

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 18.06.2021

PRONOUNCED ON: 12.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (NPD) No. 943 of 2021

And

C.M.P.No. 7624 of 2021

V.M. Selvaraj

... Respondent/Appellant/Petitioner

.....
Tenant

-Vs-

R.Ravindran

... Petitioner/Respondent/Respondent

.....
Landlord

PRAYER: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960, against the fair and final order of the Sub Court (Rent Control Appellate Authority), Tiruvarur, dated 24.11.2020 made in R.C.A.No. 5 of 2018 confirming the fair and final order of the District Munsif (Rent Controller), Tiruvarur, dated 20.08.2018 made in R.C.O.P.No. 5 of 2017.

For Petitioner : Mr. S.Sounthar

For Respondent : Mr. S. Siva Shanmugan

ORDER

This Revision Petition has been filed against the order dated 24.11.2020 in R.C.A.No. 5 of 2018 passed by the Sub Court, Tiruvarur/ Rent Control Appellate Authority, confirming the order of the District Munsif/Rent Controller, Tiruvarur dated 20.08.2018 in R.C.O.P.No. 5 of 2017.

2. The respondent herein had filed R.C.O.P.No. 5 of 2017 under Sections 10(2)(i) & 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960, as amended, seeking eviction of the revision petitioner herein from the suit property, namely, the ground floor portion of the Door No. 20(B) in Javulikkara Street, Tiruvarur.

3. It had been contended in the Rent Control Petition that the said property belonged to the respondent and that the revision petitioner had taken the same on lease for rent on 13.01.2014 on a monthly rental of Rs.4,000/-. He had also paid an advance of Rs.30,000/-. It had been

claimed that the respondent requested the petitioner to pay the monthly rent on or before the 10th day of every month to his father since the respondent had necessity to go out often. Under these circumstances, the father used to acknowledge the payment of rent. The respondent had requested the petitioner herein to vacate the premises since maintenance work had to be done to the building. It is claimed that the petitioner sought six months time to vacate the premises.

4. It was also stated that the revision petitioner had not paid the monthly rents from December 2015. The father of the respondent demanded vacant possession and the payment of arrears of rent on 12.07.2016. The petitioner however refused to comply with the said request. An advocate notice was issued on 05.08.2016. A reply was issued on 04.06.2016 wherein it was contended that the agreement was only with the father of the respondent and that the rents have been paid to the father but that necessary receipts had not been given. It is also stated that the father had also stated that necessary deductions may be made in the rent towards maintenance expenses.

5. Claiming that there was rental arrears from 01.12.2015 and also

that there was denial of landlord / tenant relationship and further that the property was necessary for owner's occupation and to carry out repairs, the Rent Control Petition was filed seeking eviction.

6. A counter was filed specifically stating that the petitioner herein had no jural relationship of landlord / tenant relationship with the respondent. It was also stated that the respondent was working in Chennai and was a permanent resident of Chennai.

7. It was also stated that the petition premises did not require any maintenance. It was further stated that the monthly rent was Rs.2,000/- and not Rs.4,000/- as claimed by the respondent. It was further stated that entries in the note book as if rents were paid and acknowledged were created by the respondent. The petitioner also stated that he had spent substantial amounts towards electric meter maintenance work including refixing the meter and had spent a sum of Rs.4,380/- towards the same.

8. The petitioner denied that there was arrears of rent. It was also

denied that the respondent required the premises for own occupation and also for carrying out repair work. It was claimed that the Rent Control Petition should be dismissed.

9. By order dated 20.08.2018, the learned Rent Controller/District Munsif, Tiruvarur, had allowed the Rent Control Petition and had directed that the revision petitioner should vacate the premises within a period of two months. During the course of trial, the Respondent was examined as PW-1. Another witness was examined as PW-2. Exs. P-1 to P-4 were also marked. Ex.P-1 was the copy of the police complaint given by the father of the respondent; Ex.P-2 was the Advocate notice dated 05.08.2016; Ex.P-4 was the reply dated 29.08.2016. On the side of the Revision Petitioner, the petitioner was examined as RW-1 and another witness was examined as RW-2. Exs. R-1 to R-3 were marked. Ex.R-1 was the receipt for repair of electrical; Ex.R-2 was the receipt of purchase of a door; Ex.R-3 was the receipt for purchase of paint.

10. The learned Rent Controller in the course of his order

extracted the cross examination of PW-1 wherein he had stated that the property was being maintained only by his father and that there was an agreement between the petitioner herein and his father and that there was no specific agreement between himself and the revision petitioner herein. He also extracted the cross examination of RW-1 wherein he stated that he came to know that the respondent herein was the owner of the premises on receipt of the Advocate notice.

11. The portion of the admission that there was agreement between the father and the revision petitioner was stressed by Mr.S.Sounthar, learned counsel for the revision petitioner, who stated that the respondent himself had admitted that the tenancy was only with his father and the Rent Control Petition having been filed without impleading the said father necessarily has to fail. The learned counsel also pointed out the observations of the Rent Control Appellate Authority and stated that the ground of default in payment of rent can never be put against the revision petitioner herein.

12. I have carefully considered the arguments advanced.

13. In the instant case, the primary stand taken by the revision petitioner is that the revision petitioner was a tenant only under the father of the respondent herein. It is claimed that this stand of the revision petitioner had also been admitted as being correct by the respondent. It is also seen from the records however that the revision petitioner had also admitted that he came to know that the respondent was the owner of the building from the advocate notice issued prior to the institution of the Rent Control Petition. When that was to the knowledge of the revision petitioner even prior to the filing of the Rent Control Petition then he cannot take a stand that the respondent was not the landlord.

14. The definition of landlord is very exhaustive. Section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 is as follows:-

“2(6) "landlord" includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver

or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant.”

15. A plain very reading of the said provision of course shows that the landlord would also include any person, who collects the rents. He need not be the owner of the property. In this case, the father of the respondent had collected the rents. However, the petitioner himself had come to know that it was the respondent, who was the owner of the property. In case, the petitioner did have any doubt as to whether the father or the son was the owner, then he should have resorted to specific provisions provided under the Act to deposit the rent into Court. He had not taken any such steps. The default in the rent only accumulated. It also accumulated even during the pendency of the Rent Control Petition, the Rent Control Appeal and also the Civil Revision Petition. Therefore, the default which had accrued has to be considered as being willful in nature.

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16. The evidence when examined in depth will also reveal the fact that the revision petitioner came to know that the respondent was the owner of the premises from the notice issued to the revision petitioner herein. That

notice had been marked as Ex.P-2. In the said notice, it had been very specifically stated that the respondent, owing to the compulsion of his job had to go outside and at that particular point of time, his father was maintaining the building. It was also mentioned that as requested by the respondent, the rents were paid to the father.

17. It was finally demanded that the rents which were due from December 2015 should be paid. The notice was dated 05.08.2016. Even after this notice, it would not lie in the mouth of the revision petitioner to take a stand and that he was a tenant only under the father of the respondent herein.

18. The petitioner had admitted that he came to know that the respondent was the owner of the premises. The father was only an agent collecting the rent. The fact that the respondent herein had stated that the agreement was only with the father will not advance the case of the revision petitioner herein.

19. A perusal of the evidence show that PW-1 in his chief

examination had actually produced an agreement dated 13.01.2014 which was a xerox copy. That document was not marked.

20. It is seen that the admission of the petitioner will have to be weighed with the admission of the respondent. The admission that the agreement was with the father would pale into insignificance because the petitioner himself admitted that he came to know that the respondent was the owner of the building. The owner of the building gets a better right to demand eviction even though a father had entered into an agreement. Such agreement can only be on behalf of the owner of the building. That will not taken away the right of the owner of the building to seek eviction.

21. In view of these reasons since default is admitted, I am not inclined to interfere with the orders of both the Rent Control Appellate Authority and the Rent Controller.

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

order as to costs. Consequently, connected Miscellaneous Petition is closed. Two months time is granted for eviction.

12.07.2021

vsg

Index: Yes/No

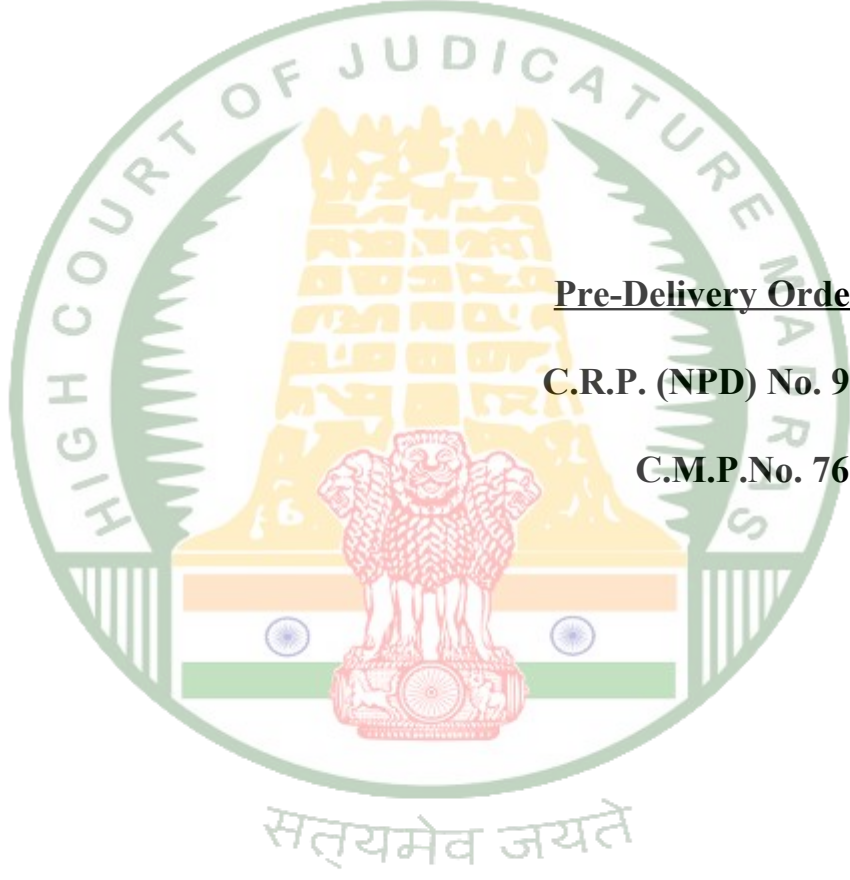
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C.V.KARTHIKEYAN, J.



Pre-Delivery Order made in

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