



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.02.2021

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) (MD)No.927 of 2008

- 1.Ramasamy (Died)
- 2.Poongothai
- 3.Dhanapal
- 4.Muthukumar
- 5.Jayachandran
- 6.Rajkumar

: Petitioners/Respondents/Respondents

(PP2 TO 6 ARE BROUGHT ON RECORD AS LRS OF DECEASED
SOLE PETITIONER VIDE COURT ORDER.DT.12/6/19 MADE IN
CMP NOS.9064 TO 9066/2018 IN CRP(MD).927/2008 BY SSSRJ)

Vs.

Fathima Bivi

: Respondent/Appellant/Petitioner

(CAUSE TITLE AMENDED VIDE COURT
ORDER DATED 06.10.2020 MADE IN CMP(MD).
4295/2020 IN CRP.(MD).927/2008)

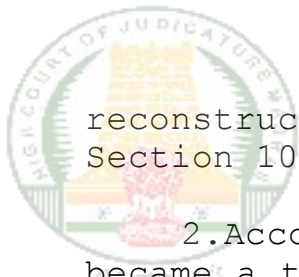
PRAYER:- Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the fair and decreetal order passed in R.C.A.No.6 of 2007, dated 25.03.2008 on the file of the Rent Control Appellate Authority/Principal Subordinate Court, Kumbakonam, reversing the fair and decreetal order passed in R.C.O.P.No.1 of 2000, dated 27.04.2007 on the file of the Rent Controller-cum-I Additional District Munsif Court, Kumbakonam.

For Petitioners
For Respondent

:Mr.V.K.Vijayaraghavan
:Mr.V.Balaji,
for Mr.B.Jameel Arasu

ORDER

These proceedings arise under the Tamil Nadu Buildings (Lease and Rent Control), Act, 1960. The tenant is the first petitioner. The landlord sought for eviction on the ground of demolition and



reconstruction under Section 14(1)(b) and denial of title under Section 10(2)(vii) of the said Act.

2. According to the landlord, the first petitioner herein became a tenant under her predecessors-in-interest, Hussan Mohamed and Noor Mohamed on 06.11.1971 on a monthly rent of Rs.40/-. It is claimed that the brothers executed a settlement deed in her favour on 03.06.1981. It is also claimed that the rent was subsequently increased to Rs.300/- per month. It is the further case of the landlord that there are four other buildings near the petition premises and suits and eviction petitions have been filed against the tenants, who are in possession of those portions, since the landlord requires the premises for demolition and reconstruction. The undertaking as required under Section 14(1)(b) of the Act was also given by the landlord to commence the demolition within a period of one month and complete the construction within a period of three months from the date of recovery of possession. The landlord would contend that the tenant is guilty of denying the title of the landlord, since the tenant has claimed that the tenancy is not in respect of the building, but, it is only in respect of the land. Therefore, the denial of title of the landlord was also made a ground for eviction.

3. This claim of the the landlord was resisted by the tenant contending that the landlord is not the owner of the superstructure. According to the tenant, the lease was only in respect of a vacant land and it was the tenant, who had put up the superstructure and therefore, the proceedings under the Tamil Nadu Buildings (Lease and Rent Control), Act 1960, are not maintainable. The tenant would claim that he is entitled to protection under the Madras City Tenants Protection Act, 1921. It is also claimed that the address of the petition premises is not No.22, Maniakara Street, but, it is D.No.94, A.R.R. Road. It is also claimed that the construction was put up by the tenant after having submitted a plan to the Kumbakonam Municipality for construction of an industrial shed. It his further case that the tenant has got electricity service connection in his name and has been running a business called, "Jeyalakshmi Engineering Works", in the said premises. The tenant also claimed that the eviction petition itself is *mala fide* and has been brought about, since the tenant did not agree for enhancement of rent.

4. At trial, the power of attorney of landlord, one Mohamed Amin, was examined as PW-1 and Ex-P1 to Ex-P20 were marked. The tenant examined himself as RW-1 and examined one Sachithanandan as RW-2. Ex-R1 to Ex-43 were marked by the tenant.



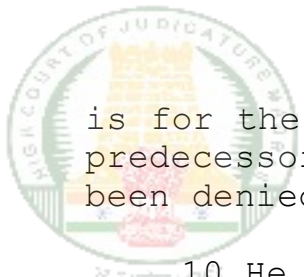
5.The learned Rent Controller, upon a consideration of the evidence on record, concluded that what was leased was only the vacant land and the construction was put up by the tenant. The learned Rent Controller also specifically found that the claim of the landlord that the portion leased out to the tenant is a part of the tiled house bearing D.No.22, Maniakara Street. The learned Rent Controller also drew adverse inference against the landlord for not seeking appointment of a Commissioner to identify the property. The recitals in Ex-R7 were taken note of by the learned Rent Controller to buttress the conclusion that the lease was of the vacant land only. In view of the finding that the lease was only in respect of the vacant land, the learned Rent Controller rejected the claim on the ground of denial of title also. The eviction petition was dismissed by the learned Rent Controller.

6.Aggrieved, the landlord preferred an appeal in R.C.A.No.6 of 2007. The learned appellate authority, upon a re-consideration of the evidence on record, disagreed with the conclusions of the trial Court. The learned Appellate Authority accepted the case of the landlord that the leased premises form part of D.No.22, Maniakara Street and what was leased out was a building. The claim of the tenant that the vacant land alone was leased was disbelieved by the learned appellate authority. The learned appellate authority also found that the tenant is guilty of denial of title, since he had set up title himself for the building. On the above findings, the learned appellate authority allowed the appeal and ordered eviction.

7.I have heard Mr.V.K.Vijaya Raghavan, learned counsel for the petitioners and Mr.V.Balaji, learned Counsel for Mr.Jameel Arasu, learned Counsel for the respondent/landlord.

8.Mr.V.K.Vijaya Raghavan, learned Counsel for the petitioners would vehemently contend that the appellate authority has ignored the vital evidence, that has been produced by the tenant to demonstrate that the construction has been put up by him. He would also fault the appellate authority for having relied on certain documents, which are not documents inter parties and therefore, not binding on the tenant. Mr.V.K.Vijaya Raghavan, learned Counsel for the tenant, would draw my attention to Ex-R7, namely, a rent book issued by Hussan Mohamed and Noor Mohamed for the period between 06.11.1971 and 1988 to contend that what was leased out was only a vacant land. He would point out that the said document specifically refers to the lease, as the lease of vacant land.

9.Mr.V.K.Vijaya Raghavan would further contend that the truth and validity of this instrument has not been denied. Though the landlord has chosen to deny the signatures found in Ex-R8, which



is for the period from 03.08.1986 to 05.10.1999, the signatures of predecessors-in-interest of the landlord found in Ex-R7 have not been denied. Ex-R7 specifically refers to lease of vacant land.

10.He would also point out that the tenant had, in fact, applied to the Municipality for permission to construct and the said blue print has been produced as Ex-R19. A perusal of Ex-R19 would show that the tenant has, in fact, applied for permission to construct a shed in the petition premises and the same has been returned by the Municipality for certain corrections and re-submission. The tenant, as RW-1 in his evidence, has deposed that he did not re-present the plan, since he had completed the construction and had obtained electricity service connection also.

11.Mr.V.K.Vijaya Raghavan, learned Counsel would also draw my attention to the plaint in O.S.No.241 of 1987, which is a suit for ejectment filed by the landlord against the other tenants, wherein, it is shown that the suit property in the said suit is situated on the north of "M/s.Jeyalakshmi Engineering Works". He would also rely upon the cross examination of PW-1 in the said suit, which shows that the said tenant had put up construction in the rear portion of the building in D.No.22, Maniakara Street which had been let out as vacant land.

12.Mr.V.K.Vijaya Raghavan, learned Counsel would fault the appellate authority for concluding that the tenant has not established that he had taken the vacant land on lease on the ground that the property is not shown as vacant land in the partition suit instituted between the landlord and her family members. He would further submit that the appellate authority was not right in ignoring the evidence offered by Ex-R7 and Ex-R19, which would go a long way to show that it was the tenant, who had put up the construction. He would also draw my attention to various receipts, that were filed as Ex-R9 to Ex-R18 to show that the construction was made by the tenant. Arguing further the learned Counsel would also point out that the tenant had obtained electricity service connection in his name under Ex-R21 for the suit premises.

13.Relying upon Ex-R21 to Ex-R28, the correspondence between the tenant and the Kumbakonam Electric Supply Corporation, the learned Counsel would submit that the effect of these documents is that the tenant has put up the construction and obtained electricity service connection for the same and the appellate authority was not right in ignoring these documents and relying upon the recital in the plaint in a partition suit in O.S.No.39 of 1977 to conclude that the building was leased to the tenant.



14.Contending contra, Mr.V.Balaji, learned Counsel for the respondent/landlord would submit that the lease was only in respect of the building bearing D.No.22, Maniakara Street and not in respect of any land situated at A.R.R. Street. He would further submit that the appellate authority constituted under the Act has adverted to the evidence and has come to the conclusion that what has been leased out is only the building and not the land and there is no warrant for interference with the findings of the appellate authority.

15.I have considered the submissions of the leaned Counsel on either side.

16.The moot question is as to whether the lease was of the building or vacant land. The earliest document, that is available, is Ex-R7, a rent Note Book (Katchath). Ex-R7 is executed by the predecessor-in-interest of the respondent/landlord. The genuineness or validity of the said document is not in dispute. The landlord has not specifically claimed that the lease commenced on 06.11.1971 under the said document. No doubt, the landlord has denied the signature in Ex-R8, but, she has not denied the correctness or truth or validity of Ex-R7. The genuineness of the signature in Ex-R7 has not been tested. Ex-R7 clearly recites that the tenancy is in respect of the land alone and it reads as follows:

“எங்களுக்கு சொந்தமான டி.எஸ்.1267/2 கீழ்நிலத்தில் தங்கள் சிலவில் மேன்கூரை போட்டுக் கொண்டு மாதம் ரூ.40/-க்கு வாடகை வாங்கி அட்வான்சாக ரூ.100/- (நூறு ரூபாய்) வாங்கி இருக்கிறோம். 1971 தாம் எழுதிக் கொடுத்திருக்கும் வாடகைப் பத்திரம் பிரகாரம் அட்வான்ஸ் நூறு ரூபாய்க்கும் இதையே ரசீதாக கொடுத்து இருக்கிறோம்.”

17.Though un-registered Ex-R7 can be looked into for the purposes of determining the nature of tenancy as it is only a receipt evidencing payment of advance. Ex-R7 coupled with Ex-R19, the blue print, which has been admittedly submitted by the tenant to the Municipality would definitely prove that the building in question has been constructed by the tenant. Apart from producing Ex-R7 and Ex-R19, the tenant has also produced Ex-R9 to Ex-R17, which are around the period of commencement of the lease to show that the tenant has procured building materials and other materials for construction of the shed in the leased land.

18.Ex-R21 to Ex-R28 are correspondence between the tenant and the Kumbakonam Electricity Supply Corporation for having obtained electricity service connection for the shed, that is put up by the tenant in the land leased out to him. The combined effect of these documents has been totally ignored by the appellate

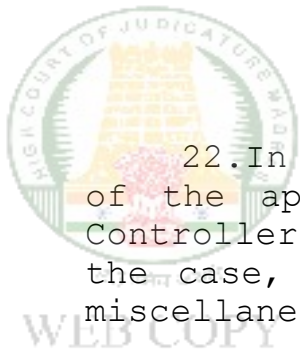


authority, while considering the question of the subject matter of the lease. The appellate authority has gone on the presumption that the lease is in respect of the building, since D.No.22, Maniakara Street is shown to be an existing tiled house. The very blue print would show that a tiled house is in existence on the northern side immediately on the south of Maniakara Street. The physical feature that the subject property is bounded on the east by A.R.R. Road is not denied. The proposed tiled structure is shown to be situated immediately after the country tiled house, that is situated on the north of the petition premises, which is admittedly facing Maniakara Street. The landlord, undoubtedly, wants to take advantage of the presence of the construction in a portion of the property to contend that the lease is in respect of D.No.22, Maniakara Street. Ex-R7 and Ex-R19 belie the claim of the landlord. Once the claim of the landlord that the lease was in respect of the building is not established, the authorities under the Tamil Nadu Buildings (Lease and Rent Control) Act, will not have jurisdiction to pronounce upon the eviction of the tenant.

19.I am unable to concur with the findings of the appellate authority, who had presumed that Ex-R7 is invalid because the signatures in Ex-R8 have been found to be not that of the landlord. Ex-R7 was executed by the predecessor-in-interest of the landlord in the year 1971 and the fact that the tenant had applied for permission to construct would by itself demonstrate that the lease was in respect of a vacant land. The fact that the tenant applied for permission to construct the shed under Ex-R19, cannot be doubted.

20.I am, therefore, of the opinion that the appellate authority has grievously erred in not advertng to the evidence offered by the tenant, particularly, Ex-R7, Ex-R19 and Ex-R21 to Ex-27, which are transactions between the tenant, Kumbakonam Municipality and Kumbakonam Electricity Supply Corporation which cannot be created subsequently. For the reasons stated above, I find that the findings of the appellate authority are erroneous, result of ignoring vital evidence and relying upon unilateral documents, which have come into existence after the creation of the tenancy. I am, therefore, of the opinion that the order of the appellate authority cannot be sustained and it is liable to be set aside.

21.In view of the fact that the tenancy is only in respect of the land and the building was constructed by the tenant, the authorities under the Tamil Nadu Buildings (Lease and Rent Control) Act, will not have jurisdiction to even entertain the eviction petition. In view of the above, the second ground for eviction, namely, the denial of title, is rejected



22. In fine, the Civil Revision Petition is allowed. The order of the appellate authority is set aside and that of the Rent Controller will stand restored. However, in the circumstances of the case, I make no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Cmr

To

1. The Rent Control Appellate Authority /
Principal Subordinate Judge, Kumbakonam.

2. The Rent Controller-cum-
I Additional District Munsif, Kumbakonam.

3. The Section Officer-2 copies
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr. V.K. VIJAYARAGAVAN, Advocate (SR-15070[F] dated
01/04/2021)

+1 CC to Mr. B. JAMEEL ARASU, Advocate (SR-15138[F] dated
01/04/2021)

order made in
C.R.P. (NPD) (MD) No. 927 of 2008
01.04.2021

KM(20.05.2021) 7P 7C