



C.R.P.No.2164 of 2021
and C.M.P.No.16401 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2022

CORAM :

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.2164 of 2021

and

C.M.P.No.16401 of 2021

1. Srinivasan

2. Shanthi

... Petitioners

Vs.

K. Soundaram

... Respondent

PRAYER: Civil Revision Petition filed under Section 25 of Tamilnadu Buildings Lease and Rent Control Act against the decree and judgment dated 06.01.2021 passed in RCA No.319/2017 on the file of IX Small Causes court, Chennai, upholding the order and decree dated 10.01.2017 passed in RCOP No.207 of 2008 on the file of XIII Small Causes Court, Chennai.

For Petitioners : Mr. V. Balasubramani

For Respondent : Mr. Adinarayana Rao



WEB COPY



C.R.P.No.2164 of 2021
and C.M.P.No.16401 of 2021

ORDER

The revision petitioners are the tenants in the premises bearing D. No.15, Nana Street, T. Nagar, Chennai 600 017 on a monthly rent of Rs.500/- and it is for residential purpose. According to the respondent/landlady the revision petitioners have been irregular in payment of rents from January 2003 and moreover used the premises for commercial purpose thereby committing a different usage other than the one agreed upon. The land lady also wanted the premises for her own use and occupation as she is already living with her brother's family and had some personal inconvenience due to which she wanted the premises for her own use. Therefore the landlady approached the Small Causes Court at Chennai and filed R.C.O.P. No.207/2008 under Sections 10(2)(i) and 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960.

2. The revision petitioners / tenants resisted the RCOP by stating that there was no landlord-tenant relationship between them.



C.R.P.No.2164 of 2021
and C.M.P.No.16401 of 2021

WEB COPY

According to the revision petitioners/tenants the premises originally belonged to one Kandhasamy Mudaliar who during his lifetime gave the property to one Mr.Ramanujam, who was living in the petition mentioned premises along with his family for more than 40 years. The Revision petitioners are the son and daughter-in-law of the said Ramanujam. Both Kandhasamy and Ramanujam died. Therefore, when there was no relationship of landlord - tenant, the RCOP itself is liable to be dismissed and all other allegations made out by the landlady are false.

3. The learned Rent Controller allowed the RCOP vide his orders dated 10.01.2017 and ordered eviction of the tenants based on Ex.P12 rental receipt which revealed that the deceased father of the tenants had paid rents of Rs.250/- to the landlady's mother in the year 1978. The trial Court had also relied on the deposition of RW1 (2nd respondent in RCOP) that the signature found in Ex.P12 rental receipt was that of his father late Ramanujam and that he never disputed the rental receipt Ex.P12. Thus, according to the trial Court the tenancy was



C.R.P.No.2164 of 2021
and C.M.P.No.16401 of 2021

WEB COPY

established and Ex.P3 (the Will executed by the mother of the landlady)

clearly substantiated the fact that the landlady had title to the property in her name and this was also strengthened through Ex.P4 to Ex.P6 which were the electricity white meter card, property tax and water charges in the name of the landlady. The trial Court further concluded that since the father of the present tenants was the tenant under landlady's deceased mother, the landlord - tenant relationship continued to exist and as it has been admitted by the tenants that they never remitted rents, the wilful default in payment of rents aspect goes in favour of the landlady. Regarding the requirement of own occupation since there was no serious objection from the tenants it was also answered in favour of the landlady.

4. Aggrieved over this order dated 10.01.2017, the tenants filed R.C.A No.319 of 2017 before the IX Small Causes Court, Chennai. In the same RCA, M.P No.161 of 2018 was also filed for receiving additional documents and both RCA and M.P were dismissed vide orders dated 06.01.2021. In the RCA, the tenants had additionally made a submission that they were not only in possession and occupation of the



C.R.P.No.2164 of 2021
and C.M.P.No.16401 of 2021

WEB COPY

tenanted premises but also were the rightful owners by way of gift deed in favour of the deceased Ramanujam and also by adverse possession. It was also contended that the other co-owners were not added as parties.

The RCA was dismissed on the following grounds :

- 1) Gift deed was not produced by the tenants.
- 2) The claim of adverse possession itself implied that the title of the property was not with the tenants and that the tenants admitted the ownership of the landlady.
- 3) The plea of adverse possession was also negated in O.S.No.3571 of 2015 on the file of VI Assistant City Civil Court, Chennai, vide decree and judgment dated 20.12.2017.
- 4) Ex.P12 rental receipt was admitted by the tenants and the signature of their deceased father was also confirmed by them.
- 5) The tenants had committed wilful default in payment of rent and also did not seriously dispute the requirement of landlady for her own use and occupation.

5. Mr. V. Balasubramani, learned counsel for the revision



C.R.P.No.2164 of 2021
and C.M.P.No.16401 of 2021

WEB COPY

petitioners would contend that there never existed a tenancy agreement and there is no jural relationship between the petitioners and the respondents herein. It was also contended by him that the petitioners have been in occupation of the said property for more than 40 years without any interruption. It was further contended by the counsel that the father of the revision petitioners was a clerical staff in the office where the landlady's father was working as Chief Engineer. The father of the landlady had utilised the services of the father of the petitioners for collecting rents from different properties owned by him and some of the rental receipts were misused in order to show and prove that there was indeed a landlord-tenant relationship between both of them. It was also reiterated by the learned counsel that the premises under the occupation of the petitioners was gifted by the father of the landlady to their father and that was the reason that there was no need for them to pay any rent. According to him, the trouble started only after the demise of the father of the landlady and in fact the rental receipts produced by the landlady were of the year 1978 and not of any recent date which itself clearly shows that there was no landlord - tenant relationship between the parties



C.R.P.No.2164 of 2021
and C.M.P.No.16401 of 2021

and the RCOP itself is not maintainable.

6. Per contra Mr. Adinarayana Rao, learned counsel for the respondent/landlady would contend that there existed a landlord-tenant relationship much before the present petitioners' tenancy came into existence. Firstly, the father of the landlady had let out the premises to the father of the tenants. He also drew the attention of this Court to the judgment in C.S.No.159 of 2019 dated 17.07.2019 in which a single judge of this Court had observed that the possession of the present petitioners can at the best be termed as permissive possession and that when the finding of the Rent Controller regarding the existence of relationship of landlord-tenant has been made, the claim of the present petitioners that they have perfected their title by way of adverse possession and prescription would not hold good.

7. Moreover, in C.M.P. No.7698 of 2021 in O.S.A.Sr.No.2367 of 2021 a Division Bench of this Court had also observed based on the then prevailing law that the plea of adverse possession can only be raised as a shield and not as a sword.



C.R.P.No.2164 of 2021
and C.M.P.No.16401 of 2021

WEB COPY

8. On a careful scrutiny of both the orders in R.C.O.P.No.207 of 2008 and R.C.A.No.319 of 2017 it is evident that the present petitioners have not only defaulted in payment of rents but have actually thwarted the attempts to evict them by disputing the title of the landlady as well as claiming title by way of a gift deed as well as by way of adverse possession. Ironically the plea of adverse possession and the plea of title through gift deed do not go together. The very term adverse possession would imply that the ownership is not with the person who is in possession and that though the owner has knowledge about the possession he has not objected to it. Thus, the plea of adverse possession is sufficient evidence to show that the title of the property was never with the petitioners / tenants. Though the Courts below have concluded that the gift deed has not been adduced by the petitioners, the very plea of adverse possession by them itself made the other plea of gift deed invalid. Moreover, the said gift deed has not also been marked at any stage of the proceeding.



C.R.P.No.2164 of 2021
and C.M.P.No.16401 of 2021

WEB COPY

9. Now coming to the wilful default in payment of rent aspect, it can be easily deciphered that the present petitioners as tenants have never remitted the rent claiming that no jural relationship existed. The tenants have gone to the extent of claiming that the only rental receipt Ex.P12 is for Rs.250/- and not for Rs.500/- which was claimed as the rent by the landlady. However, since the first petitioner, as RW1 had admitted that Ex.P12 was signed by his father and genuine the existence of jural relationship was clearly established by the landlady. The petitioners / tenants have also averred that they have been in occupation of the property for more than 40 years which also shows that the jural relationship was quite old and the absence of any written rental agreement cannot be considered fatal to the case of the respondent / landlady. The other reason cited by the landlady for evicting the petitioners / tenants was the requirement for her own use and occupation. According to the landlady, she being a spinster, was finding it difficult and inconvenient to live with her brother and his family. This was not disputed and objected by the petitioners / tenants since they were not



C.R.P.No.2164 of 2021
and C.M.P.No.16401 of 2021

WEB COPY ready to accept the jural relationship itself.

10. In view of the aforesaid discussion I do not see any infirmity in the orders of the Rent Controller and Rent Control Appellate Authority. Accordingly, the Civil Revision Petition fails and is therefore dismissed.

11. In the result,

- i. the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is also dismissed.
- ii. The decree and judgment dated 06.01.2021 passed in R.C.A No.319/2017 on the file of IX Small Causes court, Chennai, and the orders dated 10.01.2017 passed in R.C.O.P No.207 of 2008 on the file of XIII Small Causes Court, Chennai, are upheld.

23.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



WEB COPY



C.R.P.No.2164 of 2021
and C.M.P.No.16401 of 2021

R. HEMALATHA, J.

bga

To,

1. The IX Judge, Small Causes court, Chennai.
2. The XIII Judge, Small Causes Court, Chennai.

C.R.P.No.2164 of 2021
and C.M.P.No.16401 of 2021

23.11.2022