



CRP (MD) Nos.1630 and 1631 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP (MD) Nos.1630 and 1631 of 2022
and
CMP (MD) No.7127 of 2022

Peer Mydeen ... Petitioner / tenant

Vs

Shakila Banu ... Respondent / landlord

PRAYER: Civil Revision Petitions are filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, to allow the civil revision petitions and set aside the order dated 27.09.2021 made in IA.No.3 of 2019 in RCA.No.2 of 2019 on the file of the Rent Controller Appellate Authority (Principal Sub Court), Tirunelveli and to set aside the fair and decreetal order dated 28.10.2021 made in RCA.No.2 of 2019 on the file of the Rent Controller Appellate Authority (Sub Court), Tirunelveli confirming the fair and decreetal order dated 15.11.2018 made in RCOP.No.19 of 2014 on the file of the Rent Controller (District Munsif Court), Tirunelveli respectively.

For Petitioner : Mr.A.Arumugam

M/s.Ajmal Associates



CRP (MD) Nos.1630 and 1631 of 2022

ORDER

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There are two civil revision petitions. CRP(MD)No.1630 of 2022 is filed as against the order dated 27.09.2021 passed in IA.No.3 of 2019 in RCA.No.2 of 2019 on the file of the Rent Controller Appellate Authority (Principal Sub Court), Tirunelveli and CRP(MD)No.1631 of 2022 is filed as against the order dated 28.10.2021 made in RCA.No.2 of 2019 on the file of the Rent Controller Appellate Authority (Principal Sub Court), Tirunelveli.

2.The petitioner is the tenant and the respondent is the landlord. The landlord has initiated the RCOP proceedings for eviction of the petitioner/ tenant on the ground wilful default, which was allowed with cost by the Rent Controller, Tirunelveli. Aggrieved over the same, the petitioner / tenant preferred an appeal before the Rent Control Appellate Authority, Tirunelveli. Pending the appeal, the respondent/ landlord filed an interlocutory application in IA.No.3 of 2019 under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 for a direction for payment of arrears of the rent of



CRP (MD) Nos. 1630 and 1631 of 2022

and in default, to stop all further proceedings of the appeal filed by the tenant. The said interlocutory application was allowed on 27.09.2021 and the petitioner was directed to pay the arrears of rent within a period of one month and in default, the appeal proceedings would be stopped. However, the petitioner failed to pay the arrears of rent as directed by the appellate authority and therefore, the appellate authority by order dated 28.10.2021 stopped the further proceedings in the appeal. Challenging those orders dated 27.09.2021 and 28.10.2021 of the appellate authority, these civil revision petitions are filed by the tenant.

3.The learned Counsel for the petitioner / tenant submits that the mother-in-law of the petitioner and the mother of the respondent/landlady are sisters and therefore, the petitioner's wife is having 1/16 share in the property as per the Rules of Succession in Mohamedan Law. The father of the landlady settled his property in favour of the mother of the landlady vide Ex.R2 settlement deed dated 16.02.1984. The mother of the landlady did not execute any other deed further in respect of the said



CRP (MD) Nos.1630 and 1631 of 2022

property and therefore, as per the Mohammedan Law, the landlady and the mother-in-law of the petitioner are entitled for each half share in the property. Further, there is no evidence to show that the existence of landlord-tenant relationship between parties. Without considering these facts, the courts below have passed orders mechanically in favour of the landlady.

4.Heard the learned Counsel for the petitioner and perused the materials placed on record.

5.The respondent / landlady filed the RCOP petition on the ground of wilful default. The respondent claims that initially the tenant was paying rent of Rs.1,500/- per month to her father. After her father's demise in the year 2008, the tenant was paying rent to the landlady regularly. However, after May 2012, the tenant did not pay any rent. Hence the landlady initiated RCOP proceedings for eviction of the petitioner on the ground of wilful default and the same has been allowed in favour of the landlady. Aggrieved over the same the petitioner / tenant has filed an appeal before the rent control appellate authority. Pending the



CRP (MD) Nos. 1630 and 1631 of 2022

appeal, the landlady filed an interlocutory application for payment of arrears of rent and it was allowed by directing the petitioner to pay the arrears of rent within one month, and it was also made clear that if the due is not paid by the tenant, as directed, the appeal proceedings will be stopped. However, the petitioner did not pay the amount within the stipulated time as directed and therefore, the appellate authority stopped the appeal proceedings, in view of the orders passed in the interlocutory application as per Section 11(4) of the said Act.

6. Perusal of the records shows that the rent controller has observed that in the reply notice sent by the tenant Ex.P2 dated 08.06.2013 the tenant claimed that there was an oral othi between him and the father of the landlady with respect to the property for a sum of Rs.5,00,000/-. However in his cross examination he stated that he has been residing in the property in the capacity as son-in-law and therefore, his father in-law promised that he would give a sum of Rs.5,00,000/- when he vacates the property. He further stated that his mother-in-law and the mother of the landlady are sisters. His mother-in-law initially filed



CRP (MD) Nos.1630 and 1631 of 2022

a suit in OS.No.20 of 2013 before the Additional District Court, Tirunelveli in respect of the property and the same has been dismissed. The petitioner in the reply notice claimed that he has been in the occupation of the property based on the oral othi and contrary to it, in the cross examination, he denied the same. The Rent Control Appellate Authority taking into consideration of the evidence of the petitioner and his cross examination came to the conclusion that the contention raised by the petitioner / tenant is not bonafide and hence allowed the petition and directed the petitioner to vacate the premises within one month.

7.The above facts shows that the petitioner / tenant disputing the title of the landlady by claiming share in the property and denies the landlord - tenant relationship. At this juncture, it is relevant to extract Section 10 of the Act, which reads as follows:

"10. Eviction of tenants. - (1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or sections 14 to 16:

... ..



CRP (MD) Nos.1630 and 1631 of 2022

WEB COPY

Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied-

... ..

(vii) that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bona fide, the Controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application:"



CRP (MD) Nos.1630 and 1631 of 2022

8. On a plain reading of the above provision shows that the rent controller has to refer the matter to the civil court, if the claim of the tenant is bona fide with respect to the title of the property. If the claim of the tenant is not bona fide, by recording the reasons of the same, the rent controller has to decide the issue. Since the rent controller in this case has found that the claim of the tenant is not bona fide, has decided the issue and passed the orders. The rent controller appellate authority also, considering the stand of the tenant, found that the claim of the tenant was not bona fide since his claim of oral othi has not been proved and the suit filed by the mother-in-law of the petitioner in OS.No.20 of 2013 before the Additional District Court, Tirunelveli for partition in respect of the suit property was dismissed and the appeal suit filed as against the same is pending before this Court. Since there is due of Rs.1,20,000/- from the tenant, the rent control appellate authority has rightly allowed the said interlocutory application with the direction as mentioned supra. Since the petitioner has not paid the arrears of rent as directed within the stipulated time, the appeal proceedings are stopped by the rent control



appellate authority as per Section 11(4) of the said Act,
which reads as follows:

" 11. Payment or deposit of rent during the pendency of proceedings for eviction. - (1) No tenant against whom an application for eviction has been made by a landlord under section 10 shall be entitled to contest the application before the Controller under that section, or to prefer any appeal under section 23 against any order made by the Controller on the application unless he has paid or pays to the landlord, or deposits with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building up to the date of payment or deposit, and continues to pay or to deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Controller or the appellate authority, as the case may be.

... ..

(4) If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building."



CRP (MD) Nos.1630 and 1631 of 2022

9. In view of the above discussion, there is no reason to interfere with the orders of the rent control appellate authority and therefore, these civil revision petitions are dismissed. No costs. Consequently connected miscellaneous petition also stands dismissed.

02.12.2022

Index: Yes/No.

dsk

To

1. The Rent Control Appellate Authority/
The Principal Sub Judge,
Tirunelveli.
2. The Rent Controller /
The District Munsif,
Tirunelveli.



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CRP (MD) Nos.1630 and 1631 of 2022

B.PUGALENDHI, J.

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**CRP (MD) Nos.1630
and 1631 of 2022**

02.12.2022