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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 04.01.2022
Orders Pronounced on : 04.02.2022

CORAM:

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

CRP.(NPD)No. 326 of 2017
and
C.M.P.Nos. 1450 of 2017 and 12848 of 2021

S. Venkatesan ...Petitioner/Respondent/Respondent

Versus

A. Janakiraman ... Respondent/Appellant/Petitioner

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the judgment and decree dated 04.06.2016 made in R.C.A.No. 24 of 2011 on the file of the Subordinate Judge, Ponneri, Tiruvallur District in reversing the judgment and decree, dated 04.02.2011 made in R.C.O.P.No. 3 of 2008, on the file of the Rent Controller, District Munsif Court, Ponneri, Tiruvallur District.

For Petitioner : Mr.A.E. Ravi Chandran
For Respondent : Mr.V.Surya Sankar
For Mr.R. Munuswamy

ORDER

The tenant has come forward with the present Civil Revision Petition against the order passed by the learned Subordinate Judge, Ponneri, Tiruvallur District, in R.C.A.No. 24 of 2011.

2. Rent Control Original Petition No.3 of 2008 was filed by the landlord under Section 10 (2) (1) read with Section 10 (2) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, complaining that the tenant has committed willful default in payment of rent and therefore, sought for his eviction.

3. The Rent Control Original Petition (RCOP) was contested by the appellant/tenant herein on the ground that, even though he was inducted as a tenant in the year 1994, he has



paid rent upto the year 2004 without any default. Thereafter, the superstructure (hut) had suffered damages and therefore, he, on his own, had put up the superstructure and expenses thereon. The land where the superstructure was put up, is classified as a "Poramboke Land". Therefore, the landlord cannot claim exclusive right, title or interest thereof. Hence, the tenant prayed for dismissal of the said RCOP.

4. Before the learned Rent Controller, the landlord examined himself as PW1 and Ex.P1 to Ex.P5 were marked. Ex.P1 is the notice dated 21.05.2005 sent by the landlord. Ex.P2 is the reply notice dated 27.06.2005 given by the tenant. Ex.P3 is the another notice dated 13.07.2009 sent by the landlord. Ex.P4 is the deed of partition dated 27.03.1996 and Ex.P5 is the house receipt dated 09.05.1996. On the side of the tenant, no oral and documentary evidence and no documents were marked.

5. The learned Rent Controller, on an appreciation of the oral and documentary evidence, dismissed the Original Petition on the ground that the land is classified as "Adimanai Koil Kulam Poramboke" (Tank Poramboke) and therefore, the landlord cannot claim any right, title or interest over such land. Furthermore, the landlord himself admitted in his cross examination that there was no agreement between the landlord and the tenant for letting out schedule mentioned premises, for rent. It was also observed that the landlord has not come forward with the correct facts and figures as to when the property was let out to the tenant, as to what was the period from which the tenant committed default in payment of rent etc.,

6. On appeal filed by the landlord, the learned Rent Control Appellate Authority reversed the order passed by the learned Rent Controller, on the ground that the tenant himself admitted that he was inducted in the year 1994 and he had paid the rent upto the year of 2004. Thereafter, since the superstructure (hut) got damaged, he constructed the superstructure on his own. As the land does not even belong to the landlord, the tenant is not liable to pay any rent. Having regard to the submissions made by the tenant, the Rent Control Appellate Authority concluded that the tenant cannot say that he was the tenant for some time and thereafter, he became the owner of the superstructure. When the tenant admitted that he has paid rent upto 2004 and thereafter, committed default in payment of rent, the learned Rent Controller ought not to have dismissed the Original Petition. Accordingly, the learned Rent Control Appellate Authority allowed the appeal filed by the land lord.



7. The learned counsel for the revision petitioner/tenant vehemently contended that the subject matter of the property is classified as "Temple Poramboke" and therefore, the landlord cannot claim any right over it. The superstructure was constructed only by the tenant in the year 2004 and from the year 2005 onwards, there is no landlord-tenancy relationship. Further, the landlord has already filed RCOP.No. 3 of 2005 and the same was dismissed for default by the District Munsif Court, Ponneri. Therefore, the landlord is estopped from filing the present RCOP.No.3 of 2008 claiming willful default in payment of rent when no relationship between the landlord and the tenant exists and therefore, the order passed by the Rent Control Appellate Authority is perverse.

8. On the above contentions, this Court heard the submissions made by the learned counsel appearing for the respondent/landlord, who contended that there was a clear admission on the part of the tenant that he was inducted in the subject matter of the property during 1994 and he has paid the rent till 2004. However, it is claimed that, from the year 2005 onwards, he is residing in the land after putting up the superstructure on his own cost. The learned Rent Control Appellate Authority has rightly found that the tenant does not have any right over the superstructure after remaining there for more than a decade as a tenant. As per the decision of the Hon'ble Supreme Court, the tenant had an obligation to pay the rent even during the first hearing of the RCOP, but he has not complied with such an obligation. In any event, the Rent Control Appellate Authority, on the basis of the evidence available has categorically held that the non-payment of rent is only willful and directed the eviction of the tenant.

9. Heard both sides and perused the materials placed on record.

10. It is an admitted fact that the tenancy is oral and there is no written agreement between the landlord and the tenant. The tenant was inducted in the year 1994. The rent was Rs.300/-p.m. and a sum of Rs.6,000/- was paid as advance. Even according to the tenant, he paid the rent upto 2004. The reason assigned by the tenant for non-payment of rent is that the land in question belonged to Arulmighu Harikrishna Temple and the land is classified as "Tank Poramboke". Therefore, at the first blush, it is contended that the landlord has no right over such land. The second reason assigned by the tenant is that, in the year 2004, the superstructure (hut) has become dilapidated and got severely damaged. Therefore, the tenant had put up the



11. As already pointed out by the learned Rent Control Appellate Authority, a tenant is always regarded as tenant and he cannot approbate and reprobate. In this case, the tenant admitted having paid rent till 2004. While so, he is under an obligation to continue to pay the rent till he vacates and hand over the vacant possession of the tenanted premises to the landlord. In this case, even after the demand of rent by the landlord, he did not pay the rent from the year 2005. Therefore, it is clearly established by the landlord that the tenant is guilty of willful default in payment of rent.

13. The learned counsel for the respondent would also point out a tenant having recognized a person as a landlord cannot subsequently deny the relationship and ownership of the property is not the criterion that entitles a person to file a petition for eviction.

15. The learned counsel would further contend that there is an exception to the principle "once a tenant always a tenant" and relied on the judgment of the Apex Court reported in 2019 (20) SCC Page 182 in which it has been held that though by virtue of Section 116 of the Evidence Act, the tenant is estopped from challenging his title of the land lord, yet the tenant is entitled to challenge the derivative title of an assignee of the original land lord of the demised property in and action brought by assignee against a tenant for his eviction under the rent loss.



16. Admittedly, the hut put up by the respondent herein was taken for rent by the petitioner herein and the petitioner herein was also paying the rent. It was the specific case of the respondent herein that apart from the wilfull default by the petitioner herein, he also committed damages and based on the property. It is the case of the petitioner herein that since the hut put up by the respondent was damaged. He put up a new thatched shed without paying rent anybody and there is no tenancy between the petitioner and respondent after that. The petitioner herein has not informed the respondent herein about the damage of the hut put up by the respondent.

17. Even as per the ruling quoted by the learned counsel for the petitioner in 2019 (20) SCC 182, though by virtue of Section 116 of Evidence Act, the tenant is estopped from challenging his title of the land lord, yet the tenant is entitled to challenge the derivative title of a assignee of the original land lord of the demised property in and again brought by assignee against a tenant for his eviction under the rent loss. However, this right of a tenant is subject to one caveat that the tenant has not attorned to the assignee. If the tenant pays rent to the assignee or otherwise accepts the assignee's title over the demised property, then it results in creation of the attornment which, in turn deprives the tenant to challenge the derivative title of the land lord. Hence, the petitioner had admitted the respondent as land lord for the thatched house put up by the respondent and paid rent to him then he has no right to question the title of the respondent herein.

18. Section 2(d) of the Act reads that "land lord includes any person who for the time being is entitled to receive or but for a special contract would be entitled to receive the rent of any premises whether or not on his own account.

19. The petitioner herein filed petition in C.M.P.No.12848 of 2021 to receive documents as additional evidence. The documents which are sought to be marked was where the survey sketch pertaining to the petition mentioned property in Survey Number 374 as Government prombok and EB card in the name of the petitioner herein and also the property tax receipts in the name of the petitioner whereas all the documents are subsequent to the documents obtained in the year 2017-2021. As discussed earlier when the petitioner had admitted the respondent herein as the land lord and paid the rent which cannot questioned the title of the respondent. Later the



documents which are sought to be received at the belated stage cannot be entertained.

20. In the above said facts and circumstance of this case, this Court is of the view that the Rent Control Appellate Authority is right in allowing the appeal filed by the landlord/respondent herein. The Civil Revision Petition has no merits and accordingly, it is dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

21. The revision petitioner/tenant is granted three months time from today to vacate and hand over the vacant possession of the rented premises. It is open for the respondent/landlord to recover the arrears of rent from the petitioner/tenant in the manner known to law.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msm
To

1. The Subordinate Judge, Ponneri,
Tiruvallur District
2. The Rent Controller, District Munsif,
Ponneri, Tiruvallur District.
3. The Section Officer,
V.R.Section, High Court, Madras.

+1 CC to Mr.R. Munuswamy, Advocate sr 7102
+1 CC to Mr.A.E. Ravichandran, Advocate sr 7087.

CRP. (NPD) No. 326 of 2017

GMR (CO)
SP (18/03/2022)