



CRP.No. 2071 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 2071 of 2017

1.Vijayalakshmi
2. Bagyalakshmi

.. Petitioners

Versus

Shankar (died)
2. Susila
3. Prema
4. Pavitha
5. Venkatesan
6. Saranya
[Respondents 2 to 6 brought on record
as LRs of the deceased sole respondent
viz., Shankar vide Court order dated 11.04.2022
made in CMP.No.16424 of 2021]

...Respondents

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings [Lease and Rent Control] Act, 1960] against the Judgment and Decree in RCA.No.1 of 2016, dated 04.05.2017 on the file of Rent Control Appellate Tribunal, Vellore, in reversing the order and decree in



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RCOP.No.24 of 2009, dated 30.11.2015 on the file of the Rent Controller,
Katpadi, (District Munsif, Katpadi).

For Petitioners : Mr.V. Raghavachari

Deceased Sarcar : Died

For RR 2 to 6 : No Appearance

ORDER

This Civil Revision Petition has been filed against the Judgment and Decree dated 04.05.2017 in R.C.A.No.1 of 2016 on the file of Rent Control Appellate Tribunal, Vellore, reversing the order and decree in R.C.O.P.No.24 of 2009, dated 30.11.2015 on the file of the Rent Controller, Katpadi, (District Munsif, Katpadi).

2. The revision petitioners are the landlords who have filed the said RCOP.No.24 of 2009 to evict the tenants/respondents herein on the ground of willful default in payment of rent.



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3. The said application was contested by the tenant (since deceased) and while submitting the facts before the trial Court, the tenant contended that the landlords purchased the property from the original owner Abrham Sarcar on 14.12.2001 and from that day onwards, the landlord was the absolute owner of the property and after purchase of the property, the revision petitioners issued notice to the tenant on 08.03.2004 intimating that they are the purchasers and also directed the tenant to pay monthly rent of Rs.1,000/- to them. On receipt of the said notice, the respondent/tenant has not sent any reply. As there are rental arrears for about three years, the landlords filed RCOP.No.24 of 2009 for eviction.

4. The respondent/tenant (since deceased), denied the right of the landlords by contending that they have not become the owners of the property by alleged sale and he paid the rent to the original owner Abrham Sarcar and after his demise, he paid rent regularly to his son, namely, Abrham Sarcar and there is no wilful default on his part. Hence, the tenant prayed to dismiss the application.



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5. Considering both side submissions and the oral and documentary evidence, the Rent Controller held that *prima facie* case is made out and it reveals that the petitioners are the landlords and accordingly, concluded that the tenant committed wilful default in payment of rent and directed the respondent/tenant to vacate the premises within a period of four weeks from 30.11.2015.

6. Challenging the said finding of the trial Court, the tenant has preferred an appeal in RCA.No.1 of 2006 under Section 10(2)(1) of the Tamil Nadu Building (Lease and Rent) Control Act, before the Rent Control Appellate Tribunal, Vellore. In the said appeal also, it was contended by the tenants that he is paying rent to the son of the original owner, namely, Abrham Sarcar from the year 2002, in which there is no dispute and there is also a title dispute between the legal heirs of the deceased Abrham Sarcar (Vendor of the plaintiffs) and it is pending in A.S.No.504 of 2013 before the Court. Therefore, the landlords have no right to claim themselves as the owner of the property and accordingly, they are not entitled to proceed with the eviction proceedings against their



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tenant. The appellate authority on consideration of material evidence, allowed RCA.No.1 of 2016 by setting aside the order passed in RCOP.No.24 of 2009, dated 30.11.2015. Challenging the said finding, the revision petitioners/landlords have preferred this revision.

7. None appeared on behalf of the respondent/tenant.

8. The learned counsel appearing for the revision petitioners/landlords submitted that, already the landlords have filed separate suit in O.S.No.457 of 2004 before the District Munsif Court, Vellore, for eviction, claiming decree for arrears of rent and the same was allowed in their favour and till date, the said decree has not been challenged by the tenant. After their purchase of the property from the Vendor Abrham Sarcar by way of sale deed dated 14.12.2001, they are in possession of the property. So, the respondent/tenant is bound to pay the rent to the landlords and not to the vendor's son. The appellate Court has failed to appreciate the said fact and erroneously passed the order dated 30.11.2015 and RCA.No.1 of 2016 was allowed and it is stated by the



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learned counsel for the petitioners/landlords that the findings of the Rent Controller are proper and he prayed to set aside the findings of the Appellate Court.

9. The learned counsel appearing for the revision petitioners/landlords pointed out that the landlords have purchased the property from the original owner Abrham Sarcar while he was alive in the year 2001 itself and thereafter, he passed away on 20.02.2010 and his son, Abrham Sarcar claimed himself as the owner of the property, based on the Will said to have been executed by his father and to prove the said Will, he filed a suit in TOS.No.23 of 2013 on the file of this Court praying issuance of Letters of Administration with a certified copy of the Will claiming that he became the owner of the property based on the Will and also entered into compromise with parties to the proceedings and the present landlords are not parties therein.



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10. Having come to the knowledge of the said proceedings, the landlords filed O.A.No.2608 of 2012 under Order XIV Rule 8 of CPC r/w.Order 25 Rule 62 of OS Rules r/w 263 of Indian Succession Act, 1925 to revoke or recall and annul the grant of Letters of Administration granted in TOS.No.23 of 2003, dated 29.08.2008 to the 1st respondent viz., in favour of the Abrham Sarcar, the son of their vendors dated 02.03.2017. The said application was heard by this Court and it was held that the purchase was made by the landlords, who are the absolute owners of the property, much prior to the death of the original vendor and behind their back, the son of the vendor initiated the said proceedings and accordingly, the same was set aside and it clearly indicates the conduct of the son of the vendor. Therefore, the landlords clearly established that they are the owner of the property from the date of purchase in the year 2001.

11. Furthermore, during the appeal proceedings also, the factum



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of the Letters of Administration proceedings was also intimated to the Rent Control Appellate Authority, but it was not taken into consideration and the appeal was allowed, which is totally erroneous and it is liable to be set aside, because as per the title deed, they are the landlords of the property till date and it is not set aside by any of the Court below. Admittedly, in the appeal suit in A.S.No.504 of 2013 on the file of this Court, the present purchasers are not the parties to the proceedings and therefore, the findings are not set aside by any of the Court below.

12. Thus, it is seen that the tenant committed wilful default in a payment of rent and no proof is filed to show the rent was paid to the son of the vendor, which is also denied, and the tenant has to be vacated from the premises in question. Accordingly, the findings of the Rent Controller are confirmed. Time is given to the tenant to vacate the premises within a period of three months from the date of receipt of a copy of this order and file a report before this Court.



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13. Accordingly, this Civil Revision Petition is allowed. The order dated 04.05.2017 passed in R.C.A.No.1 of 2016 is set aside. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

17.11.2022

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Index : Yes/No

Speaking Order : Yes/No

To

1. The Rent Control Appellate Tribunal, Vellore.
2. The Rent Controller, Katpadi, (District Munsif, Katpadi).
3. The Section Officer, V.R. Section, High Court, Madras.

T.V.THAMILSELVI, J.



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