

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(NPD) No. 2670 of 2016
and C.M.P.No.13827 of 2016

Mathews (Deceased)
1.Lewellyn Xavier
Wife of Lewellyn Xavier,
running a Montessori School
at Devonshire House,
Higgins Road,
Uthagamandalam.

2.E.Mathews

... Petitioners

Vs.

J.Prabhu

... Respondent

Prayer :- Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 to set aside the order and decretal order dated 12.08.2013 made in RCOP No.26 of 1997 on the file of the Rent Controller of Uthagamandalam and the Judgement and Decree dated 02.06.2016 made in RCA No.7 of 2013 on the file of the Subordinate Judge, Uthagamandalam.

For Petitioners : Mr. B.Soundarapandian

For Respondent : Mr.S.Parthasarathi, Senior Counsel
for Mr.S.Kingston Jerold

ORDER

The Civil Revision Petition is arising out of the order and decretal order dated 12.08.2013 made in RCOP No.26 of 1997 on the file of the Rent Controller of Uthagamandalam and the Judgement and Decree dated 02.06.2016 made in RCA No.7 of 2013 on the file of the Subordinate Judge, Uthagamandalam.

2. The respondent is the landlord. The petitioners are the tenant. The landlord filed a petition for vacating the petition premises, on the ground of wilful default in payment of rent, subletting for different use than that was rented out and also denial of title. The landlord was declared as Administrator, the petitioners filed a petition in O.P.No.5 of 1991 to enable him to administer the estate of the deceased M.A.Browne. Therefore, the respondent being an Administrator of the the estate of the deceased M.A.Browne. The ownership of the premisses vested with the landlord. Originally the petition premises was let out by M.A.Browne to the deceased first tenant viz., C.Mathews. He along with his wife sub-let the major portion of the premises to the second tenant herein. The first tenant has retained only a small portion consisting of two rooms for his use and occupation and the remaining entire portion is sub-let to the second tenant herein. The second tenant also converted the residential

premises into a non residential premises. In fact, the then Administrator of the petition premises had issued a legal notice on 11.09.1985, called upon the tenant to pay the arrears of rent from October, 1977 and also to vacate the premises. Therefore, the tenant is in arrears of rent for the period from 01.10.1977 to 31.12.1996. The default in payment of rent is wilful and deliberate.

3. Whereas, the case of the tenants is that the first tenant was inducted into possession for running a school, which was stated more than 30 years back. The predecessor has never paid any rent to the petition premises. They are not liable to pay the rent. Further they claimed that as absolute owner of the petition premises and as such question of arrears of rent does not arise.

4. The landlord was examined as PW.1 and marked as Exs.A1 to A14. The tenant was examined as RW.1 and marked Exs.R1 to R7.

5. On a perusal of the evidence on records, the Rent Controller ordered to vacate the petition premises and hand over vacant possession to the landlord. Aggrieved by the same, the tenant preferred an appeal before the Appellate

authority and the same was dismissed. Aggrieved by the same, the present Civil Revision Petition.

6. The learned counsel for the tenant submitted that the then Administrator viz., K.B.Carter had filed RCOP No.24 of 1987 for eviction on the ground of wilful default and the same was dismissed. Aggrieved by the same, the Civil Revision Petition was filed and again the matter was remanded back to the Rent Controller. Thereafter, he died and though the landlord has impleaded as a party, he did not proceed further. Subsequently, the present Civil Revision Petition filed on various grounds. He further submitted that for the very same premises one Elizabeth Antony filed a petition in RCOP No.20 of 2005 for eviction on the ground of wilful default. Pending RCOP, they filed a petition under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, in which the Rent Controller directed the tenants to pay a sum of Rs.1,98,000/-. Aggrieved by the same, the tenant preferred an appeal before the Rent Control Appellate Authority in RCA No.28 of 2011 and the same was confirmed. Aggrieved by the same, the tenants filed a Civil Revision Petition in CRP (NPD) No.2248 of 2013, as directed by this Court, the petitioner to deposit the entire arrears of rent and directed to pay the rent continuously, the

RCOP still pending. Therefore, in the very same petition premises there are two eviction petitions filed by different persons. The tenants could not pay the rent. Further, the first tenant originally was in possession of the petition premises, after his demise his wife is in possession and enjoyment of the petition premises. The second tenant is none other than his own brother. Therefore, absolutely no question of different users and sub-letting. He further submitted that the RCOP proceedings in RCOP No.20 of 2005 and the RCA proceedings were marked before the learned Rent Controller as R1 to R7, which were not considered by both the Courts below.

7. Per contra, the learned Senior Counsel submitted that the landlord's petition is which earlier to the petition filed by the other person. The landlord is the Administrator of the estate of the deceased M.A.Browne. He was appointed in O.P.No.5 of 1991 for the grant of Letters of Administration, as to enable him to Administer the estate of the deceased M.A.Browne. The then Administrator of estate viz., K.B.Carter filed an eviction petition for wilful default in payment of rent against the tenants. After his demise, the said petition was not pursued by the landlord. After different uses of the petition premises and sub-letting, the landlord was constrained to file a petition for

eviction.

8. In fact, the landlord marked Exs.A4, A5 and A6 revealed that the landlord is the original owner of the estate of the deceased M.A.Browne. Therefore, absolutely there is no dispute about the ownership of the petition premises. The RCOP No.20 of 2005 filed by the other person only in the year 2005 and as such it could not have any impact in respect of the petition premises. In fact, RCOP No.20 of 2005 is still pending on the file of the learned Rent Controller, Uthagamandalam.

9. Heard Mr. B.Soundarapandian, learned counsel appearing for the petitioners and Mr.S.Parthasarathi, learned Senior Counsel appearing for the respondent.

10. The landlord filed a petition for eviction on the ground of wilful default, different uses and sub-letting and the denial of title. In all the grounds, the Rent Controller allowed the petition and ordered eviction.

11. On a perusal of the counter filed by the tenants, categorically averred

that the respondents are not landlord for the petition premises. They are absolute owners of the petition premises and as such they did not pay any rent for the petition premises. There is no relationship of landlord and tenant between them and no question of payment of rent and no arrears for the petition premises. At the same time, another petition for eviction filed by one Antony in RCOP No.20 of 2005 on the file of the learned Rent Controller, Uthagamandalam, in which, she filed a petition for arrears of rent under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The said petition was ordered and aggrieved by the same the tenant went up to this Court in CRP (NPD) No.2248 of 2013 in which he agree that he is ready and willing to deposit the arrears of rent and also pay the default rent till the disposal of the Rent Control proceedings. Therefore, the stand taken by the tenants have not been accepted. Though the tenants are same family members, originally, the petition premises was rented out for residential purpose and it was modified for the commercial purpose viz., running the school under the name and style of Excelsior School. Now, the first original tenant died and present tenants are in possession of the petition premises.

12. A perusal of the Exhibits marked by the landlord revealed that they

filed several petitions for eviction proceedings and also for other reliefs which were ordered in their favour. Therefore, the estate, after the death of M.A.Browne, was duly administered by the landlord. Hence, Both the Court below rightly ordered for eviction on the ground of wilful default and sub-letting. This Court finds no illegality or infirmity in the order passed by the Courts below. Accordingly, the Civil Revision Petition is dismissed. The tenants are directed to vacate the premise and hand over the same to the landlord within a period of three months. No costs. Consequently, connected Miscellaneous Petition is closed.

23.02.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To

1. The Rent Controller,
Uthagamandalam.
2. The Sub Judge,
Uthagamandalam.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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