

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.04.2021

PRONOUNCED ON: 03.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (NPD) No. 698 of 2021

And

C.M.P.No. 5880 of 2021

Mr.K.Vipin Chandran

... Respondent/Appellant/Petitioner

-Vs-

Mr. Devaraj Kothari

... Petitioner/Respondent/Respondent

PRAYER: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960, against the order and decretal order dated 08.01.2021 in R.C.A.No. 460 of 2018 passed by VIII Judge, Small Causes Court at Chennai confirming the order of eviction and decretal order dated 01.03.2018 in R.C.O.P.No. 162 of 2009 passed by XIV Judge, Small Causes Court at Chennai.

For Petitioner : Mr. S.Jaganathan

For Respondent : Mr. Prakash Goklaney

ORDER

The respondent in R.C.O.P.No. 162 of 2009 on the file of XIV Small Causes Court, Chennai is the revision petitioner herein.

2. R.C.O.P.No. 162 of 2009 had been filed for eviction under Sections 10(2)(vii) and 19(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control Act 1960), seeking eviction of the respondent on the ground of owners occupation and wrongful denial of title.

3. By order dated 01.03.2018, the petition was allowed on both the grounds and eviction was directed. The respondent then filed R.C.A.No. 460 of 2018 before the VIII Small Causes Court, Chennai. Pending the Rent Control Appeal, the landlady filed M.P.No. 207 of 2018 under Section 11(4) of the Act claiming that the rents have not been paid amounting to Rs.13,80,000/- up to the month of May 2018. By order dated 19.02.2019, the tenant was directed to deposit a sum of Rs.1,32,000/- into Court on or before 19.03.2019. Thereafter, the Rent Control Appeal was taken up for hearing and by Judgment dated 08.01.2021, the Appeal was

dismissed and the order of the learned Rent Controller was affirmed and eviction was directed. Questioning that Judgment, the present Civil Revision has been filed.

4. Heard arguments advanced by Mr.S.Jaganathan, learned counsel for the revision petitioner and Mr. Prakash Goklaney, learned counsel for the respondent.

5. The respondent entered appearance through caveat and it is the grievance expressed that about Rs.14/- lakhs is due towards rent. The learned counsel for the petitioner however raised objections stating that there is no landlord/tenant relationship. The petitioner questioned the sale deed of the year 1994 and stated that a suit had been filed questioning the said sale deed that the suit had been dismissed for non-prosecution in the year 2011. This Court had called upon the petitioner to express bona fide by paying the arrears of rent. However, the revision petitioner did not come forward to pay the arrears.

6. R.C.O.P.No. 162 of 2009 had been filed by the respondent herein seeking eviction on the ground that the petitioner premises is used for own occupation and also on the ground that the petitioner herein had denied the title of the respondent. The petition premises is building and ground bearing Plot No.8, Door No. 18 Vth Main Road Extension, Bhakthavathsalam Nagar, admeasuring 1760 sq.f.t. It had been stated that the property was purchased by the respondent herein by a sale deed dated 22.12.1994 registered as document No. 2337 of 1995 on the file of the Sub Registrar, Adyar. The vendor was the petitioner herein/respondent in the Rent Control Petition. Thereafter, the Vendor/revision petitioner requested time to vacate and therefore, a tenancy agreement was entered on 06.01.1998. The entire house was rented out for a monthly rent of Rs.6,000/-. That was increased to Rs.12,000/-.

7. Originally R.C.O.P.No. 814 of 2008 had been filed and the revision petitioner took a stand that he was not a tenant and that he was a mortgagor and denied the title of the respondent herein. The respondent claimed that he does not have any other residence in Chennai, and that he is living with his son, who is also married and who has children. Therefore,

he required the premises for his own occupation. The Rent Control Petition was therefore filed on the ground of owners occupation and also for eviction on the ground of denial of landlord/tenancy relationship. R.C.O.P.No. 814 of 2008 was dismissed for non-prosecution.

8. The respondent filed an application seeking liberty to a file fresh Rent Control Petition. However that application was dismissed since the fresh Rent Control Petition was filed on a different ground than for what R.C.O.P.No. 814 of 2008 was filed.

9. A counter was filed in the main Rent Control Petition. It was stated that the request had borrowed a sum of Rs.8,50,000/- in 1995 by executing a deed of sale registered as Document No. 2337 of 1995 with the Sub Registrar Office, Adyar, Chennai, conveying the house ground and premises at No.18, 5th Main Road, Bakthavatchalam Nagar, Adyar, Chennai.

10. It is claimed that on repayment of the mortgage amount, the property would be reconveyed. It is claimed that he had been regularly paying the monthly interest from 1995. In this connection, there were

exchanges of communication and the revision petitioner wrote a letter on 25.01.2008 expressing readiness and willingness to repay the entire amount of Rs.8,50,000/- and seeking reconveyment of the property. It had been claimed that there is no landlord/tenant relationship and that the revision petitioner is the owner of the premises. It had also been stated that the Rent Control Petition was also barred by resjudicata. It was stated that there is no merits in this petition and that it should be dismissed.

11. The parties went on trial and during the course of trial, the petitioner examined himself as PW-1 and marked Exs. P-1 to P-4. The respondent examined himself as RW-1 and marked Exs. R-1 to R-4.

12. Ex.P-1 was the certified copy of the sale deed dated 22.12.1994. The learned Rent Controller had found that in Ex.P-1 / sale deed dated 22.12.1994, there was no covenant regarding reconveying the property and that till then, possession would be retained by the vendor. Ex.P-2 was the Rental Agreement dated 06.01.1998 in which the signatures were also admitted. Therefore, holding that the respondent was taking inconsistent stands, the Rent Controller held that Ex.P-2 had been entered

into subsequent to Ex.P-1. It was also very specifically found that the monthly payment of Rs.12,000/- was paid only as a rent and not otherwise. It was also stated that the sale deed had not been challenged in any Court of law. Maintainability of the petition was also upheld and it was also stated that the tenant had not produced any material to dispute the contention of the landlord that the premise was required for bona fide occupation. The Rent Control Petition was therefore allowed and the eviction was ordered.

13. Thereafter, R.C.A.No. 460 of 2018 came to be filed. By Judgment dated 08.01.2021, the learned Rent Controller Appellate Authority again took up the issues for reconsideration. It had been found that the tenant was a highly literate person and that he executed a sale deed under Ex.P-1 and had not challenged it for a period of 26 years. He cannot turn around and stated that Ex.P-1 was an English mortgage. It was found that the tenant had not filed any suit for redemption even if it is to be assumed that Ex.P-1 was a document of English mortgage. Moreover, the monthly amount of Rs.12,000/- was admittedly paid only towards interest. It had been stated that Ex.P-1 transferred all rights over the property to the landlord. The Rent Control Appellate Authority also relied on Sections 91

and 92 of the Evidence Act that oral evidence cannot be let in as against the contents a document. I agree with the finding given by both the Courts below. Ex.P-1 is a sale deed simplicitor. There is no other way in which it could be described. It conveys the property to the respondent herein for adequate and valid consideration. There is no clause that the respondent herein would reconvey the property. The petitioner herein retained possession, since even on evidence, it has come to light that he wanted time to vacate the premise and thereafter, he had turned around and he claimed that Ex.P-1 sale deed is actually a document reflecting English mortgage. This cannot be accepted at all since there is no such covenant in the document and the document speaks for itself.

14. It is the case of the revision petitioner that he had filed a suit to set aside the sale deed, which was dismissed for non prosecution in the year 2011. That rental arrears payable by him amounts to Rs.14/- lakhs is not denied by the revision petitioner. Even if it is claimed that it is a English mortgage, then he had not filed any suit seeking to redeem the mortgage. He had admitted his signature in Ex.P-2, namely, the tenancy agreement. The tenancy agreement had been executed between the parties

because the revision petitioner herein continues to be in occupation even subsequent to Ex.P-1, sale deed and therefore, was under an obligation to pay monthly rents. I hold, the revision petitioner herein had not come to Court with clean hands after executing Ex.P-1 to claim that it is not a sale deed but rather a document reflecting English mortgage. The fact that he had turned around and stated that new point itself shows that he is a literate person and therefore cannot claim ignorance of the contents of Ex.P-1. Both the authorities below have given good reasons for rejecting the case of the revision petitioner and holding that he had deliberately denied the title of the respondent herein.

15. It is also seen that even on the ground of owner's occupation, a specific plea had been put by the respondent that his son had been married and was living with two children and therefore, having purchased the suit property, it would only be appropriate that he is permitted to reside in the same. This reason is well taken . No contra evidence had been produced by the revision petitioner. The finding of both the Courts below on this issue is also upheld.

C.V.KARTHIKEYAN, J.

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16. I therefore hold that this Civil Revision Petition has to suffer an order of dismissal.

17. Accordingly, this Civil Revision Petition is dismissed with cost of Rs.1,00,000/- (Rupees One Lakh only) payable by 30.06.2021 to the respondent directly. Time for eviction two months from this date. Consequently, connected Civil Miscellaneous Petition is closed.

03.06.2021

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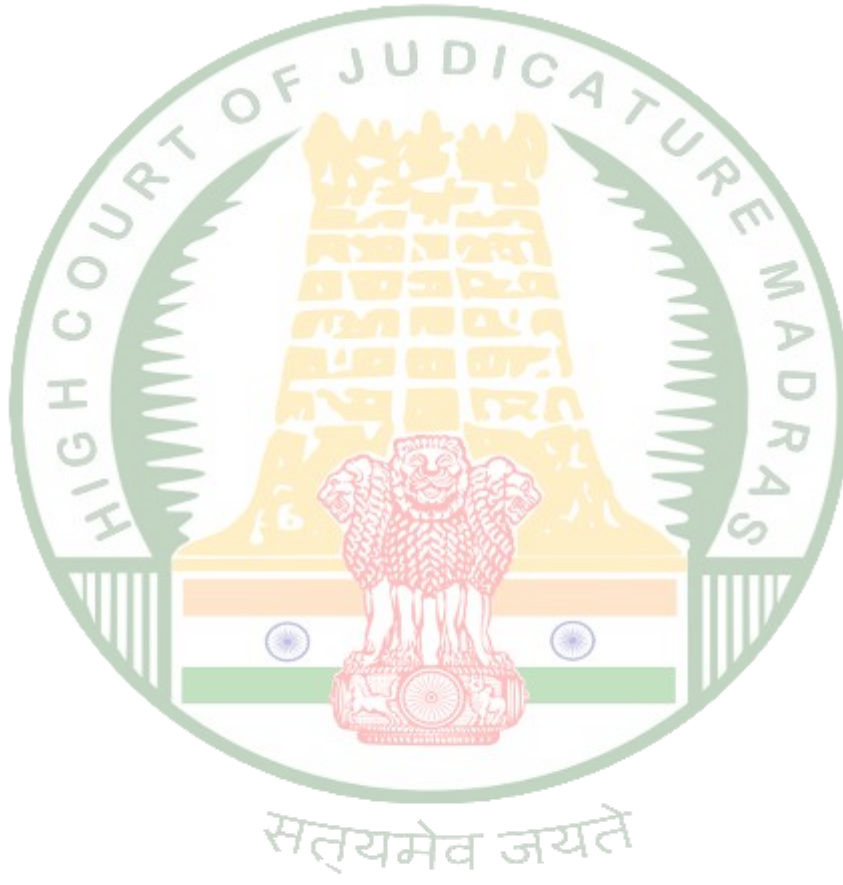
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