

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.02.2021

Date of Verdict : 11.02.2021

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

CRP.NPD.Nos. 4629 and 4630 of 2015

and

MP.No.1 of 2015

CRP.NPD.No.4629 of 2015

1. K.Umar Khan
2. U.Amjath Khan

..Petitioners

Vs.

K.Akbar Ali

..Respondent

PRAYER: The Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control Act, 1960 as amended by Act 23/1973 and Act1/1980), praying to set aside the order dated 31.07.2015 in R.C.A.No.52/2014 on the file of VII Judge, Small Causes Court, Chennai, confirming the order dated 09.12.2013 in RCOP.No.1802 of 2011 on the file of the XII Small Causes Court, Chennai.

For Petitioners

: Mr.K.Chandrasekaran

For Respondent

: Mr.M.Balasubramanian

CRP.NPD.No.4630 of 2015

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2. U.Amjath Khan

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For Petitioners : Mr.K.Chandrasekaran

For Respondent : Mr.M.Balasubramanian

ORDER

These Civil Revision Petitions are arising out of orders passed in R.C.A.No.52 and 53 of 2014 dated 31.07.2015 on the file of the VII Judge, Small Causes Court, Chennai, confirming the orders dated 09.12.2013 in RCOP.No.1802 of 2011 and RCOP.No.2052 of 2012 on the file of the XII Small Causes Court, Chennai.

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2. The petitioners in both the Civil Revision Petitions are the landlords (hereinafter called as landlords). The respondent is the tenant

(hereinafter called as tenant). The landlords filed a petition for eviction on the ground of wilful default, own occupation and denial of title. The landlords also filed a petition for fixation of fair rent for the petition premises. The learned Rent Controller dismissed the petition for eviction on all the grounds and also dismissed the petition for fixation of fair rent. Aggrieved by both the orders passed by the learned Rent Controller, the landlords filed an appeal before the learned Rent Control Appellate Authority. The learned Rent Control Appellate Authority also dismissed both the appeals. Aggrieved by the same, the present Civil Revision Petitions.

3. The learned counsel for the petitioners/landlords submitted that they are the absolute owners of the petition premises from the date of purchase of the petition premises from one Mrs.A.Zainabu Beevi, represented by her elder son Power Agent viz. A.J.Zahir Ali. After purchase of the petition premises, the vendor issued letter for attornment of the tenancy to the tenant. In fact, the landlords also sent a letter to the tenant, in respect of attornment of tenancy. Thereafter, the tenant did not pay any rent and also stated that there was a pre-emption agreement and as such, the sale

itself is not binding on him. He further submitted that from the year June 2010 onwards, the tenant has defaulted in payment of rents. The tenant filed a suit in C.S.No.825 of 2010 before this Court for declaration to declare the sale deed dated 02.06.2010, registered vide document No.668/2010 executed in favour of the landlords is not binding on the tenant. Further, the prayer in the said suit was also for declaration that the pre-emption agreement dated 05.11.1998 is binding on the vendor of the landlords as well as the tenant herein and on the strength of the same, the tenant also filed the said suit for specific performance as per the said agreement and also consequential permanent injunction.

4. The respondent is admittedly a tenant and it is settled law that a tenant is always a tenant, unless there is a merger of the tenancy with the ownership. While pending the said suit, the landlords filed an application to reject the plaint and the same was dismissed by this Court. Aggrieved by the same, the landlords have filed an appeal in OSA.No.185 of 2018 before this Hon'ble Division Bench of this Court and the same was allowed by the judgment and decree dated 17.07.2018. Aggrieved by the same, the tenant herein filed an appeal before the Hon'ble Supreme Court of India in

SLP.No.31844 of 2018 and it is pending. Thereafter, the plaint itself was rejected and alleged pre-emption agreement dated 05.11.1998 is not in force. The civil dispute, in respect of denial of title, ended in favour of the landlords herein and as such, he sought for eviction of tenant for the petition premises. He further submitted in fact, the letter of attornment of tenancy was also duly informed to the tenant. In support of his contentions, he relied upon the judgments reported in AIR 1989 SC 553 (***S.B.Abdul Azeez -vs- M.Maniyappa Setty***), 2009 SCC online Mad 2040=2010 (2) LW 104 (***Elumalai -vs- Kotteeswaran @ Kotti Naicker***), 2015 (13) SCC 13 (***Ambica Prasad -vs- Mohd.Alam***) and 2011 (2) MWN (Civil) 667 (***K.Mani -vs-M.D.Jayavel***).

5. Per contra, the learned counsel for the respondent/tenant contended that there is no relationship of landlords and tenant between the petitioners and the respondent herein at any point of time. In the year 1987, the tenant was inducted as tenant by A.Zainabu Beevi, wife of late Abdul Jawad Shib, through the lease agreement dated 01.10.1987 executed through her Power of Attorney viz., his son/A.J.Zakir Ali for a period of 5 years and the monthly rent was fixed for the petition premises at Rs.2,000/- with the

security deposit of Rs.10,000/-. Thereafter, by lease agreement dated 01.10.1992, the tenancy was renewed for a further period of 5 years. Thereafter, due to fire accident, the entire building was totally destroyed. As such, the tenant entered into an agreement for construction of building and also with a pre-emption clause of the said agreement. The tenant paid more than Rs.29 lakhs to her vendor. On the strength of the said agreement, the tenant filed a suit in C.S.No.825 of 2010 before this Court, in which the landlords are also the parties. While being so, the landlords have come with the case that they purchased the petition premises for a total construction at Rs.19,50,000/- by the sale deed. Therefore, the tenant filed the above suit for declaration to declare the sale deed as sham and nominal and is not binding on the tenant. In fact, his vendor also filed a suit in O.S.No.3826 of 2011 before the City Civil Court, Chennai, questioning the competency of Power of Attorney, who executed the sale deed in favour of the landlords herein. Hence, the sale deed dated 02.06.2010 executed in favour of the landlords is under challenge before the City Civil Court, Chennai. As such, the landlords have no right or locus standi to file any eviction petition, in respect of the petition premises as against the tenant, since there is no relationship of landlords and tenant between them.

6. Though this Court allowed the petition for rejection of plaint and it is under challenge before the Hon'ble Supreme Court of India in SLP.No.31844 of 2018 and it is pending. Since, no suit is pending and as such, no interim order was granted by the Hon'ble Supreme Court of India. Therefore, the Courts below rightly dismissed the petition and nothing warrants to interfere with the findings of the Courts below.

7. Heard the learned counsel for the petitioners as well as the learned counsel for the respondent.

8. The landlords filed a petition for eviction on the ground of wilful default, denial of title and owner's occupation. They also filed a petition for fixation of fair rent for the petition premises. The tenant took a stand that he was originally inducted in the year 1987 by A.Zainabu Beevi, the erstwhile owner of the petition premises. Thereafter, he entered into a pre-emption agreement dated 05.11.1998 and paid a sum of Rs.29 lakhs. Thereafter, he constructed building in the petition premises. Since the earlier building was completely destroyed due to fire accident. While being so, by the sale deed dated 02.06.2010, the landlords purchased the petition premises and after

issuing the letter to the tenant, in respect of attornment of tenancy, claim rents for the petition premises.

9. According to the tenant, he is claiming the property under the pre-emption agreement dated 05.11.1998 and admittedly, it is prior to the sale deed dated 02.06.2010. Therefore, the tenant filed a suit before this Court in C.S.No.825 of 2010 for declaration to declare that the sale deed dated 02.06.2010 as sham in nominal and not binding the respondent/tenant with a consequential injunction. The interim injunction was granted in favour of the tenant. While being so, the landlords filed a petition for eviction on the ground of wilful default, denial of title and also owner's occupation. The landlords have also filed a petition for fixation of fair rent. Both the petitions were dismissed by the learned Rent Controller on the ground that there is a civil dispute pending between them. Only after filing the civil suit, on the strength of the pre-emption agreement, the eviction petition has been filed. In fact, this Court granted interim injunction not to interfere with the peaceful possession and enjoyment of the tenant, in respect of the petition premises. Therefore, only after disposal of the civil dispute, the learned

Rent Controller can decide the issue of eviction and the same was also confirmed by the learned Rent Control Appellate Authority.

10. The learned counsel for the petitioners/landlords contended that, now the landlords filed an application for rejection of the plaint and the same was allowed by the Hon'ble Division Bench of this Court in O.S.A.No.185 of 2018 dated 17.07.2018. Though, it was challenged before the Hon'ble Supreme Court of India, no interim order has been passed.

11. Admittedly, the tenant filed a suit on the strength of the pre-emption agreement dated 05.11.1998 and obtained interim injunction in his favour. Since the plaint itself was rejected and as such, no interim order was passed by the Hon'ble Supreme Court of India and that the Special Leave Petition in SLP.No.31844 of 2018 is still pending, in which, the landlords have also filed their counter and it is pending for adjudication. When there is a dispute pending, in respect of ownership of the petition premises, the learned Rent Controller cannot decide the eviction petition on the ground of wilful default and denial of title. Therefore, the judgments cited by the learned counsel for the petitioners/landlords are not helpful in the case on hand. This Court finds no irregularity or infirmity in the order passed by the

Courts below.

12. In view of above discussion, these Civil Revision Petitions are dismissed. Consequently, the connected Miscellaneous Petition is closed.

No costs.

11.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

1. The Judge, Small Causes Court, Chennai.

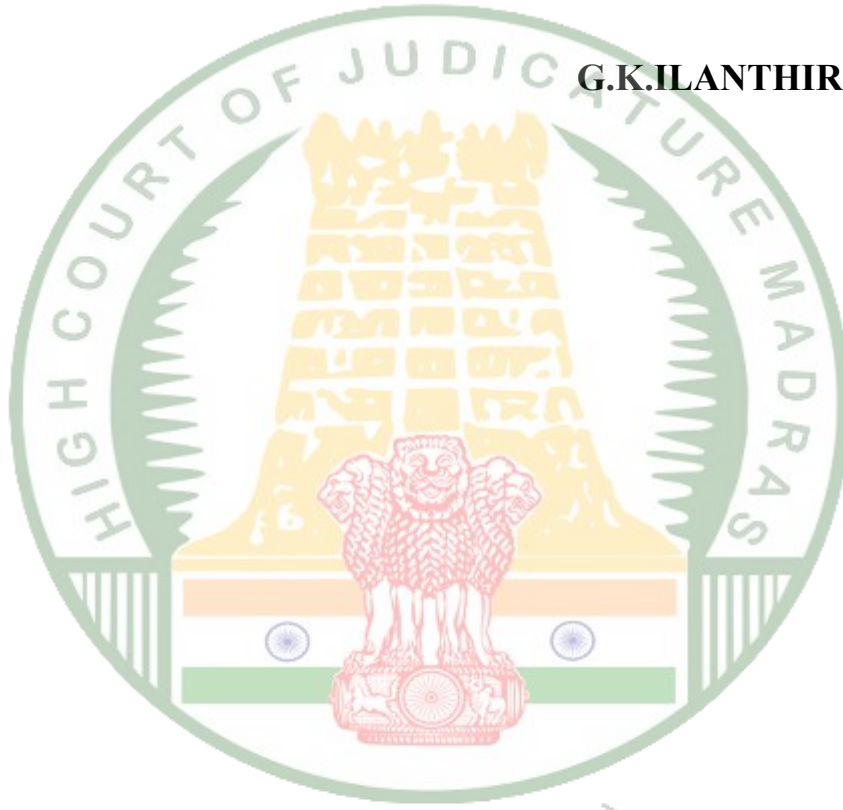
2. The XII Small Causes Court, Chennai.

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G.K.ILANTHIRAIYAN,J.

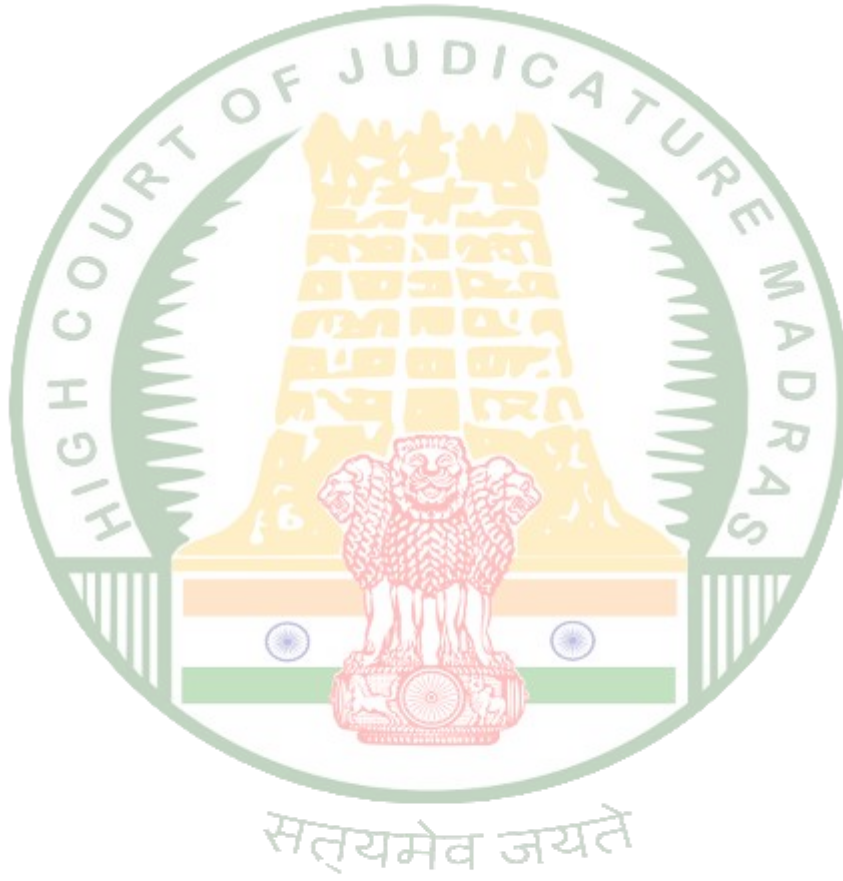
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