



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date :01.03.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(NPD) (MD)No.1273 of 2019

and

CMP(MD).No.7026 of 2019

R.P.Sekar

... Petitioner/Appellant/Respondent

Vs

D.Bright @ Bright Paul Raj

... Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition has been filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 against the fair and decreetal order dated 05.03.2009 made in R.C.A.No.1 of 2006 on the file of the Rent Control Appellate Authority/Sub Court, Valliyoor, confirming the fair order and decreetal order dated 07.09.2015 made in R.C.O.P.No.3 of 2009 on the file of the Rent Controller/Principal District Munsif Court, Valliyoor.

For Petitioner : Mr.R.Anbarasu

For Respondent : Mr.H.Arumugam

O R D E R

This Civil Revision Petition has been filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 against the fair and decreetal order dated 05.03.2009 made in R.C.A.No.1 of 2006 on the file of the Rent Control Appellate Authority/Sub Court, Valliyoor, confirming the fair order and decreetal order dated 07.09.2015 made in R.C.O.P.No.3 of 2009 on the file of the Rent Controller/Principal District Munsif Court, Valliyoor.

2. The petitioner would aver among other things that he is the tenant and the respondent herein is the landlord of the petition mentioned property. Both the Courts have concurrently held that the respondent/landlord have proved their claim by way of oral and

documentary evidence. As against the concurrent findings of the Court below, the petitioner has filed this present Civil Revision Petition for the relief stated supra.

3. The main contention of the learned counsel for the petitioner is that the landlord and his brother have admitted in unequivocal terms that there is no relationship as landlord and tenant between this petitioner and respondent and that no rent was received from the petitioner herein. The second contention of the petitioner is that the landlord has failed to prove that the petition mentioned properties require for his own use and occupation. The third contention of the petitioner is that the landlord is having two other non-residential buildings in the same town and admittedly he is carrying on his printing press business in the above non-residential bearing door Nos.77B and 77C. By stating all these facts, he would contend that the Court below erroneously passed the orders in favour of the landlord and he prays for setting aside the orders passed by them.

4. *Per contra*, learned counsel for the respondent would contend that both the Courts below after taking note of the oral and documentary evidence adduced by the respondent, the Courts below have granted the relief in favour of them wherein there could be no infirmity or illegality. Hence, he prays for dismissal of this Civil Revision Petition.

5. Heard the learned counsel for the petitioner and learned counsel for the respondent and perused the materials available on record.

6. As far as the first contention is concerned that there is no relationship as tenant and landlord between the petitioner and the respondent is concerned, in the earlier round of litigation in O.S.No.548 of 2013 and R.C.O.P.No.4 of 1994, the tenant has admitted the relationship that he is the tenant under this respondent. Having admitted the ownership and having paid the rent, he is estopped from contending that there is no landlord and tenant relationship between them, as provided under Section 116 of Indian Evidence Act and further, when the tenant admitted the relationship in the previous permanent injunction suit, it is not open to the tenant to turn around and deny the ownership of the landlord. Hence, both the Courts have properly analysed the evidences and records and come to the correct conclusion that the respondent is the landlord of the petition mentioned premises and the petitioner is the tenant under him. Therefore, the first contention raised by the petitioner miserably fails. The Tenant admitting the relationship only instituted the previous suit and as well as RCOP and as such the Tenant is estopped from taking the defence. To garner support, the Hon'ble Supreme Court in **V.M. Salim v. Fathima Muhammed**, reported in (2011) 15 SCC 756, it is held as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>

"9. We may next consider the decision in *Devi Dass* [(1982) 1 SCC 495] relied on by the respondents. In *Devi*



Dass [(1982) 1 SCC 495] the case was remanded, as the Appellate Authority and the High Court had not considered at all the contention of the tenant that the sale was sham. But in this case, the trial court and the appellate court have considered the evidence on the question whether the transaction was sham and recorded a finding thereon. Further, the decision in *Devi Dass* [(1982) 1 SCC 495] was rendered on facts, where apparently the tenant had not accepted the purchaser as his landlord by attornment. In this case the respondent tenants attorned to the new landlord (the appellant) and were paying the rents to him. It is now well settled that where on being informed of the sale of the premises by the vendor/purchaser, the tenant acknowledges the purchaser as his landlord, and pays the rents to him, he cannot thereafter be heard to say that the sale in favour of his landlord is sham. The only exception to this principle is, where the derivative title of the purchaser landlord is challenged by the tenant by pleading and proving that when he attorned, he was labouring under a mistake or ignorance as to material facts affecting title of the new landlord. (See *Tej Bhan Madan v. II ADJ* [(1988) 3 SCC 137] and *Subhash Chandra v. Mohd. Sharif* [(1990) 1 SCC 252] .) We may refer to the classic statement from Spencer Bower and Turner on *Estoppel by Representation* (3rd Edn.) on this issue:

"Where a tenant, with full knowledge of the facts, either expressly in writing, or impliedly by acts, such as the payment of rent, attorns tenant to a person other than his original landlord or one who is claiming the estate or interest of such original landlord by assignment, succession, or otherwise, he is ordinarily estopped from questioning the title of the person to whom he has so attorned. But, here too, it is open to the party sought to be estopped to explain away the attornment, and so escape the estoppel to which he would otherwise be subject, by proof that, when he so attorned, he was labouring under mistake or ignorance as to material facts affecting the title of the person to whom he attorned, particularly if such error or ignorance was due to the fraud of that person."

The following observation of this Court in *Lingala Kondala Rao v. Vootukuri Narayana Rao* [(2003) 1 SCC 672] is also apposite: (SCC p. 677, para 11)

"In an eviction suit between the landlord and the tenant the motive behind execution of the document conferring title on the landlord cannot be allowed to be gone into so long as the document has been executed and registered in accordance with law and the transaction is otherwise legal."



In this case, there was no pleading or proof by tenants to bring themselves within the exception to the general principle of estoppel.

10. The finding of fact recorded by the trial court and the appellate court that the sale was not a sham transaction therefore did not call for interference. We, therefore, find that the High Court was not justified, in exercise of revisional power, in remitting the matter to the Rent Control Court for fresh consideration as to whether the sale under the deed (Ext. A-1) was a sham transaction or not. In regard to other issues, the High Court did not find any reason to upset the findings of the courts below. In fact, it has specifically held that if the sale deed is not sham, the eviction order would stand. Under the aforesaid circumstances, we set aside the impugned order of the High Court and restore the order of eviction passed by the courts below. This appeal is, accordingly, allowed with costs.

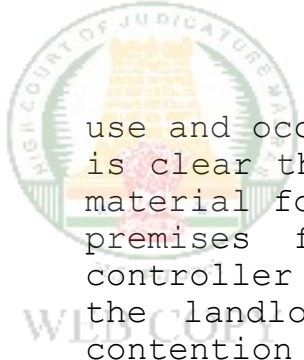
6.1. In one of my judgments reported in **2018 (2) MWN (Civil) 198 - Paramasivan Vs Murugesan**, I have also held as follows:-

12. Section 116 of the Indian Evidence Act reads as follows:

'116. Estoppel of Tenant and of licensee of person in possession.- No Tenant of immovable property, or person claiming through such Tenant, shall, during the continuance of the tenancy, be permitted to deny that the Landlord of such Tenant had, at the beginning of the tenancy, a title to such immovable property; and no person, who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had title to such possession at the time when such licence was given.'

From the above provision, it is clear that a Tenant once inducted as a Tenant by a Landlord later cannot deny his Landlord's title. Here, in this case, the Respondent had been paying Rent to his previous Landlord viz., Shanmugam Pillai and when the said Shanmugam Pillai himself asked to pay Rent to the Petitioner, the Respondent refused to pay Rent disputing the ownership, even to the said Shanmugam Pillai. Though it is contended by the Respondent that he has paid Rent to the son of Shanmugam Pillai, he has not produced any document to substantiate the same. Under these circumstances, the denial of title of the Petitioner by the Respondent totally lacks bona fide. Therefore, he is barred from raising so under Section 116 of the Indian Evidence Act."

6.2. As far as the second contention of the petitioner is concerned that the building in question does not require for his own



use and occupation is concerned, from the evidence of the tenant, it is clear that the landlord is running a printing press and keep the material for his business in his house and the respondent wanted the premises for running a shop for printing material. The Rent controller has appropriately appreciated the testimony and held that the landlord has clearly proved his bona fide. So, the second contention also fails.

6.3. Yet another contention of the tenant is that the landlord is having another premises which can be used for his business purposes. In the case of **Mookan Vs Abdul Rasheeth (deceased) and others**, reported in **1999 (1) MLJ 233**, this Court has held that the landlord can choose the portion required and it is not for the tenant to dictate terms and conditions to the owner. The said decision is squarely applicable to the facts and circumstances of the case and the respondent being the landlord of the petition mentioned premises, he can choose any one of the building possessed by him and on this aspect, the tenant cannot dictate terms. Furthermore, even on facts, the landlord does not have any other building which is not proved by the tenant also and the landlord is the absolute owner of the disputed building alone. This Court is of the considered view that in the case of choosing of the premises in question, it is not the object of the provision to weigh the hardship of the tenant as against the test of the landlord on a delicate scale, giving the benefit of the slight tilt in favour of the landlord. Therefore, the last contention also fails.

7. Apart from the above, the scope of revision under "Section 25" is very limited and all the grounds raised are only re-agitation of fact which cannot be done under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act. In this case the concurrent finding of the Courts below is purely based upon legally and accepted evidence and thus no interference is warranted in this revision. The Hon'ble Supreme Court in **2016 (2) CTC 292** held as follows:-

"33. So far as the issue pertaining to exercise of Revisional jurisdiction of the High Court while hearing Revision Petition arising out of eviction matter is concerned, it remains no more res integra and stands settled by the Constitution Bench of this Court in *Hindustan Petroleum Corporation Limited v. Dilbahar Singh*, 2014 (3) MWN (Civil) 334 (SC): 2014 (9) SCC 78. Justice R.M. Lodha, the learned Chief Justice speaking for the Bench held in Para 43 thus:

'43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on reappreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in Revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not



suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its Revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned Order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or Order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned Decision or the Order, the High Court shall not exercise its power as an Appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a Court of First Appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the Order impugned before it suffers from procedural illegality or irregularity."

8. Viewed from any other angle, the reasons adduced by the tenant could not be acceptable one. The court below has not only dealt with the matter factually, but also legally, by sailing various judgments of the Court in which no infirmity could be found. To sum up, no convincing reasons have been placed for interfering with the orders of the Court below and the order of the Court below is a just and proper and therefore, there is no scope of warranting circumstances to disturb the impugned orders of the Court below.

9. In view of the foregoing reasons, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. However, there will be no order as to costs.

Sd/-

Assistant Registrar

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/ /2021

Sub Assistant Registrar(CS)



- (1) The Rent Control Appellate Authority/Sub Court,
Valliyoor,
(2) The Rent Controller/Principal District Munsif Court,
Valliyoor.

Copy to:-

The Section Officer,
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Madurai Bench of Madras High Court.
Madurai.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-8272[F] dated 02/03/2021)

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MR(11.05.2021) 7P 5C