



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 23.08.2021

Delivered On : 30.11.2021

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) .No.806 of 2018

and

C.M.P. (MD) No.3569 of 2018

1.Jawahar Hasan

2.Sathik Ali

... Petitioners/ Appellants/
Respondents

Vs.

Chinnan

... Respondent/Respondent/
Petitioner

PRAYER: This Civil Revision Petition has been filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act), 1960, to set aside the fair and decreetal order dated 24.01.2018 made in R.C.A.No.1 of 2016 on the file of the Rent Controller Appellate Authority, (Sub Court), Uthamapalayam, confirming the fair and decreetal order dated 25.07.2016 made in R.C.O.P.No.1 of 2013 on the file of the Rent Controller, (District Munsif Court), Uthamapalayam.

For Petitioners : Mr.V.George Raja
For Ajmal Associates
For Respondent : Mr.K.Ashokkumar Ram

ORDER

This petition has been filed to set aside the order in R.C.A.No.1 of 2016 on the file of the Rent Controller Appellate Authority, Sub Court, Uthamapalayam.

2.The respondent herein is the landlord and the petitioners herein are the tenant in R.C.O.P.No.1 of 2013. The respondent herein has filed a petition in R.C.O.P.No.1 of 2013, before the Rent Controller, to evict the tenant.

3.Brief substance of the petition in R.C.O.P.No.1 of 2013 is as follows:

The property originally belong to the sons of one Mani Pillai by name Raju, Ravi, Suresh, Hariharan and Karthikeyan. Among them, Raju and Karthikeyan died. The petitioner purchased the property from the above said Raju and others through a sale deed dated 26.05.2009. Before the purchase, the tenant was in possession of the property and the sons of Mani Pillai filed a petition in R.C.O.P.No.2 of 2003 before the Rent Controller and the petition was dismissed. Against the same, R.C.A.No.6 of 2004 was filed and the appeal was also dismissed. C.R.P.(MD)No.1148 of 2005 was pending before this Court. Only after the purchase, the petitioner came to



know about all these cases.

The landlord informed the tenant the factum of purchase and instructed him to pay the rent. The first respondent agreed for the same but he failed to pay the rent. He sub leased the property to the second respondent. The first respondent has taken a shop in K.Puthupatti Corporation, ward no.12, shop no.4 for lease from the municipality. He is paying professional tax and he is running a grocery shop there. The death of Raju and Karthikeyan were not brought to the knowledge of the Court. The power agent of the erstwhile owner Maanikavasavi is colluding with the first respondent and failed to bring the death of the owners to the knowledge of the Court and deposit the rent in Court as if the erstwhile owners are alive. Without the consent of the petitioner, the first respondent sub leased the property to the second respondent. The property is situated in the prime commercial locality in Kambam main road. The petitioner reserved the right to take steps for enhancing the rent. The petitioner was running a shop in the front side of his residential house. But subsequently, the health of the petitioner was affected and he has to sell his house and shop and the petition mentioned property is to be vacated for the own use of the petitioner. The petitioner sent a legal notice. The respondent sent a reply notice with false particulars. The respondents are to be evicted.

4.Brief substance of the counter in R.C.O.P.No.1 of 2013 reads as follows:

The first respondent entered into a rental agreement on 01.07.1999 with the power agent Maanikavasavi. A sum of Rs.1,00,001/- (Rupees One Lakh and One Rupee only) was fixed as advance and the monthly rent was fixed as Rs.1,000/- (Rupees One Thousand only) and that there would be 10% of rent raise in the rent from 01.07.2001. An endorsement was made by Maanikavasavi on the backside of the agreement on 01.07.1999.

Up to 30.06.2001, the first respondent was paying the rent regularly. From July 2002, since Maanikavasavi failed to give receipt for payment of rent, the first respondent sent the amount through money order. The same was refused. Since Maanikavasavi and her husband tried to evict the respondents, he filed a suit in O.S.No.167 of 2002 and Maanikavasavi has filed a petition in R.C.O.P.No.2 of 2003. The respondents have deposited the rent in R.C.O.P.No.2 of 2003. R.C.O.P.No.2 of 2003 was dismissed. On 07.09.2003, R.C.A.No.6 of 2004 was filed before the Sub Court, Uthamapalayam and the same was dismissed. The respondents were regular in depositing the rent in R.C.O.P.No.2 of 2003. The second respondent is just helping the first respondent in the business. He is not a sub tenant. The petitioner failed to inform the purchase. The petitioner never demanded rent from the respondents. The respondents are ready to pay rent, if the petitioner proved the



5. One witness was examined and 12 documents were marked, on the side of the petitioner. One witness was examined and 17 documents were marked on the side of the respondents. After trial, the Rent Controller passed an order for eviction. Against the order of eviction, the tenant approached the Rent Control Appellate Authority in R.C.A.No.1 of 2016 and the appeal was also dismissed. Against which, the revision petitioners have preferred this Civil Revision Petition.

6. On the side of the revision petitioners, it is stated that both on the grounds of willful default and for owners' occupation, the eviction petition was filed by the landlord. The landlord who is a wealthy person, was not particular about receiving the rent in time. The earlier R.C.O.P and R.C.A would bind the landlord under the doctrine of res judicata. No notice was sent to the tenants informing the purchase. Only after three years from the date of purchase, notice was sent to the tenants. Even after the receipt of reply notice, the landlord did not send a rejoinder with a certified copy of the sale deed. The counsel for the landlord received the rent from the month of January 2013. The tenants are not guilty of willful default. The subsequent rent was not accepted by the counsel for the landlord. Section 85 of the Act does not apply to the pending proceedings for eviction and on the date of R.C.O.P., there was no question of rent, since the arrears was already deposited in the earlier R.C.O.P. The tenant has already deposited Rs.1,00,000/- as advance to the landlord. If that amount was adjusted, there may not be any balance of arrears. The claim for own occupation is not bonafide. The landlord is responsible for the mess, he has created.

7. On the side of the revision petitioners, it is stated that the landlord has to prove that the default is willful. In the R.C.A., the tenants have paid the earlier arrears of rent till date. There was no arrears and no calculation memo was filed by the landlord. There is no proof for the arrears still pending payment.

8. On the side of the respondent, it is stated that on the ground of willful default, for owners' occupation and for sub letting by the tenant, R.C.O.P was filed for eviction. The tenants have not chosen to file any petition for deposit of rent. The rent was not deposited. Only on 20.09.2013, a memo was filed. No order was passed on that memo. No document was filed to show that the landlord refused to receive the rent. Only in the R.C.A., the tenant has deposited the balance of arrears of rent. The premises is required for the own occupation of the owner. Only on bonafide reason for own occupation, the landlord has filed the petition for eviction. On 07.11.2014, the landlord had a cardiac problem. He sold his house and the front side shop for his treatment. He is not having any shop now and the landlord is in need of this premises for his own occupation. The first petitioner has sub leased the property to the second petitioner. The first petitioner is running another



grocery shop in a premises, auctioned by him from the municipality.

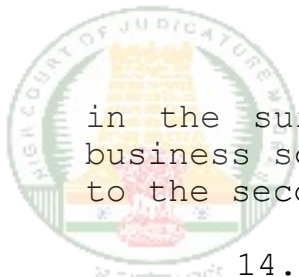
9. It is seen that the first revision petitioner was a tenant of the erstwhile owners of the premises. The claim of the revision petitioners is that they paid a sum of Rs.1,00,001/- (Rupees One Lakh and One Rupee only) as advance to the erstwhile owners but no document to prove the same was filed on the side of the revision petitioners. The revision petitioners had not taken any steps to deposit the rent as soon as the power agent of the erstwhile owner refused to receive the rent in July 2002. The erstwhile owner has filed a R.C.O.P.No.2 of 2003 against the revision petitioners and the petition was dismissed and the appeal filed by the earlier owner in R.C.A.No.6 of 2004 was also dismissed and a Civil Revision Petition in C.R.P.(MD)No.1148 of 2005 was filed before this Court.

10. The claim of the revision petitioners is that they are depositing the rent in R.C.O.P.No.2 of 2003 and they are not aware of the purchase by the revision respondent. The lodgment schedule dated 12.08.2013 was marked as Ex.R12. No document was filed on the side of the revision petitioners to prove that the rent was deposited before or subsequent to Ex.R12. Ex.R1 to Ex.R11 are documents to show that the revision petitioners are in occupation of the premises. The occupation of revision petitioners was already admitted by the respondent and Ex.R1 to Ex.R11 are not useful to decide the issue.

11. The revision respondent is the purchaser of the property. Ex.P1 to P3 are documents to show that the revision respondent is the owner of the premises. The claim of the revision respondent is that the first revision petitioner got a shop through municipality auction and he is running a grocery shop in that premises. Ex.P6 and Ex.P7 are documents to prove the same. It is seen that the petitioners sent a legal notice on 18.12.2012. Only after eight months from date of receipt of the notice, the tenant filed a lodgement schedule dated 12.08.2013. Even after the issuance of notice, the petitioners have not chosen to pay the rent immediately. Hence, it is decided that there is willful default on the part of the revision petitioners.

12. The claim of the revision respondent is that the building is necessary for the own use of the landlord. It is stated that the landlord is planning to run a grocery shop in the premises and to occupy the house.

13. On the side of the revision respondent, it is stated that the revision petitioners have sub leased the building to his brother who is the second petitioner herein. The contention of the first revision petitioner is that the second revision petitioner is just helping his brother and the premises was not sub leased. From Ex.P6 and Ex.P7, it is clear that the first revision petitioner is running



in the suit premises. Since the first respondent is running his business somewhere else, it is clear that he sub leased the premises to the second petitioner.

14. In the above circumstances, it is decided that there is no reason sufficient enough to interfere in the order passed in R.C.A.No.1 of 2016 on the file of the Rent Controller Appellate Authority, Sub Court, Uthamapalayam. Hence, this Civil Revision Petition is dismissed. The revision petitioners are directed to vacate the premises and to hand over vacant possession to the respondent within a period of one month from the date of receipt of copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Sub Judge, Uthamapalayam.

2.The District Munsif, Uthamapalayam.

COPY TO:

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

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-36578[F] dated 30/11/2021)

+1 CC to M/s.K.ASOK KUMAR RAM, Advocate (SR-36845[F] dated 01/12/2021)

C.R.P. (NPD) (MD) .No.806 of 2018
30.11.2021

RD(31.12.2021) 5P 7C