



C.R.P.(NPD).No.1104 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.1104 of 2013

1.Sridharan Nair (Deceased)
2.P.Vijayalakshmi
3.P.Krishnakumar
4.P.Manju
5.P.Manikandan

.. Petitioners

*(Petitioners 2 to 5 brought on record as LRs
of the deceased sole petitioner vide order of
this Court dated 11.04.2014 made in M.P.Nos.
1 to 3 of 2014 in C.R.P.No.1104 of 2013)*

Vs.

Arulmigu Angalaparameswari and
Kasiviswanathaswamy Aalayam,
Rep. By its Executive Officer M.Rajagopalan,
No.5, South Mada Street,
Chennai 600 112.

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against
the judgment and decree dated 31.03.2011 made in Ejectment Suit No.15
of 1989, on the file of the IV Court of Small Causes, Chennai.



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For Petitioners : M/s.Elizabeth Ravi

For Respondent : Dr.S.Suriya
Government of Tamil Nadu (CS)

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed against the judgment and decree dated 31.03.2011 made in Ejectment Suit No.15 of 1989, on the file of the IV Court of Small Causes, Chennai.

2.The 1st petitioner is defendant in Ejectment Suit No.15 of 1989, on the file of the IV Court of Small Causes, Chennai. The respondent/plaintiff filed the said suit for a decree of ejectment against the 1st petitioner for vacant possession of land measuring 625 Sq.Ft., in R.S.No.2128 under Block No.65 Divn.65 situated at No.87, Angalamman Koil Street, Choolai, Madras 600 112. The 1st petitioner filed written statement in the said suit. After contest, the suit was decreed as prayed for, with a direction to the 1st petitioner to vacate and deliver vacant



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possession of the land and building of the suit premises. Challenging the said judgment and decree dated 31.03.2011, made in Ejectment Suit No.15 of 1989, originally the 1st petitioner filed the present Civil Revision Petition. Pending Civil Revision petition, the 1st petitioner died and the petitioners 2 to 5 were brought on record as legal heirs of the deceased 1st petitioner by order dated 11.04.2014 made in M.P.Nos.1 to 3 of 2014.

3.The case of the respondent is that the respondent-temple is owner of the land and building situated at Door No.87, Angalamman Koil Street, Choolai, Madras 600 112, measuring 625 Sq.Ft. The 1st petitioner became a tenant under the respondent on a monthly rent of Rs.150/-, according to the English calender month. The 1st petitioner was running a Tea Stall in the suit premises. The respondent has terminated the tenancy of the 1st petitioner by issuing notice dated 01.05.1988 and filed the suit for possession of the suit land and building, as the 1st petitioner has not paid rents regularly to the respondent inspite of several demands made.



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4.The 1st petitioner filed written statement and contested that the respondent-temple is owner of the land. The 1st petitioner has put up a super structure over the land and was in occupation of the petition premises. The respondent-temple cannot terminate the tenancy of the 1st petitioner without any reason. There is no cause of action for the respondent to file the suit. The 1st petitioner already filed an application under Section 9 (1) of the City Tenants' Protection Act, 1921, for a direction to the respondent to sell the suit land for a market price and 1st petitioner was willing to purchase the same immediately after the suit summons served on him.

5.The 1st petitioner filed two additional written statements and contended that the respondent-temple has filed O.S.No.461 of 1984 for possession of land and building and withdrew the said suit. The said suit was dismissed as withdrawn without giving any opportunity to the respondent to file fresh suit. The respondent is not owner of the superstructure and they have to establish their right over the



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superstructure. The Court has no jurisdiction to decide the title of the respondent over the building. The respondent was receiving rent only for the land. The 1st petitioner, after obtaining permission from the Corporation, has put up the superstructure at a huge cost. The respondent, in the notice dated 01.05.1988, having claimed title over land alone, is now estopped from claiming title over the building and possession. Patta was applied in the name of N.Radhakrishnan, younger brother of the 1st petitioner, as he is lucky and he would bring good fortune to the family. The trustees of respondent temple recognised the right of the 1st petitioner over the building. The suit is not maintainable as no specific permission was obtained from the Commissioner, H.R. & C.E. Department, to institute the suit. The suit is not maintainable as the respondent has not issued valid notice of termination as per Section 106 of the Transfer of Property Act, 1882 and prayed for dismissal of the suit.

6.The respondent filed objection to the additional written statement and denied the allegation that Executive Officer has no power to file the suit. The Executive Officer is the person to sue and to be sued on behalf



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of the temple. The notice of termination issued by the respondent is valid and denying all the averments made by the 1st petitioner in the written statement and additional written statement, prayed for a direction to the 1st petitioner to vacate and hand over possession.

7.The learned Judge considering the pleadings, framed necessary points for consideration. Before the learned Judge, the Executive Officer of the respondent was examined as P.W.1 and 19 documents were marked as Exs.A1 to A19. On behalf of the 1st petitioner, his Power of Attorney, the 5th petitioner, was examined as D.W.1 and 32 documents were marked as Exs.R1 to R32.

8.The learned Judge, considering the pleadings, oral and documentary evidence, decreed the suit as prayed for, directing the 1st petitioner to vacate and deliver the vacant possession of the land and building of the suit premises and granted three months time for eviction.



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9. Against the said judgment and decree dated 31.03.2011 made in Ejectment Suit No.15 of 1989, the petitioners have come out with the present Civil Revision Petition.

10. The learned counsel appearing for the petitioners raised a ground that Executive Officer has no power to file a suit against the 1st petitioner. At the time of arguments, the learned counsel appearing for the petitioners submitted that in view of the documents filed by the respondent-temple, she is not pressing the said ground and submitted that the learned Judge erred in holding that both the land and building was let out to the 1st petitioner, which is contrary to the evidence let in, in the suit and order passed in M.P.No.128 of 1989 in Ejectment Suit No.15 of 1989, filed under Section 9 of City Tenants' Protection Act, 1921, by the 1st petitioner. The learned Judge failed to see Ex.A1-copy of notice dated 01.05.1988, which was issued only for the land and Exs.R2 and R13 to R17- the receipts issued for payment of rent only for the land. The learned Judge failed to consider the documents filed by the 1st petitioner.



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The learned Judge failed to see that unless the plan for the ground floor was in the name of the tenant, the Corporation will not issue any sanctioned plan for putting up additional construction or alteration. The respondent did not produce any document to show as to how they acquired the suit property. The respondent-temple has not filed any valid or acceptable document to prove that there was a building at the time of letting out property to N.Radhakrishnan, brother of the 1st petitioner. The learned Judge erred in rejecting the documents containing rent receipts, on the ground that there is no heading, without looking into the contents in the said receipts. The respondent-temple did not prove that termination notice was served on the 1st petitioner. The learned Judge failed to take note that there are oral evidence given in M.P.No.128 of 1989, filed under Section 9 of the City Tenants' Protection Act, 1921. The said evidence forms part of the evidence in the present suit. The learned Judge failed to look into the same. The reason given by the learned Judge, the finding and entire judgments of the learned Judge are only based on assumptions and presumptions. The judgment and decree of the learned Judge is against the principles of natural justice and prayed for setting



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aside the judgment and decree passed in Ejectment Suit No.15 of 1989 and allowing the Civil Revision Petition.

11.Per contra, Dr.S.Suriya, learned Government of Tamil Nadu (CS), appearing for the respondent contended that the respondent-temple is owner of land and building and the same was leased out to the 1st petitioner. The respondent-temple has produced documents to show that the 1st petitioner was paying rent for both land and building. The Corporation and other statutory authority assessed water tax and other taxes in the name of the respondent-temple and the respondent is paying the same. The building was in dilapidated condition. The respondent-temple filed Ex.A18-photos of the temple to prove the same. The documents filed by the 1st petitioner were not for putting up construction of the building. On the other hand, it is permission for putting up additional superstructure or alteration in the existing building. The respondent-temple produced documents to show that land and building were leased out to the 1st petitioner and 1st petitioner paid rent for both. The earlier suit O.S.No.461 of 1984 was filed only for land and building.



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The 1st petitioner agreed to pay enhanced rent and at his request, the suit in O.S.No.461 of 1984 was withdrawn. The request made by the 1st petitioner was filed before the learned Judge and proved that only at the request of the 1st petitioner, earlier suit in O.S.No.461 of 1984 was withdrawn. The respondent also filed Ex.A17 – copy of the order in O.A.No.45 of 1961 by the H.R. and C.E. Department and Ex.A19 – order of High Court in W.P.No.7205 of 1996 and proved that Executive Officer is authorised to file suit against the defaulted tenants. The respondent filed two applications against the order passed in M.P.No.128 of 1989. The 1st petitioner has not initiated any further proceedings based on the order passed in M.P.No.128 of 1989. Hence, the 1st petitioner cannot claim right relying on the order passed in M.P.No.128 of 1989 and submitted that the learned Judge considered both the oral and documentary evidence let in by the respondent and decreed the suit, directing the 1st petitioner to vacate and hand over possession. There is no error or irregularity in the judgment of the learned Judge and prayed for dismissal of the Civil Revision Petition.



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12.Heard the learned counsel appearing for the petitioners as well as the learned Government Advocate (CS) appearing for the respondent and perused the entire materials available on record.

13.From the materials on record, it is seen that the respondent temple filed suit for eviction of the 1st petitioner from the suit property, which is land and building. Originally, the suit was filed mentioning only the land. Pending suit, the respondent filed M.P.No.123 of 1989 for amendment of plaint to include the building. The said M.P. was ordered. The petitioners and learned counsel for the petitioners have contended that the respondent filed suit for eviction only with regard to the land. They failed to take into account that the respondent filed M.P.No.123 of 1989 to amend the plaint to include the building also in the schedule and the same was ordered by the Trial Court. The Civil Revision Petition filed by the 1st petitioner challenging the said order was dismissed by this Court, confirming the order of the lower Court, ordering amendment. In view of the said amendment, the suit is for eviction of the 1st petitioner



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from the land and building only. The 1st petitioner has filed only original plaint and not filed amended copy of the plaint and has represented that suit is only for eviction of land alone, which is not correct in view of order in M.P.No.123 of 1989.

14.The next contention of the learned counsel appearing for the petitioners is that the 1st petitioner has taken the lease of land alone and he has put up the construction in the name of his younger brother N.Radhakrishnan, as he was lucky and they thought that he will bring fortune to the family. To substantiate the said contention that the 1st petitioner only put up superstructure, he marked Exs.R3 and Ex.R4, copy of plan and permit given by Corporation of Madras respectively. On perusal of Exs.R3 and R4, it is seen that permission was given only for putting up additional construction and alteration. The 1st petitioner has not produced any document to show that existing building, as per Exs.R3 and R4 was put up by him. The respondent had produced documents for payment of property tax and water tax in the name of the respondent-temple. The respondent also produced Ex.R2 – rent receipt dated



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30.05.1961, to show that the 1st petitioner was paying rent for both the land and building. The documents produced by the 1st petitioner to show that he was paying rent only for the land were without any heading and therefore, the learned Judge rejected the same. The respondent earlier filed O.S.No.461 of 1984 for eviction of the 1st petitioner from the land and building, as he defaulted in payment of rent. The 1st petitioner, by Ex.A3-letter addressing to the respondent-temple dated 10.09.1984, requested the respondent-temple to withdraw the suit. Based on such request made by the 1st petitioner, the said suit was withdrawn by the respondent. Before the learned Judge, the said letter was not disputed by the 1st petitioner. The legal heirs of the petitioners in the Civil Revision Petition cannot dispute the said letter on the ground that the 1st petitioner does not know to read and write English and Tamil. This contention is only an after thought and cannot be accepted. The 1st petitioner admitted that the receipt of notice of termination issued by the respondent-temple. His contention that notice was issued only for land and not for building is not valid in view of the amendment to the City Tenants' Protection Act, 1921. Having admitted the receipt of said notice issued by the



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respondent, it is not open to the petitioners now to claim that the respondent-temple failed to prove the receipt of such notice by the 1st petitioner. As far as the order in M.P.No.128 of 1989 filed under Section 9 of the City Tenants' Protection Act, 1921, according to the respondent, they have initiated further proceedings. The 1st petitioner or the petitioners 2 to 5 have not produced any materials to show after order passed in M.P.No.128 of 1989, filed under Section 9 of the City Tenants' Protection Act allowing the petition, any Advocate was appointed as Commissioner and value of the land was fixed. On the other hand, the learned counsel appearing for the petitioners submitted that no further proceedings was initiated by the petitioners after the order passed in M.P.No.128 of 1989. The order of this Court passed in Writ Petition has no relevance to the issue of eviction of 1st petitioner from the suit property. The learned Judge has considered all the materials in proper perspective and ordered eviction by giving cogent and valid reason. There is no error in the said judgment, warranting interference by this Court.



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In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

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Index :: Yes/No

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To

The IV Judge,
Small Causes Court,
Chennai.



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V.M.VELUMANI, J.

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