

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(PD).No.2358 of 2018
and C.M.P.No.14604 of 2018

S.Ganesh

...Petitioner

Vs.

1.Inderchand Kothari

2.C.M.Sambomoorthy

...Respondents

Prayer Civil Revision Petition filed under Article 227 of Constitution of India, against the order and decreetal order dated 27.03.2018 in I.A.No.61 of 2018 in R.C.O.P.No.87 of 2005 on the file of the Principal Rent Control, Coimbatore, Principal District Munsif Court, Coimbatore.

For Petitioner : Mr.C.R.Prasanan
For R1 : Mr.Jeremiah
for Mr.B.Nambi Selvan
For R2 : Given up

ORDER

This Civil Revision Petition has been filed against the order dated 27.03.2018 in I.A.No.61 of 2018 in R.C.O.P.No.87 of 2005 on the file of the Principal Rent Control, Coimbatore, Principal District Munsif Court, Coimbatore.

2.I.A.No.61 of 2018 in R.C.O.P.No.87 of 2005 was filed by the 1st respondent before the Court below to condone the delay in filing the documents with regard to the ownership of the property. The Court below after hearing both the parties allowed the said application. Against which, the present Civil Revision Petition has been filed.

3.The learned counsel for the petitioner submitted that earlier the Arun Rajammal Charitable Trust filed the applications in the very same RCOP for impleading themselves as a party to the RCOP in I.A.No.262 of 2005 and another application in I.A.No.173 of 2007 for marking the certified copy of the Will and other documents in the RCOP. The Court below dismissed both the applications stating that the Rent Controller has no jurisdiction to decide the issue regarding to the title of landlord. While being so, once again I.A.No.61 of 2018 was filed to condone the delay for marking the same documents by the tenant. The Court below without taking into consideration of the earlier order dated 05.11.2007 passed in I.A.No.173 of 2007 has allowed I.A.No.61 of 2018, which is unsustainable. Therefore, the order of the Court below is liable to be set aside.

4.Per Contra, the learned counsel for the 1st respondent submitted that he has already vacated the premises and the possession has been handedover to the third party and hence, nothing survives in the present Civil Revision Petition.

5.In reply, the learned counsel for the petitioner submitted that the 1st respondent is not the legal tenant and therefore he has no authority to surrender the tenancy to the third party and it is totally illegal and prayed to allow the Civil Revision Petition.

6.Heard the learned counsel for the petitioner as well as the 1st respondent and perused the materials available on record.

7.A perusal of the materials would show that earlier one Arun Rajammal Charitable Trust filed the applications in the very same RCOP for impleading themselves as a party to the RCOP in I.A.No.262 of 2005 and another application in I.A.No.173 of 2007 for marking the certificate copy of the Will and other documents in the RCOP to prove their ownership. The Court below

dismissed both the applications on 05.11.2007 stating that Rent Controller has no jurisdiction to decide the ownership of the property. The Court below without considering these facts has allowed the application filed by the 1st respondent in I.A.No.61 of 2013. It is the settled position of law that the Rent Controller cannot decide the ownership of the property. In such circumstances, the Court below ought not to have allowed the application filed by the 1st respondent for purpose of marking the same documents which was rejected earlier. The learned counsel for the 1st respondent submitted that the 1st respondent vacated the premises and handedover the possession to the third party and he has also produced an possession receipt to that effect. The learned counsel for the petitioner states that the tenancy itself is in dispute and therefore, it cannot be transferred to the third party.

8.The learned counsel for the petitioner referred the judgment of this court in the case of **Natarajan Vs. Nachimuthu Chettiar** reported in **1984 97 LW 347**, the relevant portion of the judgment is extracted hereunder:

“13. Mr. Ganapathy concedes the position and in fact he has no other alternative that the term 'tenant' has as defined in the Act, would not include a 'sub-tenant' and that the

second proviso to Section 10(1). contemplates a denial of title by the tenant alone and not by a sub-tenant. Even so, he would say that since Section 26 of the Act gives a right to a sub-tenant inducted into possession after a petition for eviction had been filed, to assail the order of eviction on the ground that it suffers from the vice of fraud or collusion, a sub-tenant who is made a party to the petition for eviction, will also be entitled to question the maintainability of a petition for eviction, on the ground that the landlord does not have the locus standi to file the petition. He would further submit that since Sub-rule (2) of Rule 12 of the Rules framed under the Act enjoins the Controller to give an opportunity to all the parties including a sub-tenant to put forth his case, the sub tenant is statutorily entitled to raise a defence of lack of title in the landlord in order to retain his possession of the property. We are afraid that the contention of Mr. Ganapathy is not only devoid of merit, but it is being made without reference to the specific provisions of that Act. The scheme of the Act is such that a sub-tenant has no Status or right of his own against the landlord except to the limited extent that is provided under the Act. The exception to the Rule has been provided only in those cases, where the sub-tenancy has been created with the knowledge and written consent of the landlord. In all other cases, the sub tenant has no status of his own as against the landlord except to stand in the shadow of the tenant. Therefore, it follows

that if a tenant does not choose to put forth a defence against the landlord, the sub-tenant has to be bound by the stand taken by the tenant and he cannot independently put forth any contention of his own. In the case of denial of title of the landlord, the tenant himself is conferred a limited right, provided the denial of title is of a bona fide nature. In such circumstances, instead of the landlord seeking an order of possession in his favour under the summary proceedings contemplated under the Act he has to file a suit for recovery of possession against the tenant and seek a decree for eviction. When such is the limited right of the tenant himself, it will be preposterous for a sub-tenant to say that he has an independent right to deny the title of the landlord and that such a right will be available to him even in those cases where the tenant himself does not choose to deny the title of the landlord. Therefore, it follows that the contention put forth by Mr. Ganapathy is completely in violation of the terms of the Act. The interpretation to be given to Section 26 is that where a sub-tenant is made a party to the proceedings, he can only raise a defence, which is available to him under law or in other words permissible under the Act. When he does not dispute his status as a sub tenant under the tenant, the only defence available to him is to show that the sub tenancy was not an unauthorised one, but had been created with the knowledge and written consent of the landlord. No other defence can be raised by a sub-tenant.”

9.The rights of the tenant and sub-tenant have been clearly stated in the above mentioned case law. As far as the present case is concerned, the application was filed for marking certain documents in order to prove the ownership of the property. As the Court below is entitled to deal with the dispute with regard to the tenancy, the Rent Controller is not entitled to decide the ownership of the property, filing any such application to prove the ownership of the property cannot be entertained.

10.The Court below without taking into consideration of all these aspect and even without considering the earlier stand of the Court below in I.A.No.262 of 2005 and I.A.No.173 of 2007 in the same RCOP, without application of mind has allowed the I.A.No.61 of 2018 filed by the 1st respondent to mark additional documents. The said I.A. was filed to mark documents not to prove the tenancy but to prove the ownership of the property. The tenant cannot file such application. Tenant has accepted the Revision Petitioners as owner for the purpose of payment of rent to certain point of time, when such being the position, the Court below should not have entertained this application for filing

any additional document to dispute the title. Therefore, the order passed by the Court below is suffered with infirmity and the same is liable to be set aside.

11.In view of the above, the order passed by the Court below is set aside and the Court below is directed to dispose the RCOP within a period of three months from the date of receipt of a copy of this order.

12.Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.02.2021

Index:Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

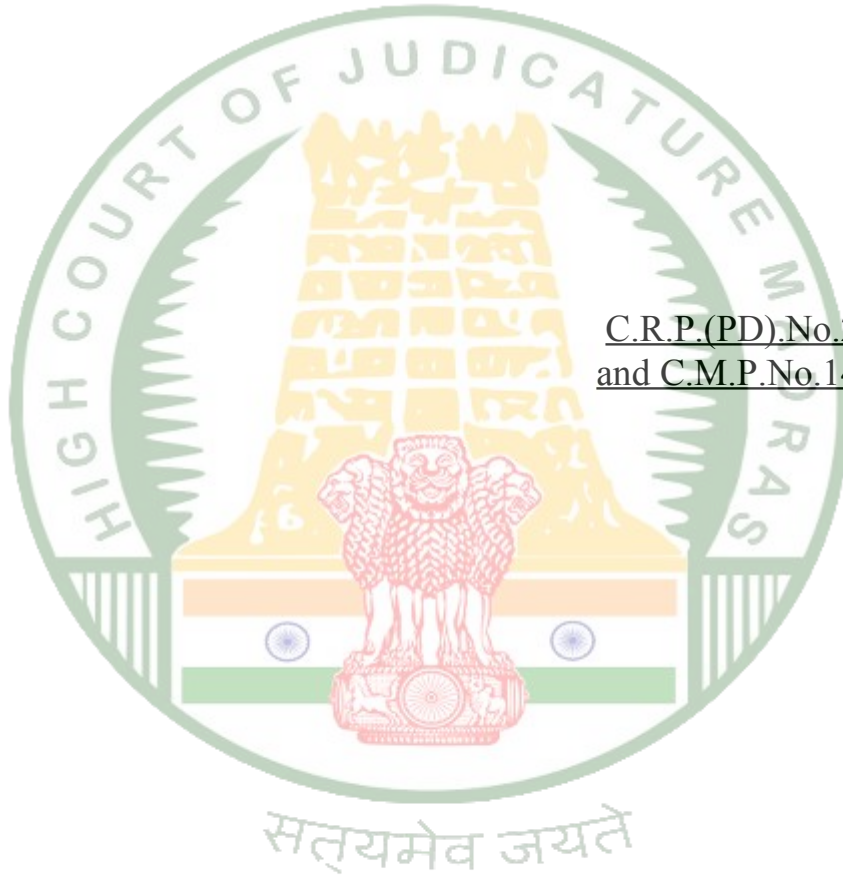
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To:

- 1.The Principal Rent Control, Coimbatore,
- 2.Principal District Munsif Court, Coimbatore.

KRISHNAN RAMASAMY,J.

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