

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.03.2021

PRONOUNCED ON : .04.2021

CORAM

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

C.R.P.(NPD)No.3587 of 2016

C.M.P.No.18482 of 2016

Durairaj

... Petitioner

Vs.

M.R.R.Sethuraman
Rep by Power Agent
Thiyagrajan

... Respondent

Prayer :- Civil Revision Petitions are filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 to set aside the judgment and decree dated 27.11.2015 passed in R.C.A.No.10 of 2015 on the file of the learned Subordinate Judge at Chidambaram, confirming the fair and final order dated 27.03.2013 passed in R.C.O.P.No.1 of 2003 on the file of the learned District Munsif-cum-Judicial Magistrate at Kattumannarkoil.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.A.Muthukumar

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order dated 27.11.2015 passed by the learned Subordinate Judge, Chidambaram, (herein after called as Rent Control Appellate Authority) in R.C.A.No.10 of 2015, confirming the order dated 27.03.2013 passed by the learned District Munsif-cum-Judicial Magistrate at Kattumannarkoil, (herein after called as Rent Controller) in R.C.O.P.No.1 of 2003, thereby ordering eviction on the ground of willful default.

2. The petitioner is the tenant and the respondent is the landlord. The respondent (herein after called as “landlord”) filed petition for eviction on the ground of willful default and owner's occupation of the petition premises. The case of the landlord is that the petition premises is belonged to him and the tenant and his brother approached the landlord to lease out the petition premises for their residential purpose. The landlord agreed for the same and fixed monthly rent at Rs.100/- per month and executed lease agreement dated 29.01.1998. The tenant agreed to pay the rent at Rs.100/- per month and also agreed to vacate the petition premises after expiry

period of the lease agreement. The tenant failed to pay the monthly rent even from the date of inception of tenancy and despite the landlord made repeated request, the tenant did not pay the rent thereby committed willful default. The tenant made the petition premises to conduct his own business as such, the landlord filed petition for eviction on the ground of willful default and owner's occupation.

3. Resisting the same, the tenant filed counter stating that there is no relationship of tenant and landlord between the petitioner and respondent herein and denied the title and ownership of the petition premise. The rental agreement dated 29.01.1998 was never executed by the tenant and also disputed the signature found in the lease agreement dated 29.01.1998. The landlord is having several residential and non-residential properties in and around Kattumanarkoil and Chidambaram and therefore, requirement of landlord is not bonafide one. Further stated that the petition premises is in the government poramboke land and for the past 60 years, the tenant and his predecessors are in possession and enjoyment of the petition premises. In fact, the tenant's father encroached the land in which the petition

premises is situated and constructed the thatched house and stayed there. The land is classified as government poromboke and therefore, the tenant need not pay any rent to the petition premises. In fact, they also applied for patta from the government for the petition premises and prayed for the dismissal of the petition.

4. On the side of the landlord, he examined P.W.1 & P.W.2 and marked Ex.P.1 to Ex.P.5. On the side of the tenant he examined R.W.1 to R.W.3 and marked Ex.R.1 to Ex.R.5. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the learned Rent Controller dismissed the petition for eviction on the ground of owner's occupation and allowed the petition for eviction on the ground of willful default. Aggrieved by the same, the tenant preferred an appeal before the learned Rent Control Appellate Authority and the Appellate Authority also confirmed the order of eviction on the ground of willful default. Aggrieved by the same, the present Civil Revision Petition.

5. The learned counsel appearing for the tenant submitted that the scope and ambit of the Tamilnadu Building (Lease and Rent Control) Act and the same has not been applied to the town panchayat as such, the petition itself is not maintainable and liable to be dismissed. The specific case of the tenant is that there is no landlord-tenant relationship, since the tenant's father encroached the property which classified as government poromboke and put up the thatched house. Therefore, there is no landlord-tenant relationship and the tenant need not to pay any rent to the petition premises.

5.1. He further submitted that the landlord also failed to prove his ownership in respect of the petition premises. The alleged rental agreement dated 29.01.1998 was never executed by the tenant and also disputed the signature found in the rental agreement. The Court below failed to consider the documents marked by the tenant such as voters list for the year 1996, bank passbook, family card, electricity bill receipts and the representation sent to the Collector. In fact, even prior to the rental agreement, the voters list of the year 1996 is marked by the tenant to prove his possession and enjoyment of the petition premises.

5.2. He further submitted that the landlord is represented by his power of attorney and he has no locus to depose on behalf of his principal that too in the rent control proceedings. He had no knowledge about the rental agreement and collection of rent. Therefore, he is not a competent person to depose on behalf of his principal. Admittedly, P.W.1 is the power of attorney of the principal viz., M.R.R.Sethuraman. Therefore, he could not depose on behalf of his principal, when he did not have any knowledge about the petition premises. The landlord himself categorically admitted that he owned several properties in and around Kattumanarkovil and Chidambaram and as such, both Courts below rightly dismissed the petition for eviction on the ground of owner's occupation.

5.3. He further submitted that when the tenant categorically questioned about the denial of title, the learned Rent Controller has no jurisdiction to decide the eviction petition, without deciding the relationship of landlord-tenant. The specific case of the tenant is that the landlord is not the owner of the petition premises and he did not produce any of the document to show that he is an absolute owner of the petition premises. It is

a government poromboke land which is occupied by his father long back and he constructed the house. In fact, Ex.R.1 to Ex.R5 were marked to show his possession for the long period. The tenant also filed suit in O.S.No.20 of 2016 on the file of the District Munsif Court, Kattumannarkoil, in respect of the very same property for permanent injunction. In the said suit, the landlord is the first defendant and he also filed his written statement. On perusal of the written statement nothing whispered about the ownership of the petition premises except the proceedings initiated under Tamilnadu Building (Lease and Rent Control) Act.

5.4. The learned counsel appearing for the tenant further submitted that Ex.P.1 is not a valid one, since the petitioner alone signed in the alleged rental agreement and either the respondent or his power of attorney did not sign the same. Therefore, it would not amount to any agreement and it is not a valid in the eye of law. The landlord is being a powerful person and he owns large extent of properties in and around Kattumannarkoil and Chidambaram, he is fighting for the property ad measuring one cent that too for poromboke land. The tenant is being very poor person, he could not be

able to send reply for the notice issued by the landlord, though he approached legal service authority to engage counsel on behalf of him. In support of his contention he relied upon the following reported judgments:-

- i) 2005 2 SCC 217 - Janki Vashdeo Bhojwani and anr Vs. Indusing Bank Ltd., and ors***
- ii) 2010 10 SCC 512 - Man Kaur (dead) by LRs., Vs. Hartar Singh Sangha***
- iii) 2021(2) CTC 104 - Iqbal Basith and ors Vs. N.Subbalakshmi and ors.***

6. Per contra, the learned counsel appearing for the landlord submitted that the landlord filed petition for eviction on the ground of willful default and owner's occupation. The rental agreement dated 29.01.1998 duly executed by the tenant and P.W.1 was also very much present at the time of execution of Ex.P.1. It is evident from the deposition of P.W.2 and he categorically deposed about the presence of P.W.1 at the time of execution of Ex.P.1. P.W.2 is one of the witnesses to the said document. P.W.1 & P.W.2 categorically deposed that the tenant executed the rental agreement and there is no rebuttal evidence produced by the

tenant to dispute the rental agreement dated 29.01.1998. Admittedly, the tenant did not pay single paisa as rent even from the date of inception of tenancy. In spite of repeated demand made by the landlord, the tenant evaded to pay the arrears of rent and has committed willful default.

6.1. The power of attorney is also very much present at the time of execution of Ex.P.1, he is the competent person to depose on behalf of the principal. It is also corroborated by P.W.2, who is none other than one of the witnesses to the rental agreement dated 29.01.1998. When the landlord categorically proved the rental agreement dated 29.01.1998, the relationship of landlord-tenant also proved. Though the tenant disputed the signature found in the rental agreement dated 29.01.1998, the tenant did not take any steps to get expert's opinion from the hand writing experts by comparing the rental agreement with the admitted signature.

6.2. Though P.W.1 did not sign in the Ex.P.1, he is very much present while executing the rental agreement by the tenant and it is also categorically deposed by P.W.2 who is one of the witnesses to the said

document. Therefore, P.W.1 has knowledge about the execution of the Ex.P.1 and he is being the power of attorney of his principal, he is eligible to depose on behalf of his principal. He further submitted that the suit filed by the tenant in O.S.No.20 of 2016 only for permanent injunction and if the tenant wants to prove the title over the petition premises, he ought to have filed suit for declaration instead of permanent injunction. Admittedly he had no title over the petition premises and when the landlord proved the jural relationship of landlord and tenant, the question of title does not arise. In support of his contention, he relied upon the judgment reported in **1996 (2) LW 315** in the case of **N.A.S. Ansari Vs. M. Sarangan.**

7. Heard Mr.Sankarasubbu, learned counsel appearing for the petitioner/tenant and Mr.A.Muthukumar, learned counsel appearing for the respondent/landlord.

8. The landlord filed petition for eviction on the ground of willful default and owner's occupation in respect of the petition premises. It was leased out for residential purpose by the rental agreement dated 29.01.1998

and the tenant executed the said rental agreement. The landlord represented by his power of attorney and the power of attorney also very much present at the time of execution of Ex.P.1. It is evident from the deposition of P.W.2 and he categorically deposed about the presence of P.W.1 at the time of execution of Ex.P.1.

9. Admittedly, the tenant did not pay any rent to the landlord even from the very inception of tenancy viz., from 29.01.1998. One Kabaleeswaran is also one of the witnesses to the rental agreement and he was examined as P.W.2. On perusal of the deposition of P.W.1 and P.W.2, it proved that the tenant executed the rental agreement dated 29.01.1998. Though the tenant disputed the rental agreement, he failed to adduce any cogent and acceptable oral or documentary evidence to rebut the Ex.P.1, except bald allegations.

10. In fact, the tenant filed counter and denied his signature in the Ex.P.1 even before marking the same during the trial. The landlord also issued notice and the same was duly received by the tenant and no reply was

sent to rebut the rental agreement. The tenant also failed to disprove his signature found in the Ex.P.1 by getting hand writing expert's opinion by filing necessary application to disprove his signature. In fact, in his cross-examination, he denied his own admitted signature in the vakalath and counter filed in the rent control original proceedings.

11. The learned counsel appearing for the tenant relied upon the judgment reported in **2005 (2) SCC 217** in the case of **Janki Vashdeo Bhojwani and anr Vs. Indusing Bank Ltd., and ors** as follows :-

"13. Order III, Rules 1 and 2 CPC, empowers the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for

the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

.....
18. *The aforesaid judgment was quoted with the approval in the case of Ram Prasad v. Hari Narain and Ors. It was held that the word "acts" used in Rule 2 of Order III of the CPC does not include the act of power of attorney holder to appear as a witness on behalf of a party. Power of attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but he cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the court, a commission for recording his evidence may be issued under the relevant provisions of the CPC."*

In the case on hand, P.W.1 was very much present at the time of execution of Ex.P.1 and it is also evident from the deposition of P.W.2. Therefore, he

had knowledge about the execution of Ex.P.1 and he only looking after the entire business of his principal and as such he very much acquaintance with the petition premises. Therefore, the above judgment cited by the learned counsel appearing for the petitioner is not helpful to the case on hand.

12. The learned counsel appearing for the tenant also relied upon the judgment reported in **2010 (10) SCC 512** in the case of ***Man Kaur (dead) by LRs., Vs. Hartar Singh Sangha***, in which our Hon'ble Supreme Court of India held as follows :-

"18. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he

may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been

conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney

even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

The Hon'ble Supreme Court of India held that if the attorney-holder has done any act or handled any transactions in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney-holder alone has personal knowledge of such acts and transactions and not the principal, the attorney-holder shall be examined, if those acts and transaction have to be proved. In the case on hand as stated supra P.W.1 is being the power of attorney of the principal he was very much present at the time of execution of Ex.P.1. He also acquainted with the petition premises in respect of leasing out the same in favour of the tenant/petitioner herein. Therefore, he can very well depose on behalf of his principal.

13. He relied upon the yet another judgment reported in **2021(2) CTC 104** in the case of **Iqbal Basith and ors Vs. N.Subbalakshmi and ors.**, which held as follows :-

"9. The present suit was instituted by the Appellants in 1974 seeking permanent injunction as the Respondents attempted to encroach on their property. The suit Schedule property was described as No. 44/6. The Respondents in their written statement claimed ownership and possession of property No. 42, acknowledging that other properties lay in between. A feeble vague objection was raised, but not pursued, questioning the title of the Appellants. The Respondents raised no genuine objection to the validity or genuineness of the government documents and the registered sale deeds produced by the Appellants in support of their lawful possession of the suit property. The original Defendant No. 1 did not appear in person to depose, and be cross-examined in the suit. His younger brother deposed on the basis of a power of attorney, acknowledging that the latter had separated from his elder brother. No explanation was furnished

why the original Defendant did not appear in person to depose. We find no reason not to draw an adverse inference against Defendant No. 1 in the circumstances."

In the case on hand, the power of attorney is very much present at the time of execution of Ex.P.1. It is evident from the deposition of P.W.2 and he categorically deposed about the present of P.W.1 at the time of execution of Ex.P.1. Therefore, the rental agreement itself executed in favour of the principal represented by his power of attorney and it is categorically corroborated by P.W.2, who is also one of the witnesses to the rental agreement dated 29.01.1998. Therefore, he is competent to depose on behalf of his principal in respect of the petition premises and also rental agreement dated 29.01.1998 as such, the above judgments cited by the learned counsel appearing for the petitioner are not helpful to the case of the tenant.

14. The learned counsel appearing for the landlord replied upon the judgment reported in **1996 2 LW 315** in the case of **N.A.S. Ansari Vs. M. Sarangan**, in which this Court held as follows :-

"16. The Appellate Authority has also taken note of the misdescription of the building. It is seen that in one of the documents executed by the revision petitioner in favour of his sister, the building has been defined as a thatched roof. But, admittedly, the scheduled building is having a tiled roof. The Appellate Authority took into account that inconsistency to hold against the landlord, saying-that if the landlord was sure about the building, the misdescription would not have occurred in the document. The said approach is also absurd. If the Appellate Authority had fully taken into consideration the objections raised by the tenant, he would not have taken into account this aspect of misdescription of property. The tenant has no case that there is any misdescription. The parties are at issue regarding a particular building, regarding the identity of which there is no dispute. In that view, I do not think the finding of the Appellate Authority can be supported by any reason. Once it is held that a landlord and tenant relationship is created under Ex. A-7, the principle of estoppel under Section 116 of the Evidence Act applies and consequently,

the respondent is barred from disputing the title of the revision petitioner.

.....

20. In *S.P. Chengalvaraya Naidu v. Jagannath* : AIR 1994 SC 853 , their Lordships have held that if a party has committed fraud, he is not entitled to any relief, and that 'fraud' can also be by withholding production of a vital document I do not think that decision has any relevancy to the facts of this case. So far as this case is concerned, the revision petitioner has come to court on the allegation that the respondent herein is a tenant. He has also filed the relevant documents before court. The only question that has to be considered in this case is, what is the relationship between the parties. The question of title is completely alien to this proceeding, especially when it is a summary proceeding under the Rent Control Act. In the decision reported in AIR 1994 SC 853, their Lordships held that a decree was obtained by the plaintiff in that case without production of a document whereby he got title to the property. I have already said that for deciding the question whether there is landlord and tenant relationship

under the Act between the parties, title need not be considered. I am, therefore, of the view that the said decision has no application to the facts of this case."

This Court held that once the jural relationship established between the petitioner and the respondent, the question of title with regard to the petition premises does not arise. In the case on hand, though the petitioner denied the title of the petition premises, he failed to prove the same by adducing oral or material evidence.

15. It is also seen that both the Courts below rightly dismissed the eviction petition on the ground of owner's occupation, since the landlord himself categorically admitted that he is having several residential as well as non-residential properties in and around Kattumannarkoil and Chidambaram. Therefore, the landlord failed to prove his bonafide requirement.

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16. In view of the above discussions, both the Courts below rightly allowed the petition for eviction on the ground of willful default and this Court finds no illegality or infirmity in the orders passed by the Courts below. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

.04.2021

Internet : Yes

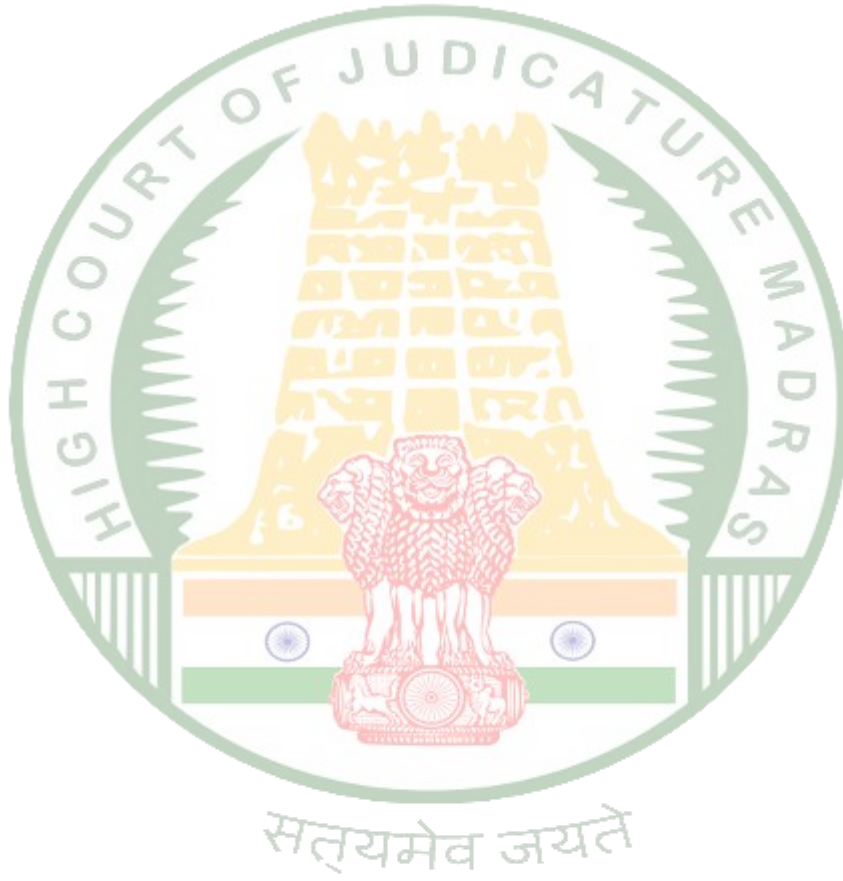
Index : Yes/No

Speaking order/Non-speaking order

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To

1. The Subordinate Judge
Chidambaram.
2. The District Munsif-cum-
Judicial Magistrate,
Kattumannarkoil.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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Pre delivery order in
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