



C.R.P.(NPD).No.3918 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3918 of 2015
and M.P.No.1 of 2015

T.Chandran

.. Petitioner

Vs.

Valsa Jose

.. Respondent

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act, against the judgment and decree dated 03.07.2015 made in R.C.A.No.622 of 2011 on the file of the VIII Court of Small Causes, Chennai, reversing the order and decree dated 20.09.2011 passed in R.C.O.P.No.432 of 2009 on the file of the XIV Court of Small Causes, Chennai.

For Petitioner : Mr.V.Manohar

For Respondent : Mr.Lakshminarayanan
for M/s.L.Gavaskar



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ORDER

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

This Civil Revision Petition is filed against the judgment and decree dated 03.07.2015 made in R.C.A.No.622 of 2011 on the file of the VIII Court of Small Causes, Chennai, reversing the order and decree dated 20.09.2011 passed in R.C.O.P.No.432 of 2009 on the file of the XIV Court of Small Causes, Chennai.

2.The petitioner is tenant and respondent is landlord. The respondent filed R.C.O.P.No.432 of 2009 on the file of the XIV Court of Small Causes, Chennai, for eviction of the petitioner on the ground of wilful default. According to the respondent, the petition property belongs to her father K.K.Dominic. After his death, his second wife Theyamma, her sister Priya Kumari Ferrandi and the respondent became owners of the petition premises. Theyamma was managing the property. She died on 19.10.2008. After her death, the respondent asked the petitioner to pay the rent to her. The petitioner informed her that he paid rent to Theyamma



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up to November, 2008 and he has to pay only for December, 2008. The respondent requested the petitioner to attorn tenancy with respect to petition premises in her favour and called upon the petitioner to pay the rent to her. The petitioner did not attorn tenancy and did not pay the rents. The respondent issued notice on 06.11.2008, through her Advocate, to the petitioner, calling upon the petitioner to attorn tenancy and also to pay the rent from December, 2008. The petitioner did not attorn the tenancy, not paid rent, has committed wilful default and hence, filed petition for eviction of petitioner.

3.The petitioner filed counter statement, denying all the averments in the petition. The petitioner submitted that K.K.Dominic is not the owner of the petition premises. Only Theyamma was owner of the property. She was controlling the property as owner. The petitioner denied that Theyamma was only managing the property after death of K.K.Dominic. Till her death, the petitioner paid rent to her. After her death, he paid rent to one V.B.Chandran, Executor of the Will dated 31.07.2006. The said V.B.Chandran issued receipts for payment of rent



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by the petitioner. The respondent has no right over the property and no right to collect rent from the petitioner. The petitioner has not recognized the respondent as his landlord. The petitioner denied the existence of landlord-tenant relationship between the respondent and petitioner and prayed for dismissal of R.C.O.P.

4.Before the learned Rent Controller, one E.Feroze Khilji, Power Agent of the respondent was examined as P.W.1 and one P.Baskaran was examined as P.W.2 and 6 documents were marked as Exs.P1 to P6. The petitioner examined himself as R.W.1 and marked 6 documents as Exs.R1 to R6.

5.The learned Rent Controller, considering the pleadings, oral and documentary evidence, dismissed the R.C.O.P., holding that:

- (i) The Executor of Will is agent of landlord and has right to collect the rent.
- (ii) The respondent failed to prove the existence of landlord-tenant relationship.



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(iii) Even though the respondent is co-owner and is entitled to maintain the petition and collect rent, she failed to prove the landlord-tenant relationship and petitioner is paying rent to the Executor, under Ex.R5 – Will dated 31.07.2006, including for alleged default period and there is no wilful default.

Against the said order dated 20.09.2011 made in R.C.O.P.No.432 of 2009, the respondent filed R.C.A.No.622 of 2011.

6.The learned First Appellate Judge, considering the pleadings, oral and documentary evidence and order of the learned Rent Controller, allowed the R.C.A., by reversing the order of the learned Rent Controller and ordered eviction, granting two months time to the petitioner to vacate and hand over the petition premises to the respondent.

7.Against the said judgment dated 03.07.2015 made in R.C.A.No.622 of 2011 in R.C.O.P.No.432 of 2009, the petitioner has come out with the present Civil Revision Petition.



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8.The learned counsel appearing for the petitioner contended that the learned Rent Controller has considered all the materials and dismissed the R.C.O.P. The Appellate Authority, on surmises, allowed the appeal. The learned Rent Controller has held that only when landlord-tenant relationship is established by the respondent, the question of denial of title will arise. The Appellate Authority erroneously gone into the issue of title of petition premises. The respondent has not produced any documents to show that she is the landlord of the petition premises and she has also not appeared before the Court to give the evidence. The respondent or her father were not owner of the petition premises. The petitioner was paying rent only to Theyamma and after her death, to V.B.Chandran, the Executor of the Will – Ex.R5. The Appellate Authority erroneously held that the case of the petitioner is only an after thought, as he failed to send any reply to the notice issued by the respondent. The Executor of the Will is entitled to receive the rent, as per Section 2 (6) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960. The Rent Controller has powers only to examine whether denial of title on the part of the tenant is bonafide or not and only the Civil Court has got



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jurisdiction to decide the title of the property. In the present case, the Appellate Authority has erroneously held that the respondent is landlord, without any basis. The Appellate Authority did not consider the documents filed by the petitioner to establish that the respondent has no right over the property. The learned Appellate Authority failed to see that O.P. filed by the Executor of the Will was pending at the time of filing the Civil Revision Petition and now the probate was granted in favour of said V.B.Chandran. The Executor appointed by the testator is to administer the property and he is entitled to collect the rent and respondent cannot have any objection to collect the rent by the Executor. The learned counsel appearing for the petitioner further contended that **Section 305** of the Indian Succession Act, 1925, which mandates administrator to obtain probate or letters of administration with Will annexed in the Indian Succession Act was deleted and there is no necessity for the Executor to obtain probate as per the provisions of the Indian Succession Act and Will has to be accepted by all and can be acted upon without probate and prayed for setting aside the judgment of the learned Appellate Authority.



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9.Per contra, Mr.Lakshminarayanan, learned counsel appearing for the respondent reiterated the averments in the petition and submitted that the respondent is daughter of K.K.Dominic, original owner of the petition premises, Theyamma, is second wife of K.K.Dominic and Priya Kumari Ferrandi is sister of the respondent. After death of K.K.Dominic, Theyamma was managing the property and after her death, the respondent, as co-owner, is entitled to collect the rent. The petitioner has set up a case that Theyamma executed a Will, appointing one V.B.Chandran as Executor of the Will and he is collecting the rent. No document has been filed to show that V.B.Chandran, the alleged Executor demanded rent from the petitioner and V.B.Chandran was not examined by the petitioner before the Rent Controller. The Rent receipts marked by the petitioner are cooked up document, in collusion with V.B.Chandran. Even in the Will, the Executor is not authorized to collect the rent. The Rent Controller, having held that the respondent is co-owner of petition premises and entitled to collect the rent, erred in holding that the respondent failed to prove the landlord-tenant relationship. Admittedly,



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the petitioner is tenant in the petition premises and after death of Theyamma, the petitioner is liable to pay the rent to the respondent. When there is rival contentions demanding payment of the rent, the petitioner ought to have initiated proceedings as per Section 9 (3) of the Rent Control Act for permission to deposit the rent into Court. The Appellate Authority, properly appreciating the entire facts and erroneous order of the learned Rent Controller, allowed the appeal, setting aside the order of the learned Rent Controller and hence, prayed for dismissal of the Civil Revision Petition.

10.Heard the learned counsel appearing for the petitioner as well as the respondent and perused the materials available on record.

11.From the materials on record, it is seen, admittedly, the petitioner is tenant in the first floor portion of the petition premises. It is the case of the respondent that petition premises belong to her father K.K.Dominic and one Theyamma was his second wife. The respondent and her sister Priya Kumari Ferrandi are daughters of K.K.Dominic. After



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death of K.K.Dominic, Theyamma was managing the petition property.

After death of Theyamma, the respondent, as a daughter and legal heir of K.K.Dominic, has become co-owner of the petition property and she is entitled to collect the rents from the petitioner. The respondent, after death of Theyamma, called upon the petitioner to attorn the tenancy to her and pay the rent. The petitioner did not attorn the tenancy and did not pay the rent. According to the respondent, she requested the petitioner orally, but the petitioner informed her that he paid rent to Theyamma up to November, 2008 and he has to pay the rent only from December, 2008, but he did not attorn the tenancy and pay the rent thereafter. Hence, the respondent issued notice dated 06.11.2008 - Ex.P1. The petitioner did not send any reply and did not pay the rent and respondent filed R.C.O.P. for eviction of the petitioner on the ground of wilful default.

12. According to the petitioner, only Theyamma, the second wife of K.K.Dominic was owner of the petition property and petitioner was paying rent to Theyamma till her death and after death of Theyamma, he is paying rent to V.B.Chandran, the Executor of the Will, executed on



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31.07.2006 by Theyamma. The petitioner has come out with such a stand for first time in the counter statement. If really he was paying the rent to V.B.Chandran, the alleged Executor of the Will, he ought to have sent a reply to the notice dated 06.11.2008 to the respondent, setting forth the defence taken by him in the counter statement. From the evidence of R.W.1, it is seen that he consulted the Advocate and as per his advice, he is paying rent to V.B.Chandran. As rightly pointed out by the learned counsel appearing for the respondent that when two persons are claiming rent from the petitioner, he ought to have initiated proceedings for deposit of rent into Court till the issue of landlord is decided between two rival claimants. Further, the said V.B.Chandran was not examined before the Rent Controller. The petitioner admitted that he is not aware of any proceedings initiated by the said V.B.Chandran. The property is situated at Alwarpet and the alleged Will was also executed in the city of Madras. In such circumstances, unless the said Will is probated and the Executor proves the genuineness of the Will by obtaining probate, the Will will not come into effect. Without considering the above facts, the learned Rent Controller, erroneously held that even before obtaining probate, the



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Executor becomes an agent of owner and he is entitled to collect the rent.

The said reasoning is erroneous.

13.The contention of the learned counsel appearing for the petitioner that the Executor need not obtain probate, Will has to be accepted by all concerned and Executor can act upon the Will, is not acceptable. Even if the Executor or beneficiary did not obtain probate or letters of administration with Will annexed, the Executor has to prove the genuineness of the Will and that the Executor was in sound disposing mind at the time of execution of Will. In the present case, the petitioner is a tenant only and it is not the case of the petitioner that Executor, at the time of pendency of R.C.O.P. itself obtained probate and based on probate, called upon the petitioner to pay the rent to the Executor. The petitioner has not produced any material to show that Executor called upon him to pay the rent and alleged receipts issued by the Executor for having received rent produced before the Rent Controller were not accepted by the Rent Controller as well as by the appellate authority. The petitioner has not raised this issue in the grounds of Revision and it is not



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open to the petitioner to raise the above issue in the Civil Revision Petition at the time of arguments. For the above reason, the contention of the learned counsel for the petitioner is not acceptable.

14.The learned Appellate Authority has properly appreciated the provisions of the Indian Succession Act, 1925 and the Indian Evidence Act, 1872 in respect of proving the Will and held that the payment of rent to alleged Executor of the Will is not valid and contended that non-payment of rent to the respondent is wilful default. Admittedly, the petitioner is tenant of first floor in the petition premises. When the respondent, as legal heir of K.K.Dominic, issued notice to the petitioner, claiming the rent and to attorn the tenancy, he did not send any reply. For the first time, he has taken a stand in the counter statement that he is paying rent to V.B.Chandran, the Executor of the Will. The learned Appellate Authority has rightly held that the said stand taken by the petitioner in the counter statement is only an after thought. The learned Appellate Authority has considered the entire materials and held that the attornment of tenancy in favour of V.B.Chandran proved that the



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petitioner has set up a case, after filing of the R.C.O.P and non-payment of rent amounts to wilful default, by giving cogent and valid reason. There is no error in the judgment of the learned Appellate Authority warranting interference by this Court.

For the above reason, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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To

1.The VIII Judge,
Court of Small Causes,
Chennai.

2.The XIV Judge,
Court of Small Causes,
Chennai.



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V.M.VELUMANI, J.

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