

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 30.09.2021	Orders pronounced on 02.11.2021
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Coram
THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(NPD) No.1231 of 2021
and
C.M.P.No.9559 of 2021

Bhawarlal Ajay

... Petitioner

Vs

1. Tegchand Pukhraj
2. Manohar Singh

... Respondents

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act against the Judgment and Decree dated 14.12.2020 in RCA.No.471 of 2016 on the file of VIII Judge, Small Causes Court, Chennai, confirming the order of eviction dated 28.06.2016 made in RCOP No.250 of 2014 on the file of XI Judge, Small Causes Court, Chennai.

For Petitioner

Mr.Sandeep Shah
for
M/s.Shah and Shah

For Respondent-1

..

Mr.P.B.Balaji

ORDER

This Civil Revision Petition is filed challenging the judgment dated 14.12.2020 in RCA No.471 of 2016 on the file of the VIII Small Causes Court, Chennai, confirming the order dated 28.06.2016 in RCOP No.250 of 2014 on the file of XI Small Causes Court, Chennai.

2. First respondent filed petition under Section 10(2(ii)(a) of Tamil Nadu Buildings (Lease and Rent) Control Act against the petitioner and second respondent herein for eviction on the ground of sub-lease.

3. The case of the first respondent is that he is the owner of the petition mentioned property. Petitioner was inducted as a tenant on a monthly rent of Rs.5,000/-. The tenancy is for non-residential purpose and according to English Calendar month. Petitioner was carrying on business in the field of fancy goods. Petitioner indulged in unauthorised subletting as early as in 2002. First respondent issued a legal notice to the petitioner and unauthorised sub-tenants and filed eviction petition in RCOP No.385 of 2002. Petitioner apologized for his act and gave an undertaking in writing on 08.04.2002 not to sub-lease the premises and

vacate the sub-tenants. On the basis of this written undertaking, first respondent withdrew the RCOP. Now the petitioner stopped his business in the petition premises and shifted his business to Door No.47, Perumal Mudali Street. He leased out the petition mentioned building to second respondent. Second respondent is running the business under the name and style of “Sadhguru Jewellers” in the petition mentioned building. Petitioner has no right to sublease the premises, without the permission and consent of the first respondent. Therefore, this petition.

4. Petitioner filed counter stating that he is carrying on business in the petition mentioned building and he has not sublet the premises to second respondent. First respondent is in the habit of creating problems to the tenants and extract more money by way of rent. He is not aware of RCOP No.385 of 2002. First respondent took the petitioner to an Advocate and made him to sign in some blank papers and that is now being used against the petitioner. He has never written any undertaking as claimed by first respondent. He is not aware of second respondent and that he is carrying on business in the name of 'M/s.Sadhguru Jewellers'. Petitioner alone is carrying on business in the

petition mentioned building. This petition is filed only to get unjust enrichment.

5. During the enquiry, before learned Rent Controller, PW.1 and RW.1 were examined. Exs.P1 to P9 and Ex.R1 have been marked. On considering the oral and documentary evidence produced and submissions made on behalf of the parties, learned Rent Controller found that first respondent established the sublease of the petition mentioned building by the petitioner and ordered eviction. Petitioner filed appeal in RCA No.471 of 2016. Learned Rent Control Appellate Authority has also concurred with the finding of learned Rent Controller and confirmed the finding of learned Rent Controller and dismissed the appeal. Against the said dismissal, this Civil Revision Petition is preferred.

6. Learned counsel for the petitioner submitted that to warrant eviction on the ground of sublease, landlord must establish that the tenant is out of possession and the sub-tenant is in complete possession and occupation of the premises. In the case before hand, first respondent/landlord has not proved the sublease alleged by him by the

petitioner in favour of the second respondent. Exs.P6 to P8 documents would not prove the sub-lease. In fact, Exs.P6 and P7 are created documents for the purpose of this case and they would not conclusively prove that the building was sublet. Ex.P8-photo will also not useful for establishing sub-lease. Exs.P6 to P8 documents had not been marked and proved in the manner known to law. However, without considering these aspects, courts below have wrongly ordered eviction on the ground of sublease. Therefore, he prayed for setting aside the judgment of learned Rent Control Appellate Authority and for dismissal of the eviction petition.

7. In response, learned counsel for the first respondent submitted that the sublease is an agreement, deceitfully and illegally entered into between a tenant and subtenant. Landlord would not be in a position to know about the details of this deceitful and illegal agreement. Initial burden is on the landlord to show that the leased premises was sublet by the tenant to sub-tenant by producing convincing evidences. Once landlord has done this part, it is for the tenant to establish that he has not sublet the premises. In the case before hand, first respondent/

landlord has produced sufficient materials to show that petitioner had sublet the premises to the second respondent. However, petitioner has not produced any evidence to show that he is running a business in the suit property on the date of filing the petition and subsequent thereto. On the other hand, first respondent was able to prove that the petitioner is running business elsewhere and not in the petition mentioned premises. Therefore, both the courts below have rightly ordered eviction on the ground of sub-lease and he prayed for confirming the judgment of the learned Rent Control Appellate Authority.

8. Considered the submissions made on either side and perused the records.

9. From the case of the parties and the submissions made, it is clear that there is no dispute with regard to the landlord - tenant jural relationship between the first respondent and petitioner. The issue is whether the petitioner still continues to occupy and do business in the petition mentioned property or he had sublet the premises to second respondent. In support of first respondent's case that the petitioner had

sublet the premises to second respondent, first respondent produced a copy of petition in RCOP No.385 of 2002 filed for evicting the petitioner on the ground of sub-lease and other grounds. It is seen that, after filing of RCOP No.385 of 2002, petitioner has given a letter on 08.04.2002 admitting sub-lease of the premises and undertaking to vacate the sub-lessees. These documents, namely Exs.P1 and P2, are now sought to be used by the first respondent to show that the petitioner had already sublet the premises and on initiation of eviction proceedings, he had given undertaking letter not to sublet the premises and vacate the sub-lessees.

10. When there is prior history of sub-lease by the petitioner and there were exchange of letters/undertakings between the parties, first respondent heavily relied on Ex.P6 and Ex.P7 - covers addressed to the second respondent. Ex.P6 is the postal cover from Rangeela Jewellers and Ex.P7 is postal cover from Vandana Vidyodh Ltd., addressed to second respondent. Ex.P9-photos with CD and receipt to show that second respondent is conducting business in the petition mentioned premises. Exs.P6 and P7 are sought to be relied for the purpose of showing that second respondent is running business in the petition

mentioned building. However, these documents are objected by the petitioner on the ground that these letters were maneuvered by first respondent giving false address of second respondent, just to frame a case that second respondent is running a business in the petition mentioned building. Using his influence over the postman, first respondent received this letter and produced in the Court. When the genuineness of these letters are disputed by petitioner, first respondent ought to have examined the persons who sent the letters and without examining them, it cannot be concluded on the basis of these letters that the second respondent is running business in the petition mentioned building.

11. In response, it is the submission of learned counsel for the first respondent that in the absence of second respondent, first respondent received the letters addressed to him in the petition mentioned building. There is nothing wrong in receiving the letter. These letters would prove that the second respondent is occupying the petition mentioned building.

12. Exs.P6 and P7 are relied on by the first respondent to show

that the petitioner sublet the premises to second respondent. The genuineness of these letters are disputed by the petitioner. Even assuming that first respondent was asked to receive the letters addressed to second respondent in his absence, first respondent is expected to handover the letters to second respondent once he returns. First respondent cannot keep the letters with himself. As rightly pointed out by petitioner, when genuineness of Exs.P6 and P7 are challenged, first respondent should have examined the persons who sent the letters and the postmaster to prove that the letters originated from a proper source and delivered. In the absence of examination of the aforesaid persons, much reliance cannot be placed on Exs.P6 and P7 for concluding that the petitioner had sublet the premises to second respondent. There are other evidences, viz., Ex.P8-visiting card and Ex.P9-photos with CD and receipt, are not conclusive proof to decide the person captured in the photo is second respondent and he was inside the petition premises and running a business on sub-lease.

13. Ex.P10 is wedding invitation prepared for the wedding of petitioner's daughter. In the wedding invitation, petitioner has given his

business address as Balaji Fancy Stores. He admitted that he has not given the business address as the address of the petition mentioned property. That apart, petitioner has not produced any document to show that he is running business in the petition mentioned building on the date of filing the petition or subsequent thereto. He said in his counter that he was made to sign in some blank papers and that is used against him. He flatly denies that the signature in Ex.P2 is that of him. In other words, he denies the writing of Ex.P2-letter. This evidence is contrary to his pleadings in the counter, where he tacitly admits it. It shows that the petitioner is speaking falsehood. The fact that he is speaking falsehood in respect of writing Ex.P2-letter and the fact that he has not produced any material to show that he is running business in the petition mentioned property, clearly establishes the fact that he is totally out of possession and occupation of the petition mentioned building. It can be deduced that the petition mentioned premises is in possession and occupation of second respondent as a sub-lessee.

14. Sub-tenancy arrangement is always taking place behind the back of landlord in a clandestine manner and it is impossible to the

landlord to prove by direct evidence the arrangement between the tenant and sub-tenant. First respondent/landlord has sufficiently proved through Ex.P10 and failure on the part of the petitioner to produce the documents to show that he is running business in the petition mentioned building. When the first respondent discharged his initial burden of proving the sub-lease, petitioner has not done anything on his part to show that he is the man running business in the petition mentioned property and has not sublet the premises. In the said circumstances, this Court finds no reason to interfere with the judgment and decree of the learned Rent Control Appellate Authority and the judgment and decree dated 14.12.2020 in RCA.No.471 of 2016 of the learned Rent Control Appellate Authority is confirmed.

15. Resultantly, this Civil Revision Petition is dismissed with costs of the first respondent. Consequently, connected Civil Miscellaneous Petition is closed.

Mra

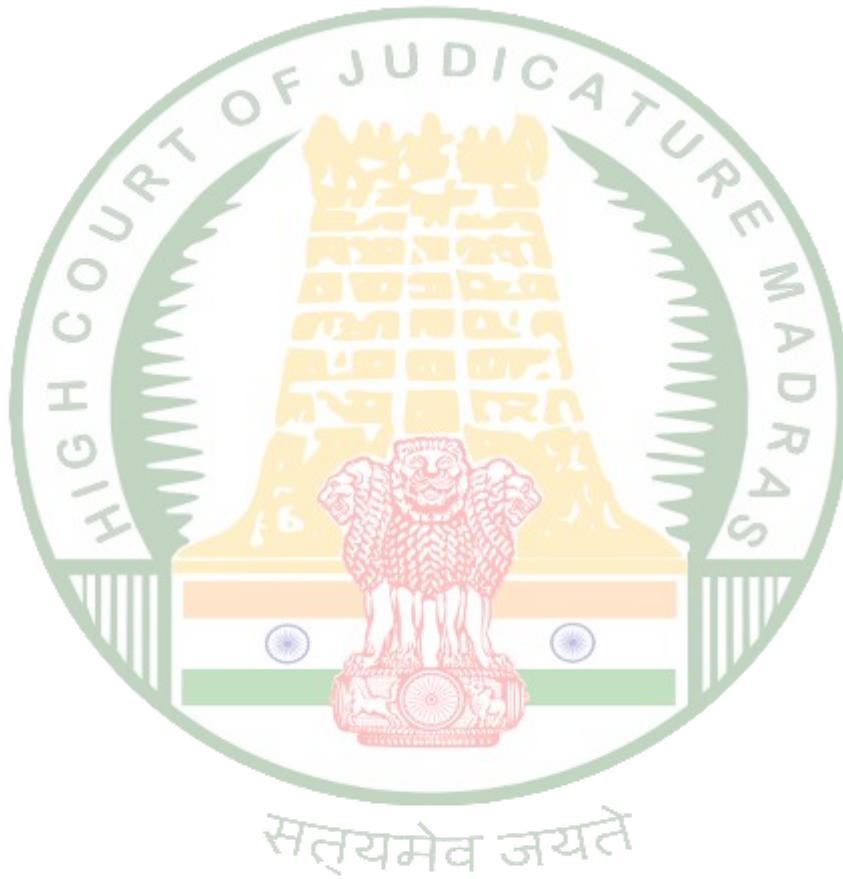
02.11.2021

Index : Yes

Speaking order : Yes / No

To,

1. The VIII Judge, Small Causes Court, Chennai.
2. The XI Judge, Small Causes Court, Chennai.

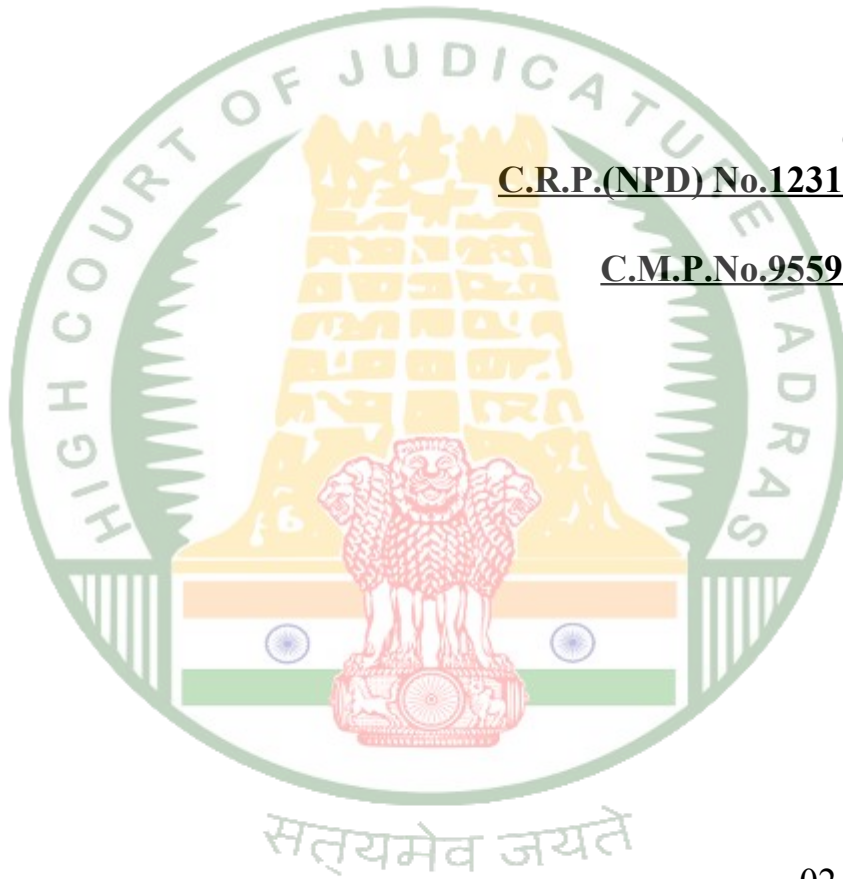


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G.CHANDRASEKHARAN, J.

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