

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.02.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2032 of 2020 and
C.M.P.No.12771 of 2020

Y.Sathish

... Petitioner

Vs.

K.G.Jothisankar (deceased)

1. Padma Jothishankar
2. Rakesh Jothishankar
3. Ramyashankar

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Fair and Final order dated 11.12.2019 made in M.P.No.504 of 2018 in R.C.O.P.No.1453 of 2015 on the file of learned XVI Court of Small Causes Judge, Chennai.

For Petitioner : Mr.S.Baskaran

O R D E R

The present Civil Revision Petition has been filed against the fair and decreetal order dated 11-12-2019 passed in M.P.No.504 of 2018 in R.C.O.P.No.1453 of 2015 on the file of learned XVI Small Causes Judge, Chennai by raising grounds.

2. The case of the petitioner is that he is a tenant under one K.G.Upendra and paying monthly rent without any default. When the said K.G.Upendra demanded an exorbitant amount as rent, he was forced to file O.S.No.6882 of 2014 before the learned VIII Assistant Civil Judge, Chennai. The said Upendra was hospitalised on 19.09.2014 and he died on 03.12.2014 in the hospital and was unconscious at that time. One Jothisankar, who is the elder brother of said Upendra, alleged that the said Upendra had executed a settlement deed in favour of him by

giving power to one Sridhar authorising him to present the settlement deed in favour of the said Jotishankar before the Sub-Registrar, T.Nagar, Chennai at the time when he was hospitalized, but to the petitioner's knowledge, the said landlord, namely, Upendra has not regained his conscious from 19.09.2014 to 03.12.2014 and died on 03.12.2014.

3. It is further averred by the petitioner that the deceased Jothishankar is not the only brother of the said K.G.Upendra, / petitioner's landlord but also there are other sisters and brothers. When the landlord, viz., K.G.Upendra was in unconscious stage, almost in the stage of coma, he could not have executed power of attorney and all these documents have been created for the sake of claiming right over the property and they all are forged one. Further, the petitioner submitted that he has been depositing the monthly rents in the ICICI Bank, Bazulla road branch, Chennai and absolutely there is no intention of dragging on the proceedings and only landlord's brother had filed eviction petition claiming title over the property under the said forged documents and had played fraud in the court.

4. It is the further case of the petitioner that to prove the landlord, K.G.Upendra was in coma during his entire period of hospitalization from 19.09.2014 to 03.12.2014 and the said Jaishankar, cannot be termed as landlord, the hospital records are to be summoned and the duty doctor, who had treated him has to be examined before the court below to prove that he was under coma stage, hence the petitioner has filed M.P.No.504 of 2018 before the court below.

5. A counter statement was filed by the said respondent / Jothishankar before the court below stating that the eviction petition has been filed by him in R.C.O.P.No.1453 of 2015 on the ground of willful default and owner's occupation. When the case was in part-heard stage, M.P.No.617 of 2018 was filed by the petitioner / tenant to issue sub-peona to the Sub Registrar Office, T.Nagar, which was dismissed by the court below after due contest made by both the parties. As against which the petitioner herein preferred C.R.P.No.1218 of 2018 before this Court and same was allowed, subsequent to which, the officials have produced original settlement deed before this Court and the Sub Registrar was also examined. The respondent stated that the petitioner / tenant has no locus standi to file the present petition to issue summons to the Chief Doctor GLB Hospitals, new No.A415, Old No.A481, Ah Block, Shanthi Colony, Anna Nagar, Chennai - 600 040 for production of the entire medical records of the deceased K.G.Upendra for the period of hospitalization from 19.09.2014 to 03.12.2014, as he is neither a relative of deceased K.G.Upendra nor a friend of him, but he is a tenant and

moreover, to prove the tenancy, he cannot raise this issue of veracity of the settlement deed. Further, the counter proceeds to state that when the own brothers and sisters of late K.G.Upendra has not raised any doubt about the treatment and death of the said K.G.Upendra, the present petitioner, who is only a tenant in respect of the petition premises has no right to question the said death, hence prayed for dismissal of the petition and as owner of the premises, he is ready to receive the rents.

6. The counter of the respondent further proceeds to state that in order to expedite the matter, the petitioners have not filed petition under Section 11(4) in the said R.C.O.P and the Civil Suit in O.S.No.6882 of 2014 filed by the petitioner was also dismissed. When the question of landlord has not been denied and it is admitted that the said Upendra was the landlord, the petitioner ought to have vacated and handed over the possession on demand made by the respondent. Further, during the life time of Upendra itself, he introduced the respondent, namely, K.G.Jothi Shankar and informed the petitioner to pay the rents to K.G.Jothi Shankar and vacate and handover the premises to the respondent. The respondent also stated that since K.G.Upendra intends to settle the property to his own brother, deceased K.G.Jothi Sankar, he gave the power to his brother's son, to present the settlement deed executed in favour of Mr.K.G.Jothi Sankar for registration before the Sub Registrar Office, Anna Nagar and T.Nagar respectively and therefore, it is false to state that K.G.Upendra was in coma till his death on 03.12.2014.

7. Besides the above, other family members of K.G.Upendra are well aware of the settlement deed executed in favour of Johti Sankar and none of them questioned the execution of settlement deed in favour of the respondent nor made any claim over the property and the petitioner herein, who is no way related to the family of the respondent has no locus standi to question the same. Also, the petition has been filed by the petitioner only to prolong the proceedings of the case and to escape from the liability of paying monthly rents to the premises, thereby sought to dismiss the M.P.No.504 of 2018 filed by the petitioner.

8. The court below upon considering the contentions and the circumstances of the case, observed that the "proceedings under the Rent Control Act are summary in nature and it is enough for the person claiming to be the landlord to prove whether he is entitled to receive the rents from the tenant or not and to that it is not necessary for the person claiming to be the landlord to prove that he is the owner of the property and in the present case, it is for the respondents to prove whether they are

entitled to receive the rents from the petitioner herein or not and the same can be decided, for which summoning of the Doctor and the medical records of the deceased K.G.Upendra is not necessary." Challenging the same, the present Civil Revision Petition is filed.

9. The learned counsel for the petitioner submitted that the order passed by the learned XVI Small Causes Judge, Chennai dated 11.12.2018 suffers from material irregularity in the exercise of jurisdiction and if the same is allowed to stand, it would cause irreparable damage to the petitioner. When there is settled principles of law, that application under Rent Control Act should be filed by the owner of the property, the alleged settlement deed in favour of deceased K.G.Jothisankar is a created and forged document. The court below on an earlier occasion had dismissed M.P.No.617 of 2017, which was filed by the petitioner to examine the Sub-Registrar, T.Nagar, Chennai to prove the execution of alleged settlement deed in favour of deceased Jothishankar. Therefore, earlier, Civil Revision Petition No.1218 of 2018 was preferred by the petitioner before this Court and this Court had allowed the said petition by directing the trial court to issue sub-poena for Sub-REgistrar, T.Nagar and to examine the said Registrar who registered the document and to decide the matter, accordingly, Sub-Registrar, T.Nagar was also examined. On the same lines, the said M.P.No.504 of 2019 had been filed to call for the medical records of the concerned hospital and examine the Doctor to prove that the said Upendra had been in coma during his entire period of hospitalization, i.e., from 19.09.2014 to 03.12.2014.

10. The learned counsel for the petitioner would further contend that the deceased Jothisankar claims that a presentation of power of attorney bearing number 49 of 2014 had been executed by the said K.G.Upendra during his hospitalization and on that strength, the said settlement deed had been executed. Further, if a person is in coma, he could not have executed any presentation power of attorney. Hence the alleged presentation is a forged and created document. As such, the alleged settlement deed dated 07.10.2014 bearing number 2637 of 2014 was executed on 03.11.2014 in favour of deceased Jothisankar on the file of the Sub-Registrar, T.Nagar, Chennai is a forged and created document.

11. Besides the above, the learned counsel for the petitioner also submitted that the petitioner never came as a tenant under the deceased Jothisankar nor accepted that he is the owner of the property. In the absence of any such declaration, the Section 116 of Evidence Act, will not be applicable and from the beginning, the petitioner has been questioning the title of deceased Jothisankar. The court below failed to understand that the non-claiming by the brothers and

sisters of original landlord Upendra will not amount to that they have accepted the same. Only by producing the medical records and by examining the duty doctor, who had treated the said Upendra, it can be proved whether the said Upendra had given power of attorney to one of his brother, hence it is just and necessary to allow this revision, he pleaded.

12. Heard the learned counsel appearing for the petitioner and perused the documents placed on record carefully.

13. From the submissions of the learned counsel for the petitioner and upon perusal of the documents placed on record it is clear that the said Upendra was the landlord under whom the petitioner is a tenant and there was a dispute arose between the parties with regard to the payment of rent and according to the petitioner, the said Upendra demanded exorbitant rent and huge advance and threatened him to vacate the premises and therefore, the petitioner / tenant filed a Suit in O.S.No.6882 of 2014 before the VIII Assistant City Civil Court, Chennai in the year 2014. Suddenly, the said landlord was hospitalised due to illness and was in hospital from 19.09.2014 to 03.12.2014 and succumbed to illness on 03.12.2014. At the time when the said Upendra was in hospital, he executed a settlement deed in favour of Jothisankar and the said deed was executed through a power of attorney and the same was registered. After the demise of the said Upendra, the petitioner has not paid any rent and as the landlord, the said Jothisankar started demanding rent from this petitioner and the petitioner denied Jothisankar / respondent ownership, as the landlord, stating that while the said Upendra was in hospital, he was under Coma stage and he could not have executed such a settlement deed in favour of a person and on the forged document, the respondent is claiming title thereby also claiming rent. When the other family members of the Upendra are also entitled to be owner and that the claim of Jothisankar has not been objected by any of the family members, it cannot be termed that the said Jothisankar is the owner of the petition property and that he has inhibited the same, by way of settlement deed, is the contention of the petitioner.

14. Further, the petitioner also claims that he has been paying monthly rent through ICICI Bank without any default and without there being any orders or directions from this court. That apart, the petitioner in order to prove his tenancy under the said Upendra and not under Jothisankar, he intends to summon the Doctor to prove that the said Jothisankar, could not have become the owner of the property and the settlement deed was a forged one in view of the fact that the said Upendra was under coma stage, who could not have executed any such deed as alleged by the respondent, is the primary contention put forth on behalf of the petitioner.

15. It is seen from the records that the said Jothisankar, deceased 1st respondent has filed R.C.O.P.No.1453 of 2015 for evicting the petitioner on the ground of willfull default and owner's occupation and the said proceedings are pending. Earlier an application in M.P.No.617 of 2017 was filed for issuing subpoena to the Sub-Registrar, T.Nagar and the same was rejected by the court below and the same was allowed by this Court by way of C.R.P.No.1218 of 2018. The petitioner herein, who is admittedly a tenant has no locus standi to question the death of late K.G.Upendra and to call for the medical records and that the proceedings under the Rent Control Act are summary in nature and it is enough for the person claiming to be the landlord to prove whether he is entitled to receive the rents from the tenant or not and to that, it is not necessary for the person claiming to be landlord to prove that he is the owner of the property and it is for the respondents to prove whether they are entitled to receive the rents from the petitioner herein or not and the same can be decided, for which summoning of the Doctor and the medical records of the deceased K.G.Upendra is not necessary, by stating so, the court below rejected the prayer of the petitioner.

16. It is seen from the documents that K.G.Upendra, who was the original landlord had given power to his own brother's son, and he inturn has presented settlement deed written by K.G.Upendra in favour of his brother Jothisankar. There is no other claim made by any other brothers or sisters of the family before the court of law raising any doubt regarding alleged execution of settlement deed or any document regarding the cause of death. When there is a relationship of landlord and tenant between the petitioner and the respondent and when the landlord would seek the property for his own use and occupation, the petitioner, who is a tenant would state that the said document was executed in a dubious manner. The Rent controller cannot go into the title of the said property because of the reason the Rent Controller has to see whether the person, who is said to be the landlord is entitled to receive the rent from the petitioner/ tenant. When the petitioner himself has admitted that he became tenant under the respondent only as per the agreement, in the petition mentioned property and brother of the respondent was the landlord and no other person from the family has claimed the rent from the said petitioner and no material is available whether any such claim was made by any family members, it is not necessary for the petitioner to examine the Doctor and peruse the medical records. When the petitioner himself accepted that he is not the owner and he is the tenant in the property, he ought to have paid the rent without any default and he cannot question the title of the respondent, as per Section 116 of the Indian Evidence Act.

17. Moreover, as the petitioner is the tenant, he cannot question the genuine and veracity of the document executed between the family members and it is for the family members to question the same and this is not the forum to question the title of the landlord. That being the case, the petitioner cannot claim that the said document is a forged one, for which he has to examine the Doctor and peruse the medical records to prove the health condition of the deceased original landlord, is not sustainable.

18. Admittedly, when the petitioner himself admitted that he is the tenant under the said Upendra and per the title also, the property vest with the said Upendra and thereafter, the property was settled in favour of the 1st respondent, who has also filed R.C.O.P, for eviction, this petitioner, as a tenant, has no locus standi to poke into the details about the health conditions and alleged execution of the said settlement deed, that too when the other legal heirs have not questioned the same. The petitioner, as a tenant, who has got no nexus and nothing to do with the family members and has no relationship with the family other than being the tenant, cannot claim any right to examine the doctor and peruse the medical records.

19. It is also seen that the R.C.O.P. was filed by the brother, of the said Upendra/ landlord, viz., Jothisankar on the basis of the settlement deed and the Sub-Registrar has deposed that the said document was registered. With regard to the ownership, receipt of rent and the document / settlement deed executed is a forged one, all these questions cannot be decided by bringing the Doctor and perusing the medical records.

20. It is pertinent to note that the other family members of the said Upendra are residing in the city at Chennai and till date, they have not raised any questions and claim against the petition property and there is no proof filed to show that the said Upendra was in coma stage, whereas, the said allegation was denied by the respondents stating that the said Upendra was in good condition till the date of death and it was false to state now that the petitioner was threatened.

21. It is no doubt true that the relevant documents were presented to one of the brother's son, who had executed the same to the another brother, viz., Jothisankar, the same would show that the other family members had knowledge about the same. Hence this Court is of the view that it is not necessary for the petitioner/tenant to summon the doctor and peruse the medical records, therefore, the order passed by the court below in M.P.No.504 of 2018 dated 11.12.2019 by the learned XVI Small Causes Judge, Chennai stands confirmed.

22. In view of the above, the present Civil Revision Petition fails and the same stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

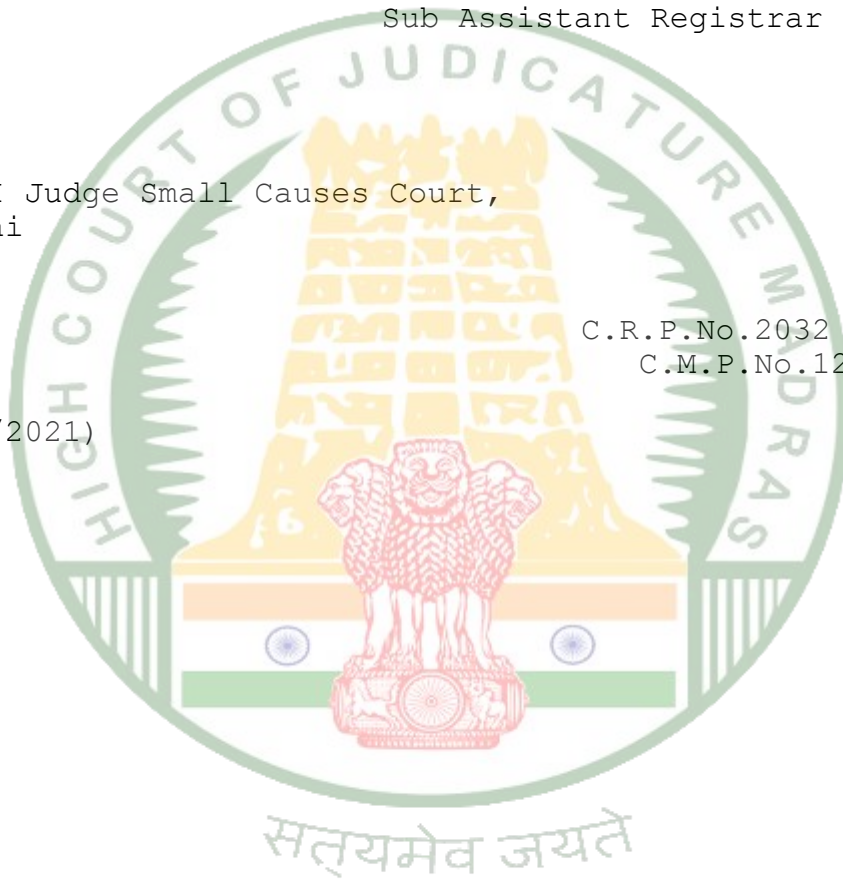
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To

1. The XVI Judge Small Causes Court,
Chennai

GMR (CO)
RMP (01/03/2021)

C.R.P.No.2032 of 2020 and
C.M.P.No.12771 of 2020



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