



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP No.2771 of 2021 and
CMP.No.20169 of 2021

1.Bagayam Nehrumathi
2.Prasanth

... Petitioners/Tenants

Vs

Dhanabagayam

... Respondent/Landlord

Prayer: Civil Revision Petition filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the order dated 19.03.2021 made in RCA.No.1 of 2018 on the file of the Principal Subordinate Judge, Erode confirming the fair and decretal order dated 16.08.2016 passed in RCOP.No.18 of 2014 on the file of Rent Controller (I Additional District Munsif), Erode.

For Petitioners : Mr.T.Saravanan, for
Mr.Soundar vijay Arulram

O R D E R

The tenant is the petitioner. Eviction was sought for on the ground of wilful default. The petitioner is the step daughter of the landlord. The father of the petitioner, a man with some vision had settled the property on his second wife for life probably because he had some intuition that the petitioner will not support his second wife. Unfortunately, the petitioner entered as a tenant of the very same property and the father's intuition became truth. The petitioner defaulted in payment of rent. When her step mother sued for eviction, the petitioner has set up a usufructuary mortgage claiming that she has paid Rs.5,00,000/- to the step mother and she has been permitted to be in possession till such time the said Rs.5,00,000/- is returned. It was also claimed that the said transaction is evidenced by a mortgage deed. The said written instrument was not produced. Thus, it could be seen that the defence was absence of landlord and tenant relationship. However, in her cross examination, the petitioner admitted that the monthly rent for the house occupied by her is Rs.1,300/- and that she has not



been paying the rent from April 2013, she had also admitted that she has paid the rent upto March 2013.

2. In the light of this evidence, the learned Rent Controller came to the conclusion that the tenant/petitioner herein has committed wilful default in payment of rent. This is a case where the initiation of eviction proceedings were preceded by issuance of notice. Despite the issuance of notice, the petitioner did not pay the rent. Therefore, there is a presumption of default. Aggrieved by the order of eviction, the tenant preferred an appeal in RCA.No.1 of 2018. The said appeal came to be dismissed by the learned Appellate Authority for the same reasons as found by the Rent Controller.

3. I have heard Mr.T.Saravanan, learned counsel appearing for the petitioners.

4. Mr.Saravanan would vehemently contend that in the absence of the landlord and tenant relationship, the authorities under the Tamil Nadu Buildings (Lease and Rent Control) Act grievously erred in coming to the conclusion that the petitioner has committed wilful default in payment of rent. The fact that there is no written document of the lease is sought to be projected as a factor to fault the conclusion of the authorities regarding existence of the lease. Under the Tamil Nadu Buildings (Lease and Rent Control) Act, a lease can be oral, there is no absolute necessity for execution of written instrument of lease. If there is evidence of payment of rent, a tenancy comes into existence and such a tenant being a statutory tenant would also be entitled to protection afforded under the various provisions of the said enactment.

5. The evidence of RW1 viz., the tenant, as noticed by the Controller would clearly show that she has been a tenant, she has been paying monthly rents and she stopped paying rent from April 2013. The claim that there is a mortgage is not supported by any document. The controller has also found that the so called instrument evidencing usufructuary mortgage is an unstamped and unregistered instrument. Therefore, the same cannot be looked into for any purpose. In the absence of any proof of the mortgage and in the light of the specific admission by the tenant, I do not think that the authorities could be faulted for ordering eviction on the ground of wilful default. I do not see any reason to entertain the revision, the revision fails and it is accordingly dismissed.

6. Considering the fact that the petitioner is occupying the premises for residential purposes, The tenant is granted time till 31.12.2022 to vacate and hand over possession, subject to the condition that the tenant files an affidavit before this



Court agreeing to vacate by 31.12.2022. Such affidavit shall be filed by 23.12.2021. If the affidavit is not filed by 23.12.2021, it is open to the landlord to execute the orders for eviction as if no time has been granted by this Court. It is made clear that the petitioner shall pay the monthly rent regularly, till such time she vacates the premises. If the monthly rent is not paid for a period of two months, the landlord will be entitled to execute the order for eviction dehorse time granted. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To:

1. The Rent Controller,
(I Additional District Munsif), Erode.
2. The Principal Subordinate Judge,
Erode.

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CT/27/12/2021