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**CRP(MD) No.628 of 2020**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : 17.12.2020

Judgment Pronounced on : 22.02.2021

CORAM:

**THE HONOURABLE MR.JUSTICE N.SESHASAYEE**

**CRP(MD) No.628 of 2020**

**and CMP(MD) Nos.4074 & 5568 of 2020**

S.Nizam Khan .... Petitioner / Appellant / 4<sup>th</sup> Respondent

Vs.

1.A.Dakshina Moorthy ... 1<sup>st</sup> Respondent/  
1<sup>st</sup> Respondent/Petitioner

2.S.Ganesan

3.H.Abdul Majeeth

4.R.Malar Nisha ... Respondents 2 to 4/ Respondents 2 to 4  
/Respondents 1 to 3

**Prayer :** Civil Revision Petition filed under Section 25 of the Tamil Nadu Building (Lease and Rent Control Act, 1960 as amended by Act 1 of 1980), to set aside the fair and executable order dated 28.02.2020 passed in R.C.A. No.1 of 2015 on the file of Subordinate Court cum Rent Control Appellate Authority, Ramanathapuram, partly reversing the fair and executable order dated 24.11.2014 passed in R.C.O.P.No.2 of 2009 on the file of the District Munsif Court cum Rent Controller, Ramanathapuram and allow the same.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.P.T.S.Narendravasan [R1]  
Mr.S.Loganathan [R3 & R4]  
R2 - No Appearance

### **ORDER**

The revision petitioner herein is the landlord of a certain building, of which the first respondent herein was a tenant. The controversy is all about the liability of the revision petitioner to repay the advance amount to the first respondent.

2. The minimum facts that are now required for the purpose are :

- Ganesan, the second respondent herein was originally the owner of the building in question. The first respondent became his



tenant sometime in 2003 for a monthly rent of Rs.4,000/- He is also stated to have paid Rs.4,50,000/- to the second respondent as advance. While so, during the subsistence of the said lease, on 25.03.2004, the second respondent sold the building to the 3<sup>rd</sup> and 4<sup>th</sup> respondents, who in turn sold it to the revision petitioner herein on 20.01.2006. Subsequently, the first respondent and the revision petitioner is stated to have entered into a oral lease agreement on 25.01.2006.

- Thereafter, the first respondent / tenant of the revision petitioner is stated to have committed willful default in payment of rent, and therefore, the revision petitioner had filed RCOP No.3 of 2007 before the District Munsif, Ramanathapuram, for eviction, in which, the first respondent had taken up a contention that he had paid the revision petitioner Rs.4,50,000/- as advance amount (when in law, he is only entitled to take an advance of one month rent only). The Rent Controller disbelieved it and ordered eviction on 30.01.2012.
- The first respondent challenged the said order in RCA.No.5 of 2012 before the Rent Control Appellate Authority. He too disbelieved the statement of the first respondent as to the payment of Rs.4,50,000/- as advance amount and dismissed the appeal on 29.08.2013.
- Undeterred, the first respondent preferred CRP(MD) No.1835 of 2013 and that too came to be dismissed by this Court on 11.03.2014.
- In the meantime, the first respondent / tenant has preferred RCOP No.2/2009 under Section 7(2)(3) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for refund of the advance amount of Rs.4,50,000/- less one month rent of Rs.4,000/-, i.e., Rs.4,46,000/-. It is his allegation that the advance amount of Rs.4,50,000/- which he has paid to the second respondent at the inception of the lease, has been made over successively to the revision petitioner and hence, the revision petition is liable to refund the same.
- The Tribunal has ordered refund of advance amount, which later came to be confirmed by the first Appellate Tribunal in RCA.No.1 of 2015, preferred by the revision petitioner.
- This is now under challenge in the present revision petition.



3 The learned counsel for the revision petitioner submitted :

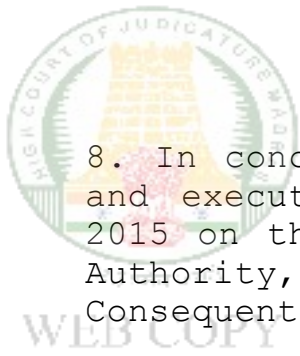
- The issue whether the first respondent had paid advance amount of Rs.4,50,000/- has already been decided in RCOP.No.3/2007 and has been confirmed upto this Court in CRP(MD) No.1835 of 2013. By oversight, the orders in this case were not marked, and for the ends of substantial justice, they may be received as additional evidence, for which he has preferred CRP(MP) MD.No.5568 of 2020.
- The sale deed dated 20.01.2006 in favour of the revision petitioner does not state anywhere that the original owner had passed on the advance amount to his purchasers. Payment of advance amount does not create any right over the land and it has to be dealt with as an action for money. This point is covered squarely in **G.Kesarichand and another Vs. T.A.Sankunni Maistry** [1972 (1) MLJ 358 = 1971 (84) LW 854].

4. Heard Mr. P.T.S.Narendravasan, learned counsel for the first respondent, whose line of argument was more in accordance with the line of reasoning of the Courts below.

5. The Courts below essentially revolved around certain question of fraud. But the fundamental issue here is about the nature of liability which the alleged non-payment of advance amount would create. Admittedly, the advance amount has been paid by the first respondent only to the second respondent, and there are no terms in the sale deed which the second respondent had executed in favour of 3<sup>rd</sup> & 4<sup>th</sup> respondents about the transfer of advance amount. However, it may appear from the orders of the Tribunal that the second respondent in his testimony made a statement that he had made over the said sum to his successors in interest. This is too feeble, weak and self-serving statement of the second respondent, which cannot bind his successors in interest, since it is impermissible under Section 91 of the Evidence Act to lead in any parole evidence to prove anything contrary to the written terms of any document.

6. Turning to the larger issue as to the nature of liability, as rightly argued by the learned counsel for the revision petitioner, this issue is no more *res integra*, and this Court relies entirely on the reasoning of this Court in the judgment in **G.Kesarichand and another Vs. T.A.Sankunni Maistry**

7. In this circumstances, this Court finds every merit in the revision and the approach of the Courts below is far distanced from legal principle characterizing the nature of liability.



8. In conclusion, this revision petition is allowed and the fair and executable order dated 28.02.2020 passed in R.C.A. No.1 of 2015 on the file of Subordinate Court cum Rent Control Appellate Authority, Ramanathapuram, is hereby set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ds/CM

To:

1.The Sub Judge  
Rent Control Appellate Authority  
Ramanathapuram.

2.The District Munsif Court cum Rent Controller  
Ramanathapuram.

Copy to

The Section Officer,V.R.Section,  
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.T.R.JEYAPALAM, Advocate SR-6628[F] dated 23/02/2021

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate ( SR-6732[F] dated 23/02/2021 )

order  
CRP(MD) No.628 of 2020  
22.02.2021

tp(CO)

TR(21.04.2021) 4P 7C