



CRP NPD No.1430 of 2021
and CMP No.11157 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 24.01.2022	Delivered on 04.02.2022
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CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Revision Petition (NPD) No.1430 of 2021
and CMP No.11157 of 2021

M.Kanagambal

.. Petitioner

Vs.

1. N.Sabapathi

2. S.Balaji @ Lakshmi Narayanan

.. Respondents

PRAYER: Civil Revision Petition filed under section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, praying to set aside the fair and decreetal order of the Rent Control Appellate Authority (Subordinate Judge Court) at Paramathi, dated 08.02.2021 in R.C.A.No.5 of 2018 confirming the fair and decreetal order of the Rent Controller (District Munsif Court cum Judicial Magistrate) at Paramathi, dated 16.03.2015 in RCOP No.1 of 2008.



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For Petitioner : Mr. P. Valliappan
for M/s. PV Law Associates

For Respondents : Mr. E.K.Kumaresan

ORDER

One of the alleged tenants is the petitioner. The respondents sought for eviction under Sections 10(2)(I) (Wilful default), 10(2)(VII) (Denial of title) and 10(3)(A)(I) (Owners occupation for residential purpose).

2. According to the respondents, they are the owners of the petition premises, the first respondent having purchased the first item of property on 03.10.1996 from one N.Manickam (1st respondent in RCOP) and the second respondent having purchased the second item of property on 31.12.1996 from one Krishnan. It is contended that Manickam, one of the vendors and his wife, the petitioner herein, became tenants under the respondents on a monthly rent of Rs.700/-. The tenancy is said to be oral.



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3. According to the respondents, the said Manickam was paying rents regularly till December 1997 and thereafter, he did not pay the rent.

It was also contended that the first respondent retired from service and he is occupying a very small house adjacent to the rented property. As the same is insufficient for his requirement, he had requested the respondents to vacate and handover possession. The second respondent is likely to get married in the near future and he also requires the portion occupied by Manickam and the petitioner herein. Hence the respondents sent a registered notice on 11.03.2008, requiring the Manickam and the petitioner herein to vacate and also pay the arrears of rent. Manickam sent a reply on 31.03.2008, claiming that he is not a tenant and the sale deed is not true. The respondents would further claim that the said Manickam has admitted the tenancy in his letter dated 18.02.1998. Therefore, the respondents sought for eviction on the grounds of Wilful default, Owners occupation and Denial of title.

4. A counter was filed by the said Manickam and the petitioner herein, contending that the Sale Deed relied upon by the landlords is not



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true and valid. It is claimed that Manickam had borrowed a sum of Rs.1,00,000/- from the first respondent and since they insisted that he should execute a sale deed as security for the loan advanced, he had executed the document. He would also claim that he had repaid the entire loan amount in February 2008. According to the said Manickam and the petitioner herein when they demanded a reconveyance, since they had discharged the entire loan, the respondents have come up with the false claim of tenancy.

5. It is claimed that the property belongs to Manickam ancestrally, and his three daughters had filed a suit for partition. It is also contended that in the said suit namely, OS No.88 of 2008, a decree for partition has been granted in favour of the daughters in the presence of the respondents herein. Therefore, according to the said Manickam, in the absence of a relationship of landlord and tenant, the proceedings under the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 are not maintainable. Manickam died pending the Original Petition and the proceeding continued against the petitioner herein.



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6. At trial, the respondents (landlords) were examined as P.Ws.1 and 2 and the petitioner herein was examined as R.W.1. Exhibits A1 to A13 were marked on the side of the respondents.

7. The learned Rent Controller on an assessment of the evidence concluded that the landlords have proved that there was a valid tenancy. The learned Rent Controller would rely upon the letter dated 18.02.1998 which was marked as Ex.P8 and the evidence of R.W.1 in cross-examination where she had admitted the sale by Manickam in favour of his brother Sababathi and the fact that the respondents are collecting the rent for the first floor portion of the house. Having concluded that there was a valid tenancy, the non-payment of rent having been admitted, the learned Rent Controller ordered eviction.

8. Aggrieved the second respondent in RCOP No.1 of 2008 preferred an Appeal in RCA No.5 of 2018. The learned Appellate Authority on a reconsideration of the evidence on record concurred with



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the findings of the Rent Controller and dismissed the Appeal, hence this
Revision.

9. Mr.P.Valliappan, learned counsel appearing for the petitioner/tenant would vehemently contend that in order to invoke the provisions of the Tamilnadu Buildings (Lease and Rent Control) Act, it is incumbent on the landlord to prove a valid tenancy. If the landlord fails to prove valid tenancy, the provisions of the Act would not be attracted and therefore, the proceedings under the Act will not be maintainable. Drawing my attention to the evidence that has been relied upon by the Rent Controller as well as the Appellate Authority, the learned counsel would contend that neither the letter dated 18.02.1998 marked as Ex.P8 nor the so called admissions in cross-examination of R.W.1, would have the effect of proving a valid tenancy. He would further add that a denial of title by a tenant would constitute a ground for eviction under Section 10(2)(7) of the Act, only if such denial is not *bona fide*.

10. In the case on hand, the deceased Manickam not only denied



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the title but also the tenancy. Therefore, it was incumbent upon the landlord to prove tenancy and to prove that the denial of title by Manickam was not bona fide. If the tenancy is not proved then the Rent Controller or the Appellate Authority cannot or need not go into the question of denial of title. Taking me through the discussion by the Authorities constituted under the Act, Mr.P.Valliappan would contend that both the Authorities have not approached the case in the right perspective and they had gone on to decide the question of denial of title without deciding, as to whether, there was a valid tenancy or not. Making a distinction between a denial of tenancy and denial of title, Mr.P.Valliappan, would contend that the existence of tenancy is a pre-requisite. He would also add that even a person without title can be a landlord in view of the wide definition of landlord under Section 2(6) of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960, but unless the tenancy is proved the Act will not apply. Therefore, according to the learned counsel both the Authorities overlooked a very vital requirement and therefore, their findings have to be interfered with.



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11. Contending contra, Mr.E.K.Kumaresan, learned counsel appearing for the respondents/landlords would contend that in the letter dated 18.02.1998 marked as Ex.P8, the deceased Manickam had categorically admitted tenancy. He would also point out that the petitioner herein as R.W.1 has deposed as follows:

“nky; tPl;il bghUj;j tiu jw;ngHJ kDjhuh;
thlif th';fp bfhs;fpwhh/;”

“bjd;g[wk; cs;s fhYf;F nkny Xl;LtPL
cs;sJ/ V';fs; tPl;ow;Fk; nky; cs;s Xl;LtPL v';fs;
tPl;ila[k; ghyh\$ p tPl;ila[k; nrh;e;J jhd; xnu tPlhf
cs;sJ/”

Relying upon the above evidence and the contents of Ex.P8, the learned counsel would submit that, the Authorities have rightly concluded that there was a valid tenancy. Therefore, according to the learned counsel,



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the findings of the Authorities need not be interfered with. He would also point out that being concurrent findings, this Court in exercise of the revisional jurisdiction under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act, may not interfere with such findings unless they are shown to be perverse or based on no evidence.

12. I have considered the submissions of the learned counsel for the parties.

13. Both the Authorities have not considered the relationship between the parties. The husband of the petitioner herein namely Manickam, who was arrayed as the respondent in the RCOP, is the brother of the first respondent. A portion of the petition premises was allotted to the deceased Manickam, in a partition that took place between the brothers. It is claimed that Manickam had sold the property allotted to him to the first petitioner under a Sale Deed dated 03.10.1996. According to the respondents herein, having sold the property, Manickam continued as a tenant under them agreeing paying a monthly rent of Rs.700/-. It is



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specifically averred in the petition that the deceased Manickam was regular in payment of rents till December 1997. The monthly rent is also stated to be Rs.700/-. The letter Ex-P8 which is sought to be relied upon as proof of tenancy is dated 18.02.1998. In the said letter it is stated that rent due is Rs.2,100/-. If Manickam had paid rents up to December 1997, as on 18.02.1998 namely the date of Ex.P8, the rent due could be only Rs.700/- that is the rent for the month of January 1998. Therefore, the explanation offered by R.W.1 that Manickam had collected the rent from the other tenants and that is the sum of Rs.2,100/- referred to in Ex.P8 becomes more plausible and acceptable.

14. To a specific question, as to whether, Manickam has admitted that he is a tenant under the respondents, P.W.2 has answered in a negative. The other evidence of R.W.1 that is sought to be relied upon is the fact that R.W.1 has admitted the sale by Manickam to his brother Sababathi and the fact that she has admitted that the petitioners are collecting rent from the first floor portion of the house.



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15. Both the Authorities under the Act, in my opinion, had not appreciated the evidence in the proper perspective and they have put together irrelevant pieces of evidence to assume a tenancy. The provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, would stand attracted only when there is proof of existing tenancy. If the relationship of landlord and tenant is not established. The Authorities under the Act will not have jurisdiction to order eviction. As I had already pointed out Ex.P8 cannot be taken as proof of tenancy as there is inherent evidence available from the very document that the rent referred to therein is not rent payable by Manickam, the author of the said document.

16. As regards the admissions in the cross-examination also there is nothing to show that the respondents in the RCOP namely the deceased Manickam and the petitioner herein had paid even a month's rent to the landlords/respondents herein, so as to assume a tenancy. Though it is stated that Manickam stopped paying rent in 1997, proceedings for eviction had been launched in June 2008, nearly after 11



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years, this delay itself raises considerable doubts about the relationship between the parties. The Authorities constituted under the Tamil Nadu Buildings (Lease and Rent Control) Act, are Tribunals having limited jurisdiction and they are not required to examine the question of title. Once it is found that the conclusion of the Tribunals on the existence of the relationship of landlord and tenant itself is unacceptable or perverse then the other findings will have to be set aside.

17. Mr.E.K.Kumaresan, learned counsel appearing for the respondents would however contend that being concurrent findings, this Court sitting in a Revision under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, should not interfere unless it is shown that the findings are *per se* perverse. No doubt, the Revisional jurisdiction under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, is not as wide as the Appellate jurisdiction, but the same is not as narrow as the jurisdiction under Section 115 of the Code of Civil Procedure also.



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18. In *S.Somaiah and another v. S.P.Vasudevan*, reported in **1996 (1) LW 407**, this Court had held that the High Court can scrutinise the propriety of the finding of a fact and if it is found that such finding is perverse High Court can interfere under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act. A similar view was expressed by this Court in *Munusamy v. S.S. Nathan*, reported in **1996 (1) MLJ 176**. This Court had held that even misunderstanding of law and misinterpretation of the evidence is a ground for interference under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act. This Court went one step further in *Murugesan v. Raj Mohamed*, reported in **1995 (1) MLJ 84**, to conclude that interference is possible under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act, even in case of miscarriage of justice.

19. If we are to examine the findings of the Authorities in the case on hand, in the light of the Principles set out in the above referred to decisions of this Court, it is clear that the findings of the Authorities are a result of misunderstanding of the scope of the provisions of the Act and



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misinterpretation of the evidence. I find that the conclusions of the Authorities are perverse and such conclusion cannot be reached on the available evidence. I have already set out the evidence that is available, Ex.P8 has its own inherent deficiencies and it probabalises the case of the petitioner herein than that of the respondents. The oral evidence to the effect that the landlords are collecting rent for another portion of the property cannot be a ground to assume a tenancy.

20. The Trial Court as well as the Appellate Court had rejected the explanation offered by R.W.1, on the ground that she has not pleaded so in the counter statement filed in RCOP. Both the Courts overlooked the fact that there was no plea regarding collection of rent from the tenants of the first floor in the petition to enable the respondents to respond to it in the counter. If a new fact is introduced in the evidence during the course of cross-examination explanation to that fact cannot be rejected on the ground of absence of plea.

21. I am therefore of the considered opinion that, though



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concurrent findings, the findings of the Authorities are perverse and the eviction order which stems out of such perverse findings will have to be set aside. The Civil Revision is therefore **allowed**, the orders of the Authorities are set aside, RCOP No.1 of 2008 will stand dismissed. However, in the circumstances there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

04.02.2022

jv

Index : Yes

Internet : Yes

Speaking order

To

1. The Subordinate Judge,
Rent Control Appellate Authority,
Paramathi.
2. The District Munsif Court cum Judicial Magistrate
Rent Controller,
Paramathi.
3. The Section Officer,
V.R.Section,
High Court of Madras.



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R.SUBRAMANIAN, J.

jv

Pre Delivery Order
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