



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2021

CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (MD) No.95 of 2018

and

C.M.P. (MD) Nos.434 and 1434 of 2018

1.Sankaranarayanan
2.G.Muthukumar
3.G.Shanmuga Sundaram
4.G.Thirupathi

... Petitioners/Respondents/Tenants

vs.

J.Rathikamala

... Respondent/Petitioner/Landlady

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 29.11.2017 made in I.A.No.169 of 2017 in RCOP.No.170 of 2009 on the file of the Principal Rent Controller/Principal District Munsif, Madurai.

For Petitioners : Mr.R.Devaraj
For Respondent : Mr.G.Aravinthan

ORDER

The tenants aggrieved by the order passed by the learned Principal Rent Controller/Principal District Munsif, Madurai in I.A.No.169 of 2017 in O.S.No.170 of 2009 have filed the above Civil Revision Petition.

2.By the impugned order, the learned Judge had allowed the petition filed by the respondent/landlady to implead the partnership firm, M/S.K.Palaniyapillai & Sons as the 5th respondent in the main petition. The respondent had filed RCOP.No.170 of 2009 on the file of the learned Principal Rent Controller/Principal District Munsif, Madurai seeking eviction of the petitioners on the ground of wilful default. In that petition, the respondent had mentioned that the petitioners herein were the tenants in respect of the demised premises on a monthly rent of Rs.6,000/- with a



1/6th share in the common expenses.

3.It is the case of the respondent that the petitioners had failed to pay the rent and therefore, the respondent was constrained to file a petition for eviction. A written statement was filed by the respondent *inter alia* contending that the petitioners and their predecessor in title have been in occupation of the demised premises for over 85 years. The rent was a sum of Rs.30/- earlier with an advance of Rs.200/- and in the year 1936, the entire building was demolished and a new construction has been put up in which the father of the petitioners, namely, Palaniyapillai was inducted as a tenant on the same rent of Rs.30/- and the same advance of Rs.200/-. After the suit property was purchased by one Mohammed Ismail in the year 1941, the petitioners' father had attorned tenancy in his favour and the rent was raised from Rs.30/- to Rs.200/- per month, which was later enhanced to a sum of Rs.250/- per month till 1983. In the year 1983, the respondent herein had purchased the property from Mohamed Ismail and thereafter, the elder brother of the petitioners, namely, P.Govindaraj had entered into a registered rental agreement dated 01.06.1983 with the petitioners and the rent was raised to a sum of Rs.1,000/- per month and Rs.25,000/- was paid as advance. Although the period of lease stipulated in the petition was for 3 years, the tenancy continuous to date.

4.The tenants would submit that in 1998, the landlady had decided to demolish the entire building and construct a new complex and she had requested the petitioners to vacate the suit property so as to enable her to put up the construction. A Varthamana agreement was therefore entered into on 29.06.1998 between the respondent and the brother of the petitioners herein, P.Govindaraj, wherein the petitioners had agreed to vacate and hand over the suit premises for construction of a new building and on the completion of the construction, the petitioners were to be given a portion of the building in rent together with an additional extent of 100 sq.fts., After the construction, the respondent had demanded a huge advance of Rs.4,00,000/- and when the petitioners handed over the possession of the suit premises, she had retained a sum of Rs.50,000/- towards advance and the balance amount of Rs.3,50,000/- was to be adjusted from the rents payable thereafter. Although the respondent has initially agreed to adjust the rental advance towards the monthly rental, the respondents had not rapt up this promise. It was only in the month of April, 2008 that the respondent had agreed to adjust the advance amount of Rs.3,50,000/- commencing from May, 2008. Therefore, there is no default on the side of the petitioners. An additional written statement was also filed, wherein the petitioners had contended that the landlady after issuing the

<https://hcservices.mca.gov.in/hcservices> dated 08.07.2009 had filed the rent control



petition before the expiry of the statutory period and therefore, the petition was not maintainable.

5. Pending this proceeding, the respondent/landlady came forward with the impugned application to implead the partnership firm as a party to the proceedings. In the affidavit filed in support of the said petition, the respondent would submit that even at the time of purchase of the property by the respondent, she agreed that the petitioners could continue their business in the name and style of Palaniyapillai & Sons. The respondent would submit that now the petitioners are carrying on business only as a partnership firm and therefore, the firm had to be impleaded.

6. The petitioners herein had filed a counter *inter alia* contending that the partnership had nothing to do with the lease and it was only for the purpose of obtaining the registration certificate that the firm was constituted in the name of K. Palaniyapillai & Sons. This firm is an unregistered one. They would submit that the partnership firm was not the tenant in respect of the property and it was only the petitioners in their individual capacity, who are tenants in occupation of the property. There is no necessity to implead the firm. However, the learned District Munsif, Madurai by his order dated 29.11.2017 allowed the said petition only on the ground that no prejudice would be caused and that technicalities could be avoided.

7. Heard the learned counsels on either side.

8. The petitioners, who are the respondents/tenants, have categorically denied the contentions of the respondent/landlady that it is a partnership firm, which is in occupation of the suit property. On the contrary, they have stated that the firm has been created only for the purpose of providing a registration certificate for no other purpose. In the light of such a categorical statement being made by the petitioner, the apprehension of the respondent/landlady that at the time of the execution proceedings, the petitioners would raise the above plea that it is the partnership firm that is the tenant is unfounded.

9. In the light of the such categorical statement both in the counter as well as in the submissions, which are now on record, that it is only the revision petitioners, who are the tenants in respect of the suit property and that the firm had nothing to do with the tenancy, there is no necessity to implead the partnership firm. Consequently, the impugned order passed by the learned Principal Rent Controller/Principal District Munsif, Madurai in I.A.No.169 of 2017 in O.S.No.170 of 2009 is liable to be set aside and is accordingly, set aside.



10. In the result, this Civil Revision Petition stands allowed.
No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

The Principal District Munsif,
Madurai.

+1 CC to M/s.R.DEVARAJ, Advocate (SR-36779[F] dated 01/12/2021)
+1 CC to M/s.G.ARAVINTHAN, Advocate (SR-36820[F] dated 01/12/2021)

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SB (29.12.2021) 4P 4C