

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.11.2020
PRONOUNCED ON : 19.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP(PD).Nos.1998 & 2000 of 2020
and
CMP.Nos.12404 & 12409 of 2020

Rajeswari

...Petitioner/Plaintiff
in both petitions

.. Vs ..

1.A.Balakrishnan
2.Abinanth

...Respondents/Defendants
in both petitions

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India to set aside the orders dated 05.09.2020 made in C.M.A.Nos.15 & 14 of 2020, on the file of the learned IV Additional District & Sessions Judge, Coimbatore, reversing the orders dated 04.07.2020, made in I.A.Nos.01 & 02 of 2020, in O.S.No. 185 of 2020, on the file of the learned Subordinate Judge, Pollachi.

For Petitioner
in both petitions : Ms.R.Shase
for Mr.M.Guruprasad

For Caveator
in both petitions : Mr.P.M.Duraisamy

COMMON ORDER

(The cases have been heard through video conference)

These Civil Revision Petitions have been filed to set aside the orders dated 05.09.2020 made in C.M.A.Nos.15 & 14 of 2020, on the file of the learned IV Additional District & Sessions Judge, Coimbatore, reversing the orders dated 04.07.2020, made in I.A.Nos.01 & 02 of 2020, in O.S.No. 185 of 2020, on the file of the learned Subordinate Judge, Pollachi.

2.The petitioner and the respondents in both the cases are one and the same persons. Hence, both the cases are heard together and disposed of by a common order.

3.The plaintiff in the suit in O.S.No.185 of 2020, is the revision petitioner herein.

4.These revision petitions have been filed by the plaintiff, who has filed above said suit in O.S.No. 185 of 2020 before the learned Sub-Judge, Pollachi, for claiming compensation and for permanent injunction on the ground that the plaintiff is a tenant and she was running a bakery cum Tea shop in the name and style of "Vishnukumar Bakery" shop with the help of her relatives and the

defendants were trying to vacate the premises forcibly.

5(a).The revision petitioner/plaintiff has also filed two applications viz., I.A.Nos. 1 & 2 of 2020, before the learned Subordinate Judge, Pollachi, along with the said suit, seeking the relief of ad interim injunctions restraining the respondents/defendants from interfering with peaceful possession and enjoyment of the suit property and also enjoyment against the respondents from interfering with her renovation work till pending disposal of the suit.

5(b).The learned Sub-Judge, Pollachi, has granted ad-interim injunction and ordered notice to the respondents.

5(c).As aggrieved against the said order passed in the interlocutory application, the landlord/1st defendant viz., A.Balakrishnan, has preferred an application in CMA.No.14 of 2020 before the learned IV Additional District and Sessions Judge, Coimbatore and the same was allowed. Hence, CRP.Nos.1998 & 2000 of 2020.

6.Heard the learned counsel appearing for the petitioner and Mr.P.M.Duarisamy, learned counsel for the caveator and perused the materials placed on record.

7.After hearing both the parties and also perusing the documents filed before the Trial Court and the typed set of papers, it is seen that

(i)the petitioner/plaintiff has filed a suit for relief of declaration and for permanent injunction. The suit property was originally belong to one Shanmugavelayutham, he is the father in law of the first respondent herein and the petitioner has become the tenant in the suit property on 01.10.1997 under the said Shanmugavelayutham and the petitioner is running a Bakery cum Tea shop in the name and style of Vishnukumar Bakery with her family members i.e, her husband's brother viz., Ravi and Girikumar. The tenancy is an oral one.

(ii)The revision petitioner/plaintiff has paid an advance amount of Rs.5,00,000/- to the said Shanmugavelayutham and the monthly rent was fixed at Rs.2,000/- and the present rent for the suit property is Rs.5,000/- per month and it should be paid within the 5th day of next English Calender month. The said

Shanmugavelayutham had not given any receipt for the advance amount paid by the petitioner and he had also not given any receipt for the monthly rent.

(iii)The revision petitioner/plaintiff has obtained license from the Local Municipality. The said Shanmugavelayutham died during the month of September 2005 and thereafter, his son viz., Karthikeyan used to receive the rent for the suit property and he also did not give any receipt for the rent.

(iv)The revision petitioner/petitioner had spent more than Rs.2,00,000/- in the suit property to make it fit for good business. After six months of the demise of the said Shanmugavelayutham, the first respondent had issued the legal notice to the brother of the petitioner's husband viz., Ravi and has claimed that the suit properties belongs to him by way of sale deed executed by late Shanmugavelayutham's wife viz., Krishnaveni and also claimed exorbitant rent of Rs.10,000/- per month.

(v)Therefore, the said Ravi has filed a petition before the Rent Controller cum District Munsif of Pollachi in RCOP.No.5 of 2006 and the rent amounts were deposited with the rent controller. Thereafter, the first respondent has filed RCOP.No.12 of 2007 for arrears of rent and thereafter, they have mutually compromised and

accordingly the rent was raised to Rs.5,000/- per month and both petitions were dismissed.

(vi)Further, when the revision petitioner has rendered the rent for the month of March 2019, the first respondent had refused to receive the rent and informed her to vacate the suit property.

(vii)Subsequently, on 03.04.2019, the first respondent accompanied with the second respondent and made holes on the wall and roof of the suit building and pumped water from their adjoining property and thereby, roof of the premises fell down and the fans were also got damages and the public ran over from the shop with fear.

(viii)Therefore, the revision petitioner had filed the suit in O.S.No.113 of 2019 before the District Munsif Court, Pollachi for relief of permanent injunction as against the respondents and the respondents have filed their written statement. The revision petitioner has also filed an application in I.A.No.3 of 2019 in O.S.No.113 of 2019 for appointment of Advocate Commissioner and the same was allowed and the Advocate Commissioner was appointed and he has filed his report.

8.In short, the revision petitioner/plaintiff claiming that she is

the statutory tenant and she is in possession and enjoyment of the suit property and due to heavy rain in Coimbatore, the super structure was collapsed and consequently, she put up the renovation work and hence, claimed the compensation and also injunction against the respondents herein from interfering with the renovation of the super structure and also the possession.

9(a).According to the landlord, the petitioner/plaintiff is not a tenant. The building in question was originally owned by the father-in-law of the first respondent herein viz., Shanmugavelayutham, by virtue of law on succession, on his death, the present respondents became the owners of the property.

9(b).Further, it is stated that the revision petitioner's brother-in-law viz., Ravikumar was tenant of a portion of the first respondent's building in SF.No.400 sq.ft with Door Nos.143 & 143-A, in the ground floor of the said building, which is about 90 years old and the same was collapsed due to rain and heavy wind on 28.05.2020. Further, the Hon'ble Supreme Court has held in many cases that the tenancy gets extinguished once the premises under the tenancy were collapsed. So, the revision petitioner/plaintiff has

no locus standi to file the suit in O.S.No. 185 of 2020 for the relief of permanent injunction against the first respondent herein for renovation of superstructure until the revision petitioner/plaintiff evicted from the premises. The law is very clear that only the landlord with the permission of the local authority is entitled to do any repair/ renovation/ reconstruction works in the collapsed premises and not the erstwhile tenant.

10.The learned counsel appearing for the caveator would contend that there was no cause of action for the revision petitioner to seek the relief of either permanent injunction against the first respondent herein for renovation of superstructure until she is evicted from the premises or permanent injunction restraining the respondents herein from interfering with possession and enjoyment of the superstructure that would be established after collapse of the building which was under tenancy. Further, the revision petitioner is neither the owner of the land nor the debris lying over there and though she has no right to clear the debris and so also cannot put up the superstructure on the collapsed building premises belonged to the first respondent.

11.Admittedly, the complaint given by the revision petitioner/plaintiff against the defendant in Crime No. 1162 of 2020 appears to have been quashed by this Court in Crl.O.P.No.8662 of 2020, dated 28.09.2020.

12.The learned counsel for the revision petitioner/plaintiff would contend that CMA filed by the landlord before the learned IV Additional District & Sessions Judge, Coimbatore, is not maintainable, whether Civil Miscellaneous Appeal is maintainable against the ex-parte order of injunction, is no longer *res integra* and in the decision reported in **AIR 2000 SC 3032 – [A.Venkatasubbiah Naidu Vs.S.Chellan]**, it is held as follows:

"An ex-parte order is appealable and the choice is for the party to file appeal or to moves application before the Court granting exparte injunction for vacation of the order."

Hence, the lower Appellate Court has rightly upheld that the CMA is maintainable and the same does not warrant interference from this Court.

13.Next point that was urged by the learned counsel for the revision petitioner/plaintiff is that after the building was collapsed

due to the act of the landlord, as a statutory tenant, the petitioner is entitle to renovate the building.

14.Before the Lower Appellate Court Exs.A1 to A14 were marked on behalf of the revision petitioner and Exs.B1 to B23 were marked on behalf of the respondents herein.

15.The suit in O.S.No.113 of 2019 filed by the revision petitioner/plaintiff against the very same landlord, is marked as Ex.B5 and copy of the written statement filed by the landlord was marked as Ex.B7. On a perusal of the averments made in the said written statement/Ex.B7, the landlord has categorically stated at paragraph No.9 that one Mr.Ravi is a tenant in the suit property and the revision petitioner/plaintiff is not a tenant as alleged by her and also assumes significance. The revision petitioner/plaintiff's brother-in-law viz., Ravi Kumar is the tenant of a portion of the first respondent's building, Door Nos.143 & 143-A, in the ground floor and hence, *prima facie*, it appears that the revision petitioner/plaintiff is not a tenant under the respondents/landlord.

16.It is also remains to be stated that in the above said suit in

O.S.No.113 of 2019, Ex.B6/ Advocate Commissioner's report was filed and from the report, it is to be noted that the Advocate Commissioner had visited the property on 09.04.2019 at 05.00 p.m.

17.Thus, this Court finds that Ex.B6 filed in O.S.No 113 of 2019 coupled with Ex.B10, goes to show that the tenant building is totally collapsed. On the contrary, the building which was shown in Ex.B6/Advocate Commissioner's Report with Photographs, is not at all available in Ex.B10/photographs showing collapse of the building, which is taken on 30.05.2020. In other words, on a comparative study of Exs.B6, B10, which is show state - on - ground as on 09.01.2019 and 30.05.2020, Ex.B10/photographs which shows that the entire building was collapsed and there was no such building, which was seen in Ex.B6/Advocate Commissioner's report, thus the lower Court has rightly come to the conclusion that the present building as shown in Ex.B18/photographs, there is no permanent structure and the same is created after collapse of the building due to heavy rain.

18.Thus, on a competitive analysis of Ex.B6/Advocate Commissioner's Report, dated 09.04.2019, Ex.B10/Photographs

dated 30.05.2020 and Ex.B18/Photographs dated 13.07.2020, the Lower Appellate Court has come to the right conclusion that what was now standing is temporary shed and which was constructed after collapse of the building and accordingly, the Lower Appellate Court has rightly rejected the order of injunction on the ground that when the tenancy is itself in doubt, there is no *prima facie* case on behalf of the revision petitioners/plaintiff. Furthermore, whether the superstructure is collapsed due to the heavy rain or by the act of the first respondent/landlord can be gone into only in the trial wherein, the revision petitioner/plaintiff has asked for compensation.

19.Furthermore, the Trial Court has granted ad-interim injunction in the nature of ad-interim mandatory injunction, which is held to be against the established procedures by the Hon'ble Supreme Court in the decision reported in **2020 (1) MWN 114 – Samir Narain Bhojwani Vs. Aurora Properties and Investments and another**, wherein, Hon'ble Supreme Court has held as follows:

"Generally stated these guidelines are :

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie

case that is normally required for a prohibitory injunction.

(2)It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3)The balance of Convenience is in favour of the one seeking such relief."

On facts as discussed, the factors of tenancy alleged is itself under cloud. Hence, the petitioner has not made out a strong case in her favour, much less, *prima facie* case in her favour.

20.Next point which was urged by the learned counsel for the petitioner is that the revision petitioner being the plaintiff is in possession of the property, is entitle to make renovation. Admittedly, the respondents are the landlord. Whether the plaintiff is the tenant or one Mr.Ravi Kumar is the tenant is the matter for adjudication in the main Trial. Without the knowledge of the landlord, the revision petitioner/plaintiff cannot renovate the building. Based upon the comparative study of the Advocate Commissioner's Report, as discussed supra, there is no permanent structure after collapse of the building due to heavy rain. Though, it is contended by the revision petitioner that it is only due to the act

of the landlord building has collapsed, the same is matter for Trial.

21(a).As of now there is no building or permanent structure in the suit property, which has been rented to one Ravi Kumar according to the landlord and hence, the revision petitioner/plaintiff is not entitle to get relief of renovating superstructure of the suit property and under the guise of the tenancy, she can not get any permission from Municipal Authority or landlord and hence, renovation has to be done with the concurrence of the landlord or with the Municipal Authority.

21(b).Thus, this Court finds that the subject matter of the superstructure is already been collapsed and what was collapsed is also removed and debris also removed by the revision petitioner/plaintiff. The present structure in the site is only temporary structure, it appears to be put up by the revision petitioner/plaintiff without consent or permission of owner.

22.After the Advocate Commissioner's report, as could be seen from the discussions in the preceding paragraphs, the lower appellate Court has rightly held that there cannot be an injunction

against the landlord for allowing the alleged tenant to carry out renovation work and hence all the three points urged by the petitioner's counsel stands rejected on the above factual grounds.

23.Thus, this Court finds that there is no reason to interfere with the whole considered order passed by the learned Lower Appellate Judge, accordingly, the CRP is rejected.

24.In this view of the above, both the CRP's are dismissed and the orders dated 05.09.2020 made in C.M.A.Nos.15 & 14 of 2020, on the file of the learned IV Additional District & Sessions Judge, Coimbatore, reversing the orders dated 04.07.2020, made in I.A.Nos.01 & 02 of 2020, in O.S.No. 185 of 2020, on the file of the learned Subordinate Judge, Pollachi, stands confirmed. Consequently, connected Miscellaneous Petitions are also closed. No costs.

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19.01.2021

Index : Yes
Internet : Yes
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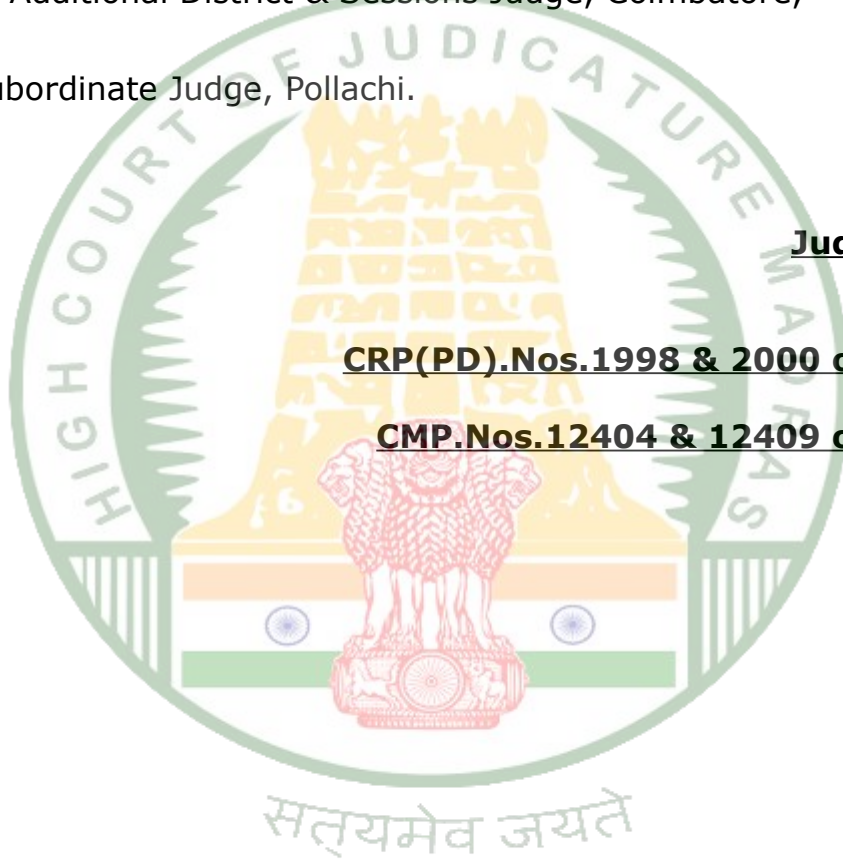
RMT.TEEKAA RAMAN. J.

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To

1.The IV Additional District & Sessions Judge, Coimbatore,

2.The Subordinate Judge, Pollachi.



Judgment

in

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and

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