



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.06.2021

Delivered on : 24.06.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

WEB COPY

C.R.P (MD) No.1579 of 2018

and

C.M.P. (MD) No.6920 of 2018

Sundersingh

... Petitioner/Judgment Debtor/
Respondent

Vs.

1. Petchimuthu Asary (Died)
2. Saraswathi
3. Lakshmi
4. Shanthi
5. Usha

... Respondents/Decree Holders/
Petitioners

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the impugned order passed in E.P.No.5 of 2017 in R.C.O.P.No.1 of 2014, dated 04.07.2018, on the file of the District Munsif Court, Srivaikundam.

For Petitioner	: Mr.P.M.Vishnuvarthanan
R1	: Died
For R2 to R5	: Mr.M.P.Senthil

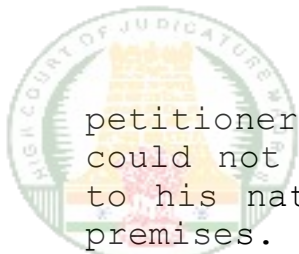
ORDER

This Civil Revision Petition is filed against the order passed in E.P.No.05 of 2017 in R.C.O.P.No.01 of 2014, dated 04.07.2018, on the file of the District Munsif Court, Srivaikundam.

2.The revision petitioner is the tenant and the respondents 2 to 4 are the legal heirs of the landlord/1st respondent herein in R.C.O.P.No.1 of 2014. The landlord filed a petition in R.C.O.P.No.1 of 2014, under Order 10(2)(i), 10(3)(iii) of Rent Control Act.

3. Brief substance of the petition in R.C.O.P.No.1 of 2014, is as follows:

The petitioner/landlord purchased the property on 20.04.1987. He was running a cycle shop there, later, he went to Madurai and he permitted the respondent / tenant to occupy the premises for a monthly rent of Rs.2000/- on oral agreement to vacate the premises as and when required by the



petitioner/landlord. Due to old age, the petitioner / landlord could not do his business in Madurai and he wants to return back to his native place and he wants to do his business in the suit premises. The respondent / tenant paid rent only up to 2012 and subsequently, he failed to pay the rent. A case was registered against the respondent / tenant regarding some theft of cattles. The petitioner's / landlord house is adjoining the property. The respondent is running a butchery shop. The petitioner/ landlord demanded the respondent / tenant to vacate the premises on 15.04.2013 and the respondent / tenant threatened him with dire consequences. The son of the petitioner lodged a complaint against the respondent / tenant and the respondent/ tenant agreed to vacate the premises within a period of five months. But, he failed to do so. On the second complaint by the petitioner, the respondent seeks three months time for vacating the premises. Even after the completion of three months, the respondent failed to vacate the premises. The petitioner / landlord sent a legal notice on 07.02.2014. The premises is necessary for the own occupation of the petitioner and prayed the premises to be vacated.

4.Brief substance of the counted filed by the respondent in R.C.O.P.No. 1 of 2014, is as follows:

It is wrong to say that the petitioner was running a Cycle shop in the premises till 2009. The premises was kept vacant. The respondent occupied the premises in the year 2002 for a rent of Rs.100/- and has paid Rs.25,000/- as advance and he was running a butchery shop in the premises. Subsequently, the petitioner permitted the respondent to put up asbestos shed in the premises, the respondent paid Rs.2,000/- as monthly rent, till the year 2007 and from 2007 to 2013 November, he was paying Rs.2,500/- per month as rent. The rent for January - 2014 alone is pending. The petitioner refused to receive the rent. Only the site belong to the petitioner, the superstructure belong to the respondent and this petition under the Rent Control Act is not maintainable.

5.The Rent Controller after hearing both sides, allowed the petition and directed the respondent to vacate the premises and to handover the possession to the petitioner within a period of three months. Against the order, the tenant approached the Rent Control Appellate Authority - Sub Court, Tiruchendur with an un-numbered R.C.A along with a delay excuse petition. In the meanwhile, the landlord filed a petition for recovery of possession before the District Munsif, Srivaikundam, in E.P.No.5 of 2017 and the Execution Petition was allowed and delivery was ordered on 25.07.2018. Against that order, the revision petitioner has filed this Civil Revision.



6. On the side of the revision petitioner, it is stated that the tenant has put up a construction at the cost of Rs.25,000/-. There is no *bona fide* requirement for own use and on the date of filing of the R.C.O.P., i.e. 25.02.2014, there was no arrears of rent and on that sole ground, R.C.O.P. Order is to be set aside. Even though a R.C.A filed by the revision petitioner, the E.P was allowed by the District Munsif. The Execution Court failed to consider that the parties are having a right to file an Appeal and prayed the order to be set aside.

7. On the side of the revision petitioner, it is further stated that the landlord died during the pendency of the proceedings and the present petitioners in the Execution Proceedings are only the second wife and her issues. The first wife and her children were not impleaded as petitioners and prayed the order of the District Munsif, to be set aside.

8. On the side of the respondents, it is stated that the R.C.O.P. was allowed on the ground of own occupation and on the ground of wilful default. No R.C.A was filed by the tenant within the time limit. The only objection raised by the tenant in the E.P proceeding is that R.C.A was pending. No interim order in the R.C.A proceeding was produced by the tenant. The tenant filed a petition to condone the delay in I.A.No.1 of 2017 along with a R.C.A petition. The petition filed under Section 5 of the Limitation Act was also dismissed as abated on 02.03.2020. As on the date of order in the Execution Proceedings, there was no R.C.A pending. Even the admitted rent was not paid by the tenant for the past seven years, R.C.A was filed in the year 2014 and the landlord could not enjoy the premises for the past seven years. The tenant is enjoying the premises without paying rent and prayed the revision to be dismissed.

9. A perusal of the records reveals that the only contention raised by the respondent in the Execution Proceeding is that R.C.A is pending. It is seen that R.C.A was not yet numbered, the petition filed by the tenant under Section 5 of Limitation Act was dismissed on 02.03.2020. The tenant has not raised any point regarding the legal heirs of the deceased-landlord in his counter filed before the Execution Court. Now, the petitioner cannot raise a new point at the stage of revision. The R.C.O.P. was allowed not only on the ground of wilful default, but also on the ground of own use of the owner.

10. In the above circumstances, there is nothing sufficient enough to interfere in the orders of the trial Court. Hence, this Civil Revision Petition is dismissed. The revision petitioner / tenant is directed to handover vacant possession of the premises



to the respondents / landlord within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Is

To

1.The District Munsif,
Srivaikundam.

2.The Section Officer-2 copies
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.P.M.VISHNUVARTHANAN, Advocate (SR-20107[F] dated 24/06/2021)

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-20109[F] dated 24/06/2021)

order made in
C.R.P(MD)No.1579 of 2018
24.06.2021

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KM(02.07.2021) 4P 6C