?*
- ii) Whether Section 53-A of the Transfer of Property Act has any application to the facts of the instance case?”*

11. Mr.S.Parthasarathy, learned Senior Counsel appearing for the landlord submitted that the landlord is the administrator appointed by his principal M.C.J.C.Longmore, through Power of Attorney. He entered into an agreement with the tenant dated 26.01.1990. When that being so, the tenant cannot say that the property belonged to whom and the landlord has no locus to deal with the petition premises. Though the tenant averred that he was put in possession only to purchase the petition premises and he has spent huge money by putting up new construction, the tenant failed to prove the same before the Court below by any piece of evidence. He did not mark any material document before the Courts below. Therefore, the landlord and tenant relationship between the petitioner and the respondent is not disputed

by the tenant herein, on any occasion.

12. On the legal notice issued by the landlord dated 22.04.2005, the tenant replied by way of his reply notice dated 26.05.2005, in which he has categorically admitted that the petition premises was ad-measuring 1,200 sq.ft building and the same was in a dilapidated condition. Though the tenant was permitted to renovate the building, it does not mean that the landlord intended to sell the petition premises to the tenant. Admittedly, the tenant did not pay a single paise from the year 1991 as monthly rent as aggrieved by the lease agreement dated 26.11.1990. The landlord categorically mentioned the reason for not claiming the rent till 2005, i.e., the tenant was not in financial crisis and he desires to purchase the petition premises. Therefore, the landlord waited till the year 2005 and even then, the tenant did not pay any rents and also did not purchase the petition premises.

13. The lease deed is very clear that the lease deed will commence from 1st of December 1990 and rent was fixed at Rs.300/- from 01.12.1990 to 30.11.1991 and for the period commencing from 01.12.1991, the tenant

has to pay monthly rent at the rate of Rs.1,000/-. Therefore, the learned Rent Controller has rightly allowed the petition by a detailed judgment and ordered for eviction on the ground of wilful default. The learned District Munsif also considered the suit claim of the landlord and the decreed the suit in his favour. Unfortunately, the Appellate Court as well as the learned Rent Control Appellate Authority reversed the well reasoned findings of the trial Court and dismissed the petition for eviction, on the ground of wilful default and also dismissed the suit for recovery of rental arrears.

14. Per contra, the learned counsel for the tenant would submit that there is no landlord and tenant relationship between the petitioner and the respondent herein. Even as per the agreement dated 26.11.1990, there is a specific clause that the lease agreement is only for a temporary period, until the terms of sale between the lessor and the lessee are settled as agreed upon by the administrator of the estate and as soon as the terms are settled, the lessee will pay the sale consideration and obtain the necessary conveyance from the lessor. When it being so, the tenant is always ready and willing to pay the sale consideration and the landlord did not come forward to receive sale consideration and execute the sale deed, in respect of the petition

premises. He further submitted that the amount paid at Rs.35,000/- was not towards security deposit and it was paid only to vacate the erstwhile tenant from the petition premises and it has to be adjusted towards the part of sale consideration for the petition premises. Therefore, the learned Rent Control Appellate Authority as well as the Appellate Court rightly allowed the appeal and dismissed the suit as well as the eviction petition filed by the landlord.

15. Heard the learned counsel for the petitioner/appellant/landlord as well as the learned counsel for the respondent/tenant.

16. The landlord filed a petition for eviction, on the ground of wilful default, in respect of the petition premises. Admittedly, there is an agreement dated 26.11.1990 between the landlord and the tenant and it was marked as Ex.P.2 by the landlord. The relevant terms and conditions of the said agreement as follows:-

*“1. The Lease will commence on 1st December 1990
and the Lessor will deliver vacant possession of the Cottage*

with its compound to the Lessee on that date. As the Lessee will be renovating and carrying out improvements for the premises and on that account the Lessee may not be able to actually occupy the premises for a period of at least one year from 1st December 1991, the Lessee will pay a token rent of Rs.300/- (Rupees three hundred only) per month for the period from 1.12.1990 to 30.11.1991 and for the period commencing from 1.12.1991 the Lessee will pay the monthly rent at the rate of Rs.1,000/- per month.

2. The Lessee would be liable to pay the electricity and water consumption charges to the respective authorities.

3. The Lessee is permitted by the Lessor to carry out re-modelling and renovation including demolition and reconstruction of any portion of the building which requires such demolition and reconstruction at his cost and the Lessor at the request of the Lessee will sign all applications as required by the Lessee and as and when produced by the Lessee for the said purpose.

4. The Lessee will use the premises only for residential purposes and he will not be entitled to sublet the same.

5. The lease contemplated under this Agreement is only for a temporary period until the terms of sale between

the Lessor and the Lessee are settled and agreed upon by the Administrator of of the Estate and as soon as the terms are settled the Lessee will pay the sale consideration and obtain the necessary conveyance from the Lessor.”

17. Accordingly, the petition premises was leased out to the tenant for the monthly rent at Rs.300/- from the period from 01.12.1990 to 30.11.1991. Thereafter, from 01.12.1991, the monthly rent was enhanced at Rs.1,000/-. Though the agreement comparing clause No.5 as that of the agreement is only for the temporary period, until the terms of sale from the lessor and lessee are settled, as such, there is a categorical clause to show that the petitioner is the lessor and the respondent is the lessee and as such the relationship between the petitioner and the respondent as well as the lessor and lessee is proved. Though the landlord agreed to sell the petition premises, admittedly it was not happened till today. Therefore, the tenant is bound to pay the rents for the petition premises as agreed by him in clause No.1 of the lease agreement dated 26.11.1990. Admittedly, the tenant till today, did not pay even a single paise to the landlord as a rent.

18. In fact, the landlord adjusted the security deposit of Rs.35,000/-

paid by the tenant towards the rental arrears and for the remaining period, the landlord claimed rental arrears. The landlord also caused legal notice on 22.04.2005, which was marked as Ex.P3 and though the tenant replied by the reply notice dated 26.05.2005, which was marked as Ex.P4, the tenant failed to make any payment as rental arrears. It is also seen that the tenant took a specific stand that when the petition premises was leased out to him, it was in a dilapidated condition and thereafter, he was permitted to put up a new construction, after demolition of the petition premises. Accordingly, he spent huge money to put up construction in the petition premises. Unfortunately, the tenant did not produce any piece of evidence to show that the petition premises was demolished and a new construction was put-up by spending huge money.

19. Even assuming that the tenant renovated the petition premises, he is bound to pay the monthly rents as agreed by him. Admittedly, the petition premises ad-measuring 38 cents situated at Udhgamandalam Town and it is a prime locality. The rent is only Rs.1,000/- and it is very meager amount for the petition premises. Even then, the tenant failed to pay any rent to the landlord, till today. That apart, the tenant also failed to prove that the

landlord agrees to sell the petition premises to him and failed to settle the issues, in respect of the petition premises. Therefore, this Court is of the view that the learned Rent Controller has rightly allowed the petition and ordered for eviction.

20. Without considering the above aspects, the learned Rent Control Appellate Authority dismissed the eviction petition only on the ground that the landlord agrees to sell the petition premises to the tenant and also did not claim any rental arrears till the year 2005. Though the landlord admitted the above facts, the tenant is bound to pay the rental arrears, the tenant is occupying the petition premises without paying any single paise as monthly rent as agreed by him. As such, the order passed by the learned Rent Control Appellate Authority is perverse and illegal and it is liable to be set aside.

21. Accordingly, this Civil Revision Petition is allowed and the order passed in R.C.A.No.15 of 2011 is set aside and the order of the learned Rent Controller is hereby restored. The respondent/tenant is directed to vacate

and hand over the vacant possession of the petition premises to the landlord within a period of three months from the date of receipt of a copy of this order.

22. In view of the order passed in Civil Revision Petition, the tenant is bound to pay the rental arrears. The landlord is very much entitled to claim the rental arrears from the tenant herein. In view of the above discussion, the substantial questions of law are answered in favour of the landlord and against the tenant. Accordingly, the Second Appeals are allowed and the judgements and decrees passed in A.S.No.36 and 37 of 2001 are set aside and the judgements and decrees passed in O.S.No.89 of 2008 and O.S.No.211 of 2005 are confirmed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

09.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

18/20

1. The Subordinate Judge and Rent Control Appellate Authority of Nilgiris at Uthagamandalam.
2. The Rent Controller, Uthagamandalam.
3. The District Munsif of Ootacamund.



G.K.ILANTHIRAIYAN,J.

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