



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022

CORAM:

Mr. JUSTICE N.SESHASAYEE

C.R.P.No.2227 of 2020
and C.M.P.No.14028 of 2020

1.P.Sengodu (Died)

2.M/s.Parimala Stores,
A Partnership Firm,
Rep. by its Partner P.Sengodu,
204, Brough Road, Erode,
Erode District.

3.S.Devendran

4.S.Pavathal

5.K.Parimala

6.T.Gomathi

[Petitioners 4 to 6 brought on record as Lrs of the deceased
1st petitioner vide Court order dated 04.03.2022 in
CMP.No.13343 of 2021 in CRP. No. 2227/2020]

...Petitioners/Tenants

Vs.

K.P.Subbaiyan (Died)

1.Radha Subbaiyan
2.Ramani Vijayan
3.Rajalakshmi Ravikanth
4.Santhi Anand
5.Prakash Subbaiyan
6.Jothi Selvan
7.Rajesh Subbaiyan

...Respondents/Landlord

PRAYER: The Civil Revision Petition is filed under Section 25 of the Tamil Nadu (Buildings Lease and Rent Control) Act, to set aside the fair and decreetal order dated 16.10.2020 made in RCA.No.5 of 2016 on the file of the learned Rent Control



Appellate Authority/ Principal Sub-Court, Erode confirming the fair and decreetal order dated 07.03.2016 made in RCOP.No.3 of 2007 on the file of the learned Rent Controller/ Principal District Munsif Court, Erode by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Manoharan

For Respondents : Mr.K.S.Jeyaganeshan

ORDER

The revision petitioners herein were the tenants in an eviction proceeding that the respondent/ landlord had instituted in RCOP.No.3 of 2007.

2. The eviction was sought on the ground of bonafide need for demolition and re-construction under Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The landlord has come forward with a straight forward case and his pleadings taken alongside the evidence indicate that the property originally belonged to certain Sivagnana Asari, and the property after successive transfer has come into the hands of the landlord vide sale deeds dated 18.08.2006. It is not in dispute that the respondents are the owners of the site in question. The only issue is, if the landlord is also the owner of the building in question.

3. According to the tenant, Sivagnana Asari has granted a ground lease of a small plot of land measuring not more than about 196.5 sq.ft., and he leased it to a certain Ramasamy Vide rent note dated 01.09.1959. The said Ramasamy had first stated to have put up a bunk shop in which he ran bicycle-mechanic business. On 31.12.1965, Ramasamy was stated to have sold the bunk shop along with all the fixtures and bicycles to the present tenant. It is case of the tenant that at the best the respondent is only the owner of the site and not of the building, and the building was put up by Ramasamy, the original tenant.

4. During trial, the tenant inter alia produced Ex.R3 and Ex.R54, of which the latter document is the rent note entered into between Sivagnana Asari and Ramasamy and the former document is a sale note that Ramasamy is stated to have executed in favour of the revision petitioner/ tenant. This apart, there was an earlier litigation between the vendor of the present landlord and the tenant in O.S.No.417 of 1988 and this is laid



for eviction. This according to the revision petitioners relates to a plot that lies adjacent to the building now in question. That suit came to be decreed and the first appeal preferred by the tenant in A.S.No.102 of 1992 came to be dismissed and so was the second appeal that he filed in S.A.No.1543 of 1993. Pleadings in this suit are marked as Ex.R40 and Ex.R41. The judgments and decrees of the trial Court as well as the first appellate Court respectively are marked as Ex.R42 and Ex.R43 and Ex.R44 and Ex.R45. Execution petition was subsequently laid in that suit and the suit property therein was delivered vide Ex.R32 delivery receipt. These documents were introduced by the tenant to show that the present cycle shop was shown as one of the boundaries of the suit property involved in O.S.No.417 of 1988.

5. Turning to the orders of the Tribunals below, both the Rent Controller and the Appellate Authority have taken exception to the fact that the present tenant has not produced both Ex.R-3 and Ex.R-54 during the trial of O.S.No.417 of 1988.

6. In this revision, the learned counsel for the revision petitioners argued that when it is established beyond doubt that the property involved in the present rent control proceedings and one involved in O.S.No.417 of 1988 are different, then the Tribunals below ought to have given its views or findings on the effect of those documents. He submitted Ex.R54 and Ex.R3 stand proved and PW1 has admitted about them in his cross examination in the present RCOP. He also submitted that the landlord has not proved any of the criteria necessary for seeking demolition and re-construction of the property and relied on the following authorities: Abdul Rasheed Vs. Muslim Mahadavia Jamath Committee [2012(3) MWN 517], M.Abu Tahir Vs. M.Rahamuthulla [2005 (5) CTC 585], Duraisamy and others vs. R.Sureshlal & another [2006 (3) CTC 147] and Arumugha Chettiyar Vs. Jayaraman [1995 (2) MLJ 282].

7. Mr.K.S.Jeyaganeshan, the learned counsel for the respondents contended that while the petitioners pleaded that Sivagnana Asari, the original owner of the property had given vacant site in lease to certain Ramasamy in 1959, that document has not been proved. Indeed when PW1 was cross examined on this aspect nowhere it was suggested to him that Sivagnana Asari had granted only a ground lease to Ramasamy, nor Ex.R54 was pointedly confronted to him. Indeed to another pointed suggestion by the tenant that Ramasamy had put up the structure, the respondent merely says that he did not know. Now it is the tenant case that the building was put up by Ramasamy, and the



burden is on him to prove it, but he has not proved it. Another fact which the tenant relies on is that, under Ex.R3 he claims to have purchased both the movables and immovables from Ramasamy for a total consideration of Rs.2,500/- and necessarily this document has to be stamped and registered but neither of these legal requirements were complied with. A mere marking of a document in evidence does not imply that the Court can look into its contents when the document needs registration and also payment of stamp duty in terms of the Stamp Act.

8. This Court carefully considered the rival submissions. Admittedly, the tenant has been in possession of the property for close to 62 years now, and it is admittedly a small bunk shop comprising an extent of roughly about 196 sq.ft. The dispute is all about title to the building and in the opinion of this Court, the tenant has not established adequately that the building was put up by Ramasamy. So far as proof of contents of Ex.R54 is concerned, this Court finds there is hardly any evidence to indicate that the present building was put up by Ramasamy. It may be that proof of signature of the parties to Ex.R54 may not have to be proved since it is an ancient document and that section 90 of the Indian Evidence Act may well take care of it, but the content there of is another aspect which requires independent proof.

9. Turning to PW1's cross examination, it requires a point of attention. He merely admits that Sivagnana Asari has given the lease of the property, but he is careful enough not to admit that Ramasamy has put up the present building. Inasmuch the ownership of the building is the fulcrum of the tenant's case, and since the same is not proved, the tenant may not resist the eviction on the ground of ownership over the building in question.

10. Turning to the other argument pertaining to the existence of the condition for demolition and re-construction, the very description of the property may invite the application of the principle of res ipsa loquitur to this case. Admittedly, the building in question is a bunk shop and the tenant has been in possession for about 60 years now. The pre-eminent V.R.Krishna Iyer J once remarked that buildings such as these are pimples in fair face. See: Kalyani v. Madhavi [1970 K.L.T. 257]. It is apparent to this Court that the tenant is now holding the right of the landlord to demolish and re-construct would augment his income to ransom, and his design cannot be countenanced. At any rate, this calls for a meticulous analysis of facts, which is not advised when this court exercises its



power of revision. See: Hindustan Petroleum Corporation Ltd.,
Vs. Dilbahar Singh [2014 (9) SCC 78].

11. In fine, this Court does not find any merit in the
revision and the same is dismissed. No costs. Consequently,
the connected civil miscellaneous petition is also dismissed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Rent Control Appellate Authority/
Principal Sub-Court,
Erode.
2. The Rent Controller/
Principal District Munsif Court,
Erode.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.K.S.Jeyaganeshan, Advocate sr 25565
+1 CC to Mr.N.Manoharan, Advocate sr 25439.

C.R.P.No.2227 of 2020

SSI (CO)
SP(02/06/2022)