

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3312 of 2017

Syed Kaleem

... Petitioner

Vs.

1.A.Rabbani Khan

2.A.Gulab Khan

... Respondents

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the judgment and decree dated 01.02.2017 made in R.C.A.No.337 of 2014 on the file of IX Small Causes Court, Chennai, reversing the fair and decretal order dated 17.01.2014 made in R.C.O.P.No.2581 of 2012 on the file of XII Small Causes Court, City Civil Court Buildings, Chennai.

For Petitioner : Mr.K.H.Ravikumar

For Respondents : Ms.H.Yasmeen Ali

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”.)

Civil Revision Petition is filed against the judgment and decree dated 01.02.2017 made in R.C.A.No.337 of 2014 on the file of IX Small Causes Court, Chennai, reversing the fair and decretal order dated 17.01.2014 made in R.C.O.P.No.2581 of 2012 on the file of XII Small Causes Court, Chennai.

2.The petitioner is landlord and respondents are tenants. The petitioner has filed R.C.O.P.No.2581 of 2012 against the respondents for eviction from the petition premises on the grounds of wilful default, nuisance and denial of title. The respondents filed counter statement and stated that they have not committed any wilful default, they are paying the rent regularly, they are not creating any nuisance to the petitioner and there is no dispute with regard to title of the property. The respondents have also stated that they are not disputing title, but stated that they do

not know who is the owner of the petition premises, the petitioner is collecting rent and he never issued any rental receipt for the acknowledgment of the rent.

3.Before the learned Rent Controller, the petitioner examined himself as P.W.1 and marked 8 documents as Exs.P1 to P8. The 2nd respondent examined himself as R.W.1 and filed and marked a memo as Ex.R1.

4.The learned Rent Controller considering the pleadings, oral and documentary evidence, held that the petitioner has not proved wilful default committed and nuisance caused by the respondents and ordered eviction on the ground of denial of title of petitioner by the respondents.

5.The respondents filed R.C.A.No.337 of 2014 against the said fair and decretal order dated 17.01.2014 made in R.C.O.P.No.2581 of 2012. The learned Appellate Authority considering the oral and documentary

evidence, the order of the learned Rent Controller and grounds of appeal filed by the respondents, held that the respondents have not denied the title of the petitioner, they are paying rent regularly to the petitioner and there is no arrears of rent. The learned Appellate Authority further held that wilful default and denial of title is mixed question of law and fact and once rent is paid regularly without any default, there is no denial of title. On these grounds, the learned Appellate Authority allowed the appeal and set aside the order passed by the learned Rent Controller in R.C.O.P.

6. Against the said judgment and decree dated 01.02.2017 made in R.C.A.No.337 of 2014 on the file of IX Small Causes Court, Chennai, the petitioner has come out with the present Civil Revision Petition.

7. The learned counsel appearing for the petitioner contended that the learned Appellate Authority ought not to have held that the respondents have not denied the title of the petitioner. The learned

Appellate Authority failed to see that in the counter statement filed by the respondents, the proof affidavit and cross-examination of R.W.1, there is denial of title. In the reply notice to the notice, marked as Ex.P8, which was sent by the petitioner through his counsel, the respondents have denied the title of the petitioner. The learned Appellate Authority failed to consider the evidence of R.W.1 in his cross-examination, wherein he has stated that he is not aware of who is the owner of the property. The learned Rent Controller has rightly taken judicial note on fact while arriving at conclusion that there is denial of title by the respondents and ordered eviction on the ground of denial of title. The learned Appellate Authority erred in holding that deposit of rent and withdrawal by the petitioner shows that there is no denial of title. Depositing rent by the respondents and withdrawal by the petitioner will not absolve the respondents from denial of title and prayed for allowing the Civil Revision Petition.

8.The learned counsel appearing for the respondents reiterated the averments made in the counter statement filed before the learned Rent

Controller and submitted that the respondents have never disputed the title of the petition property. On the other hand, there was some confusion with regard to payment of rent and they wanted clarification to whom they have to pay the rent. The respondents have paid rent till October 2012 to the petitioner and subsequently, he refused to receive the same. For the month of November 2012, the respondents sent rent by money order and the same was also refused. The respondents are depositing the rent regularly and they endorsed no objection for payment out application filed by the petitioner for withdrawal of the rent deposited by them. The petitioner has also filed R.C.O.P.No.1080 of 2017 for fixing fair rent, the same is pending trial and prayed for dismissal of the Civil Revision Petition.

9.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the entire materials on record.

10.From the materials available on record, it is seen that the petitioner filed R.C.O.P. for eviction of the respondents on three grounds viz., wilful default, nuisance and denial of title. The learned Rent Controller considering the pleadings, oral and documentary evidence, rejected the claim of the petitioner that the respondents have committed wilful default and caused nuisance. The petitioner did not file any appeal against the said finding. The learned Rent Controller ordered eviction of the respondents on the ground of denial of title that the respondents have denied title of the petitioner. The learned Rent Controller came to the conclusion that the respondents denied the ownership of the petitioner in the reply notice sent to Ex.P8 notice sent by the petitioner through his counsel. The learned Rent Controller in her order has stated that said reply notice was not filed. Having stated so, the learned Rent Controller has erroneously held that she is taking judicial note of reply notice and that the respondents have denied ownership of the petitioner and rental agreement.

11.From the materials, it is seen that in the counter statement filed in the R.C.O.P., the respondents have specifically stated that they have not disputed the title. Originally, one Mrs.Mahaboob Bi was the owner of the petition premises, after her death, one Abdul Gaffar let out the petition premises to the respondents' father, thereafter, one Mr.Shajahan, on behalf of Abudul Gaffar used to collect rent and after Shajahan, the petitioner used to collect the rent from the respondents. According to the respondents, the petitioner received rent till October 2012 and subsequently, he refused to receive the rent. The rent for the month of November 2012 was sent by the respondents by money order, the same was refused and subsequently, respondents deposited the rent and petitioner also filed application for withdrawal of the amount deposited by respondents.

12.Further, from the order of the learned Rent Controller, it is seen that the 2nd respondent was examined as R.W.1 and he did not admit that the respondents have denied title of the petitioner in reply notice. On the

other hand, it is the evidence of the 2nd respondent as R.W.1 that only 1st respondent is aware of the reply notice sent by the respondents. In view of the above materials, the finding of the learned Rent Controller that she is taking judicial note of the reply notice, which was not filed before her and that the respondents are denying the title of the petitioner in the said reply notice is erroneous. The learned Rent Controller also failed to take note of the fact that the respondents are regularly depositing the rent and the petitioner is withdrawing the same. There is no arrears of rent by the respondents. When the respondents are regularly depositing the rent, it cannot be said that the respondents are denying title of the petitioner. In the appeal filed by the respondents, the learned Appellate Authority rightly appreciating all the materials, held that the learned Rent Controller erred in holding that she is taking judicial note of reply notice that the respondents have denied title of the petitioner. The learned Appellate Authority has appreciated the facts that the respondents are depositing the rent, the petitioner is withdrawing the rent, there is no wilful default by the respondents, question of wilful default and denial of

title are mixed question of fact and law and when the respondents are regularly depositing the rent, they are not denying the title of the petitioner by giving cogent and valid reasons. There is no error or irregularity in the judgment of the learned Appellate Authority warranting interference by this Court.

13.For the above reasons, the Civil Revision Petition stands dismissed. No costs.

20.09.2021

Index : Yes/No
Internet: Yes/No
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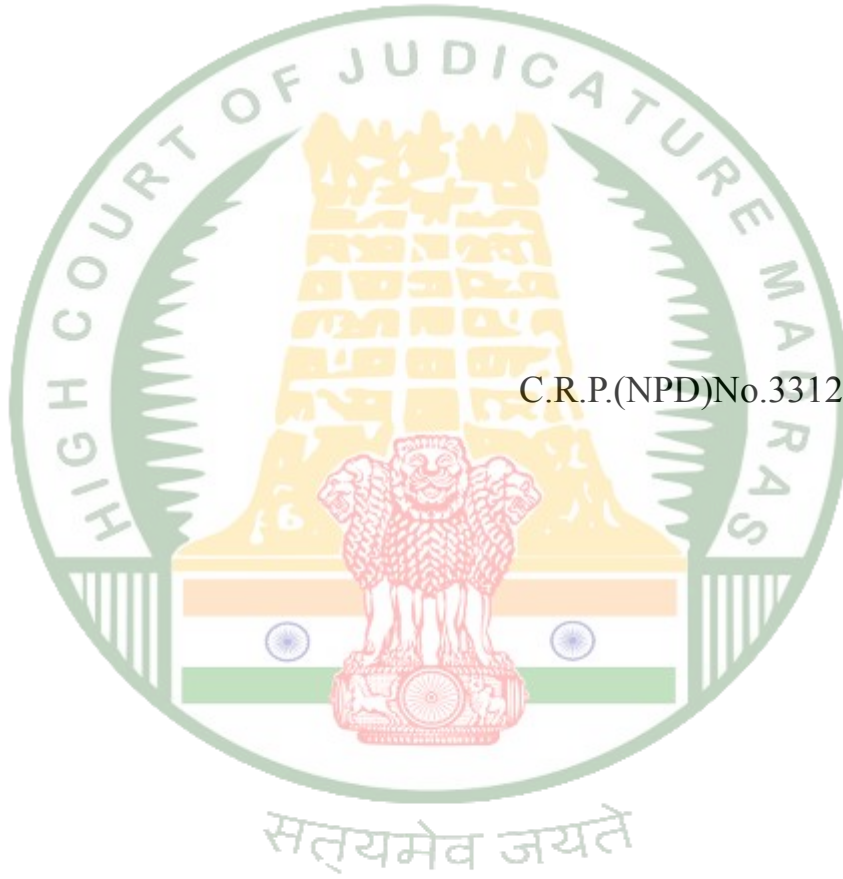
1.IX Judge
Small Causes Court, Chennai.

2.XII Judge
Small Causes Court, Chennai.

C.R.P.(NPD)No.3312 of 2017

V.M.VELUMANI,J.

Kj



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