

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.09.2021

Delivered on : 28.09.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (NPD) No. 1144 of 2021

and C.M.P. No. 8822 of 2021

P.K.Kandaswamy Sha

... Petitioner

Versus

1.R.Ramalingam

2.Shri.Motilal

... Respondents

Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings Lease and Rent Control Act 18 of 1960 as amended by Act 23 of 1973, to set aside the judgment and decree dated 02.03.2020 passed in RCA No.496 of 2017 on the file of IX Judge, Court of Small Causes, Chennai, Rent Control Appellate Authority, confirming the order and decree dated 12.06.2017 passed in R.C.O.P. No.1314 of 2012 on the file of XIV Court of Small Causes, Chennai.

For Petitioner : Mr. M.Aravind Subramanyam

For Respondent -1 : Mr. Ashok Menon

2 : No appearance

O R D E R

This Civil Revision Petition is preferred against the judgment passed in R.C.A. No.496 of 2017 by the learned IX Judge, Court of Small Causes, Chennai, confirming the fair and decreetal order dated 12.06.2017 passed in R.C.O.P. No.1314 of 2012, by the learned XIV Judge, Court of Small Causes, Chennai.

2. The first respondent is the landlord of the petition mentioned premises. It was leased out to the deceased Krishnaswamy Shaw who is the first respondent in R.C.O.P. No.1314 of 2012. R.C.O.P. No.1314 of 2012 was filed by the first respondent herein under Section 10 (2) (1) and 10 (2)(ii)(a) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the deceased Krishnaswamy Shah, Kandaswamy Shah and Motilal, for eviction. It is the case of the first respondent that the petition mentioned property was leased out to the deceased Krishnaswamy Shah for non-residential purpose. The monthly rent was Rs.627/- and the tenancy was in accordance with English Calendar month. Krishnaswamy Shah was a chronic defaulter and was in arrears of rent from January 2012 to May 2012. He sub-let the premises to second respondent Motilal without the knowledge and consent of the first respondent. The second respondent is running a business in the name and style

of “Krishna Collections”. P.K.Kandaswamy Shah, the petitioner herein is the son of Krishnaswamy Shaw. P.K.Kandaswamy Shah is receiving a monthly rent of Rs.2,500/- from the second respondent. Therefore, the petition was filed for eviction of tenants on the ground of wilful default and sub lease.

3. The case of the second respondent is that he was running a business in the name and style of “Krishna Collections” along with the deceased Krishnaswamy Shaw and P.K.Kandaswamy Shaw. The first respondent/landlord knew well that the second respondent is doing business along with the deceased Krishnaswamy Shaw and P.K.Kandaswamy Shaw and there is no sub-lease. The second respondent is not paying any rent to the petitioner / third respondent.

4. The case of the petitioner is that this petition was filed during June 2012, after knowing that Krishnaswamy Shaw was dead on 24.12.2011. Filing a petition against a dead person after knowing that the person was dead, is illegal and cannot be maintained. Krishnaswamy Shaw was a tenant under the first respondent for a long time and he was carrying on the textile business. Second respondent was also doing business in the property along with Krishnaswamy Shaw and not as a sub-tenant. There was no default, much less

wilful default, committed by Krishnaswamy Shaw. After the death of Krishnaswamy Shah, the first respondent was informed about the death and he accepted to transfer tenancy in favour of petitioner / third respondent but he avoided doing so. There is neither wilful default nor sublease.

5. During the enquiry before the Rent Controller, P.W.1 and R.W.1 were examined and Exs.P1 and P2 and Exs.R1 to R5 were marked. On considering the oral and documentary evidence, the learned Rent Controller, found that the first respondent failed to prove the case of wilful default. However, the learned Rent controller, found that the property was sublet by the deceased Krishnaswamy Shaw to the second respondent and the sublease was continued by the petitioner/third respondent and ordered eviction on the ground of sublease. The petitioner preferred an appeal in R.C.A. No.496 of 2017, against the order of eviction on the ground of sublease. The learned IX Judge, Court of Small Causes, found no reason to interfere with the view taken by the learned Rent Controller and confirmed the order of eviction on the ground of sublease. Against the said judgment, the present Civil Revision Petition is preferred.

6. Learned counsel for the petitioner submitted and filed a written argument stating that Krishnaswamy Shaw was a tenant under the first

respondent and he was carrying a textile business in the name and style of “Krishna Collections”. The business was carried out along with the second respondent, who is a family friend. He was let in to learn business. From the year 2000, he is assisting deceased Krishnaswamy Shaw in his business. He was neither in exclusive possession of the demised premises nor did he pay rent to Krishnaswamy Shaw. Krishnaswamy Shaw died on 24.12.2011 and the first respondent knew about his death. However, this R.C.O.P. was filed impleading the Krishnaswamy Shaw as the first respondent. It is an error apparent on the face of the record that eviction petition was filed against a dead person. Then his son Kandaswamy Shaw was impleaded as respondent. Kandaswamy Shaw paid arrears of rent to the first respondent. He requested the first respondent to transfer the tenancy in his favour. Though the first respondent agreed to transfer the tenancy, he did not do so. Instead, he filed an eviction petition. When there is no extension of lease agreement between the first respondent and the petitioner, it has to be considered that there is no tenancy agreement between the petitioner and the first respondent. Krishnaswamy Shaw was jointly doing business with the second respondent in the name and style of “Krishna Collections”. The petitioner will not come under the definition of tenant as he did not occupy the premises nor did he involve in the business with his deceased father. Neither the petitioner nor the second respondent fall into

the category of tenant. The petitioner has not been in business association with his deceased father nor continues to carry on the business in the said premises. Even, the second respondent has vacated the premises and not in continuance of the same. Therefore, the eviction order passed by the learned Rent Controller on the ground of sublease and the confirmation of the order by learned Rent Control Appellate Authority is contrary to facts and law. Therefore, the learned counsel for the petitioner prays for setting aside the order of learned IX Judge, Court of Small Causes, Chennai and dismissal of the eviction petition. In support of his submissions, he relied on the judgment of this Court in the case of *Sree Venkateswara Varukadalai Mills Vs. Vijayalakshmi* reported in *C.R.P. No.3514 of 1989*, wherein this Court held as follows:

“A tenant can be said to sub-let the demised premises to a third party to occupy the premises and had divested himself completely of the possession of the premises or part thereof. In other words, there must be transfer of the exclusive right to enjoy the demised premises by the tenant in favour of a third party and the said right must be in lieu of payment of some compensation or rent. If a tenant had permitted a third party to use the premises along with him while the tenant retains legal possession, it will not amount to sub-letting. There cannot be sub-letting unless the lessee parted with legal possession.

...

9. On the basis of the principles laid down in the decisions referred above, the position of law on the question of subletting may be stated as follows:

A tenant can be said to sublet the demised premises to a third party

only when the tenant had permitted the third party to occupy the premises and had divested himself completely of the possession of the premises or part thereof. In other word, there must be transfer of the exclusive right to enjoy the demised premises by the tenant in favour of a third party and the said right must be in lieu of payment of some compensation or rent.”

Learned counsel for the petitioner further relied on a judgment of this Court in the case of *Dorali Gounder Vs. Ganeshmal and four others*, reported in 1998 – 2 – L.W. 546, wherein this Court has held as hereunder:

“The burden is on the landlady to prove that the tenant has sub-let the premises. Such burden has not been discharged in this case. Merely on the basis of service of notice and summon in a particular address it cannot be said that the second respondent in the H.R.C.O.P. Has been carrying on business in the said premises. So, the findings of the authorities below in this regard cannot be sustained and the same is liable to be set aside.”

Learned counsel for the petitioner further relied on a judgment of this Court in the case of *Bentool Steel Products Private Limited Vs. O.M.A. Mohammed Omar and others*, reported in C.R.P. No.776 of 2001, wherein this Court has held as hereunder:

“In the case on hand, there is no evidence for parting with legal possession or for payment of rent by Evertaught Steels Private Ltd. To the revision petitioner for occupying the demised premises along with the revision petitioner. In view of the said position, the contention raised by the learned counsel for the respondents herein that the revision petitioner has sublet a portion of the demised premises to Evertaught Steels private Ltd. And therefore, the revision petitioner is liable to be evicted on the ground of subletting, cannot be sustained.”

7. In response, the learned counsel for the first respondent admitted that it is not correct to initiate the rent control proceedings against a dead person. However, the defect was rectified by impleading the son of deceased tenant Krishnaswamy Shaw, as third respondent in the petition. The eviction petition was filed on the ground of wilful default and sublease and the learned Rent Controller allowed the eviction petition on the ground of sublease and dismissed the petition on the ground of wilful default. The landlord has not preferred any appeal against the dismissal of the eviction petition on the ground of wilful default. It is clear from the counter filed by the petitioner and the second respondent in main R.C.O.P. that the sublease in favour of the second respondent is admitted. The evidence of the petitioner, who was examined as R.W.1 clearly proves that the property was sublet to the second respondent. The deceased Krishnaswamy Shaw did not get any consent before subleasing the premises to the second respondent. It was done without the knowledge of the first respondent. It was a secret affair between the Krishnaswamy Shaw and second respondent and now between the petitioner and the second respondent. It is difficult for the landlord to prove the sublease for the reason that lease was done in a subtle way. However, the evidence of R.W.1 clearly establishes that the presence of second respondent in the petition premises with his textile materials is nothing but as a subtenant. The second respondent has not chosen

to examine himself as witness to deny the sublease. Therefore, an adverse inference has been drawn against him. The learned Rent Controller found from the materials that sublease in favour of the second respondent was established and therefore, ordered eviction and that was rightly confirmed by the learned Rent Control Appellate Authority. Learned counsel for the first respondent prayed for confirming the order of the learned Rent Control Appellate Authority and for dismissal of this Civil Revision Petition.

8. Considered the rival submissions and perused the records. This petition was originally filed against Krishnaswamy Shaw and Motilal. It is claimed by the petitioner that eviction petition was filed against Krishnaswamy Shaw after knowing that he is dead. No doubt that if an eviction petition is filed after knowing that Krishnaswamy Shaw is dead, by including his name as respondent in the eviction petition, is wrong. However, the wrong was remedied by impleading his son Kandaswamy Shaw as third respondent. The learned Rent Controller has given a finding in this regard that the defect was rectified and it not necessary to revisit this issue again. Admittedly, the eviction petition was filed on the ground of wilful default and sublease. Eviction was ordered on the ground of sublease but denied on the ground of wilful default.

The tenant is before this Court challenging the eviction ordered by the learned

Rent Controller on the ground of sublease, later confirmed by the learned Rent Control Appellate Authority. Therefore, the limited question this Court is called upon to decide is with regard to the sublease of the premises.

9. As rightly pointed by the learned counsel for the first respondent that when a sublease is effected without the knowledge and consent of the landlord, it is always being done in a secret manner. Therefore, it is difficult for the landlord to prove the case of sublease. In the rent control petition, it is claimed that the premises was leased to deceased Krishnaswamy Shaw for non-residential purpose. It is further stated that it was sublet to the second respondent and he is running the business in the name and style of “Krishna Collections”. In the counter filed by the petitioner / third respondent, it is alleged that his father was carrying textile business in the petition property. The second respondent claims that he was running the business in the name and style of “Krishna Collections” along with the deceased Krishnaswamy Shaw and then with the petitioner Kandaswamy Shaw. The petitioner / third respondent claims that Motilal has joined his father to learn the business and he was only assisting his father. This is the pleading with regard to the presence of the second respondent in the petition premises.

10. It is interesting to note the evidence of petitioner / third respondent who was examined as R.W.1. He stated that his father was the tenant under the first respondent for more than 40 years. After completing his studies, he started helping his father in the business. Krishnaswamy Shaw and second respondent are friends. Motilal joined with Krishnaswamy Shaw to learn the business. Then Motilal started keeping his textiles in the shop and doing business from the year 2000. R.W.1 did not know as to whether his father received any money from Motilal. His father was also doing business in the same premises till his death. After his death, he is doing business there keeping his stocks. After the death of the father, he requested the first respondent to change tenancy in his name. Though the first respondent admitted and requested him to get stamp papers, he delayed entering into a lease agreement. Then he filed an eviction petition. He sent rent for the month of January 2012 to May 2012 through Demand Draft to the first respondent. He denied that the petition mentioned property was sublet to the second respondent and stated that the second respondent was only allowed to do business in a portion of the building and it will not amount to sublease. This is what he said during the course of chief examination recorded in the form of proof affidavit. During the course of cross examination, he stated that he is using the petition premises as go-down. He stocked his goods in one portion and the second respondent is stocking his

goods in another portion. He did not know the relationship between his father and the second respondent and whether the second respondent paid any rent or advance to his father. There is no connection between his business and the second respondent's business. He did not know as to whether his father received rent from the second respondent for subletting the premises.

11. Reading the evidence of R.W.1 clearly establishes the fact that the second respondent occupies the petition premises, then doing business in a portion of the premises. It is also made clear from his evidence that the petitioner was assisting his father in the business and after the death of his father, he is continuing his father's business. In fact, he requested the first respondent to enter into a tenancy agreement with him and that was not done by the first respondent.

12. Under Section 2(8) of Tamil Nadu Buildings (Lease and Rent Control) Act, “a tenant is a person by whom or on whose account rent is payable for the building and includes the surviving spouse or any son or daughter or the legal representatives of the deceased tenant; ii) in case of non-residential building had been in continuous association with the tenant for the purpose of carrying on the business of the tenant up to the death of the tenant

and continues to carry on the business, thereafter.”

13. As already said, it is clear from the evidence of R.W.1, the petitioner herein that he assisted his father in his business till his death and continued his father's business after his father's death. In terms of the aforesaid definition, the petitioner can only be considered as tenant in respect of the petition mentioned property. Therefore, the claim of the learned counsel for the petitioner that in the absence of any tenancy agreement, the petitioner cannot be construed as a tenant is liable to be rejected.

14. It is seen from written argument submitted by the learned counsel for the petitioner that it is alleged that the petitioner has not been in business association with his deceased father Krishnaswamy Shaw nor continues to carry on the business in the said premises. The second respondent has vacated the premises and is not even in continuance of the same. With regard to the first portion of the submission that the petitioner has no business association with his deceased father nor did he continued his business, it is incorrect for the reason that the own evidence of R.W.1 defy this statement. He categorically admitted that he was helping his father, before his death, in his business and continued his business after the death of his father and even now he is carrying

on the business. It is also claimed that the second respondent is also carrying on the business in the same premises. Contrary to this, the aforesaid statement made in the written argument, is incorrect.

15. It is submitted on the written argument that the petitioner is not carrying on the business and the second respondent has vacated the premises. This Court is unable to understand the necessity of filing the eviction petition and keeping it pending. The landlord could have straight away took possession of the property. Therefore, the aforesaid statement made in the written argument is incorrect.

16. As discussed earlier, sublease of the property happens between the main tenant and subtenant secretly. It is difficult for the landlord to gather evidence and produce before the Court to establish sublease. However, in the case before hand, the evidence of R.W.1, the petitioner herein, clearly proved the sublease of the portion of the premises in favour of the second respondent and he is doing business there and in complete control of that portion. It is enough to order eviction on the ground of sublease. In this view of the matter, this Court finds that the judgments relied by the learned counsel for the petitioner are not helpful to the case of the petitioner. Therefore, this Court

finds no reason to interfere with the order of the learned Rent Control Appellate Authority in confirming the order of the learned Rent Controller, in ordering eviction on the ground of sublease. Resultantly, this Civil Revision Petition is dismissed with the cost of the first respondent. Consequently, connected miscellaneous petition is closed.

28.09.2021

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Index: Yes / No

Speaking order / Non speaking order

To:

1.The IX Judge, Small Causes Court, Chennai.

2.The XVI Small Causes Court, Chennai.



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G.CHANDRASEKHARAN. J.,

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