



C.R.P (MD) No.142 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02.09.2022

CORAM:

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

CRP (MD) No.142 of 2009

Vasantha Gladias Daisy

... Petitioner

Vs

1.Sundara Raj (died)

2.Indra

3.Silviya Jeevani

4.Christy Sudha

5.Beula Sumathi

6.Enjal Ranjani

... Respondents

[R2 to R6 are brought on record as legal heirs of deceased first respondent vide order dated 23.09.2019 in CMP(MD)No.8705 of 2019]

PRAYER: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Building (Lease and Rent) Control Act, 1960 as amended by Act 23/1973 and Act 1 of 1980, to set aside the fair and decreetal order dated 16.09.2008 made in RCA.No.14 of 2003 on the file of the Subordinate Judge, Tuticorin in RCOP.No.2 of 2002 dated 31.01.2003 District Munsif Court, Sathankulam.

For Petitioner : Mr.M.Saravanan

For Respondents : Mr.G.Prabhu Rajadurai



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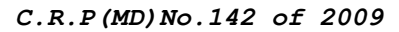
ORDER

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The petitioner has filed the above civil revision petition, as against the reversal findings passed by the Rent Control Appellate Authority/ Sub Judge, Tuticorin in RCA No.14 of 2003 dated 16.09.2008.

2.The petitioner claims to be the land lord of the house property filed an application for eviction before the Rent Controller/ the District Munsif, Sathankulam in RCOP.No.2 of 2002 under Sections 10(2)(1) and 10(3A)(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act on the ground of willful default and for own use and occupation.

3.The petition in RCOP.No.2 of 2002 filed by this petitioner was allowed by the Rent Controller on 31.01.2003 directing the respondents to evict the premises within a period of two months and the appeal filed by the respondents before the Rent Control Appellate Authority in RCA.No14 of 2003 was allowed and therefore, the present civil revision petition has been filed.



i.the subject property is a residential house, which was originally owned by one Rajamani Nadar and the same was inherited by his son Gurubatham. During his life time, Gurubatham inducted the first respondent as tenant for a monthly rent of Rs.50/- and he was paying the same. After the demise of Gurubatham in the year 1978 the petitioners being the wife and daughter of Gurubatham have succeeded the above property. The respondent was paying rent till December 1991 and thereafter failed to pay the rent. As the petitioner did not have any residential house at Sathankulam, they required the subject property for their own use. Hence they filed the above RCOP.

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proceedings. The first respondent was examined himself as RW1 and marked three documents. Considering the oral and documentary evidences in proper perspective, the Rent Controller has held that the petitioners therein proved their title for the subject property and the denial of the title on the part of the respondent is not *bonafide* and consequently ordered eviction.

iii.The first respondent in the counter filed by him contended that his father Abraham Nadar was the owner of the property and he executed a Will bequeathing the property in his favour and his brothers and they inherited the property after the death of his father. Along with his brother he filed a civil suit against the first respondent herein O.S.No.197 of 2000 on the file of the District Munsif Court, Sathankulam for declaration and permanent injunction. The issue of pecuniary jurisdiction was taken up as preliminary issue and the same was answered against them and consequently by judgment and decree dated 04.04.2002 the plaint was returned by the Court. Challenging the order he filed an appeal before the



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appellate Court and taking steps to number the same.

Further the respondent denied the jural relationship.

iv. The first respondent has taken different contradictory stands in each and other proceedings. In the present RCOP proceedings, he simply took a stand that his father Abraham Nadar was the owner of the property, but he did not trace the title of his father Abraham Nadar. He took the very same stand in his plaint in O.S.No.197 of 2000. But in the earlier proceedings in E.A.No.270 of 1972 he took a stand that Rajamani Nadar was the original owner of the property and some of his legal heirs have executed an unregistered document dated 17.06.1966 by receiving Rs.2,000/- with a condition that the respondent can enjoy the property if the amount is not repaid within five years. The above contention was contradictory to the case of the respondents herein.

v. RW1 in his evidence has admitted that in EA.No.270 of 1992 it was held that his father Abraham Nadar was not the owner of the subject property. During his cross examination the first respondent herein has stated that his



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father Abraham Nadar purchased the subject property. The respondents have taken three contradictory stands in each proceedings and therefore, it was properly appreciated by the Rent Controller. But without considering the well considered order, the Rent Controller Appellate Authority has simply allowed the appeal filed by the respondents that there is no rental agreement and the petitioners have also failed in demanding rent for more than 10 years.

vi. The first respondent in his evidence has admitted that the petitioner's father Rajamani Nadar was the owner of the subject property and the petitioners have also proved their title by marking Ex.A7 patta for the subject property and Ex.A8 property tax receipts. The proceedings of the District Revenue Officer dated 29.03.1999 granting patta in favour of the petitioners was marked as ExA3 and the respondents have not challenged that patta and the proceedings of the DRO and thus they became final. The respondents have made an attempt in O.S.No.197 of 2000 for getting declaration and injunction in respect of the subject property and they have also failed. Therefore, the Civil Revision Petition has to be allowed.



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is default in payment of rent from the year 1991 and the eviction petition was filed only in the year 2002, ie., after a delay of 11 years, as no genuine landlord would wait for 11 years to evict the tenant, who has not paid the rent.

ii.The Rent Controller has no authority to look into the title, since no issue can be framed by the Rent Control Court in that aspect. Even assuming without admitting and even considering that the respondent is an encroacher, the petitioners cannot maintain a petition under the Rent Control Act and he has to approach the Civil Court. The Tamil Nadu (Buildings Lease and Rent Control) Act has very narrow scope and if the landlord - tenant relationship is not proved, the petition cannot be maintained.

Iv.The Hon'ble Apex Court in (2009) 10 SCC 425 has held that if the land lord - tenant has not been proved then the provisions of the Rent Control Act cannot be invoked and therefore, there is no reason to interfere with the findings of the Rent Controller Appellate Authority.



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v.The Rent Controller Appellate Authority by allowing the appeal that there is no document produced to substantiate that there was landlord and tenant relationship, without considering the arrears of rent paid by the respondent in the application filed under Section 11 of the Rent Control Act.

6.In reply the learned Counsel for the petitioner submits that during the RCOP proceedings, the petitioner filed an application under Section 11(4) of the Rent Control Act, for a direction to the first respondent/tenant to pay the rental arrears. The application was allowed by the Rent Controller on 09.07.2008 directing the respondent to pay the rental arrears of Rs.8,100/- within a period of fifteen days. The respondent/tenant did not challenge the order and therefore, it became final. Towards compliance of that order, the first respondent/defendant has also paid a sum of Rs.8,100/- on 24.07.2008. Disputing the ownership, the first respondent / tenant has filed a suit for declaration of the title in respect of the subject property and for permanent injunction, as against these petitioners before the District Munsif, Sathankulam in O.S.No.197 of 9/16



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2000 and the same was returned for want of pecuniary jurisdiction. The first respondent/ defendant filed an appeal as against that order in A.S.No.24 of 2003 and the same was allowed on 04.10.2003 by remitting back the issue to the trial Court for fresh disposal on merits. Thereafter the learned District Munsif, Sathankulam after conducting full fledged trial by judgment and decree dated 01.09.2004 holding that the first respondent / tenant has no title over the subject property, dismissed their suit and the same attained finality. The said judgment and decree was also marked before the Rent Control Appellate Authority in RCA No.14 of 2003 as Ex.P10.

7.This Court considered the rival submissions and perused the materials placed on record.

8.This Civil Revision petition is filed as against the findings of the Rent Control Appellate Authority/ Sub Judge, Tuticorin in RCA No.14 of 2003 dated 16.09.2008.

9.The petitioner filed RCOP.No.2 of 2002 before the Rent Controller / District Munsif, Sathankulam for eviction

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under Sections 10(2)(1) and 10(3A)(1) of the Tamil Nadu (Buildings Lease and Rent Control) Act on the ground of willful default and own use and occupation. The RCOP was allowed. As against which appeal was filed and the appeal was allowed by the Rent Control Appellate Authority/ the Sub Judge, Tuticorin reversing the findings on the ground that there is no document to prove the tenancy agreement and the petitioners /landlords are residing at Madurai and the property is at Sathankulam and the landlord has not proved as to how the property at Sathankulam is required for his own occupation. The land lords claim that there is arrears of rent from the year 1991. However the petition was filed only in the year 2002 and there is no explanation for the delay of 11 years in demanding the rent.

10.The suit property is a house property and the case of the petitioner is that the first respondent was a tenant of one Gurubatham. The said Gurubatham died in the year 1978. The petitioner's wife and the daughter of Gurubatham have succeeded the property and filed the above RCOP. The petitioners therein have marked 9 documents. ExA7 is 11/16



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the patta granted by the Revenue Officials and Ex.A3 is the orders of the DRO in patta proceedings conducted between the petitioners and the respondent and the first respondent is a party to the proceedings. Ex.A8 is the suit property tax receipts. The first respondent has also filed a suit in the year 2000 for declaration and for injunction with regard to the suit property in O.S.No.197 of 2000. The suit was dismissed by the learned District Munsif, Sathankulam after trial in O.S.No.197 of 2000, by judgment and decree dated 01.09.2004 and that became final the same is marked as Ex.P10 before the Rent Controller.

11.As rightly pointed out by the learned Counsel for the petitioner, the respondents took various stands before each proceeding. In RCOP proceedings, the first respondent claims that his father Abraham Nadar was the owner of the property and he took the very same stand in the suit filed by him in O.S.No.197 of 2000 before the District Munsif, Sathankulam. The first respondent claims that the respondents inherited the property through the Will. In the proceedings before the DRO and in E.A.No.270 of 1992 the first respondent took a stand that Rajamani Nadar was the



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original owner of the property and his legal heirs have executed an unregistered document dated 17.06.1966 by receiving a sum of Rs.2,000/- with a condition that the first respondent can enjoy the property if the amount is not repaid within five years. During the cross examination he has taken a different stand.

12.It is the case of the petitioner that the property belongs to Rajamani Nadar and the same was inherited by his son Gurubatham and this first respondent was inducted as tenant by the said Gurubatham. Gurubatham died in the year 1978 and thereafter, the petitioners in RCOP wife and daughter of the said Gurubatham inherited the property and filed the above RCOP for eviction. Pending RCOP proceedings, they have also filed an interlocutory application under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act for payment of rental arrears and the petition was allowed by the Rent Controller on 09.07.2008 directing the first respondent/ tenant to pay the rental arrears of Rs.8,100/- within fifteen days. The first respondent/ tenant paid the said amount and recording the same, the interlocutory application was closed on 13/16



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24.07.2008. The respondent did not challenge these orders and thus they became final. Without considering these points, the Rent Control Appellate Authority simply allowed the appeal filed by the first respondent/ tenant that there is no document to prove the tenancy and there is cloud on the title of the suit property.

13.In view of the above discussion, the order passed by the Rent Control Appellate Authority is liable to be set aside and accordingly the same is set aside and the order of the Rent Controller dated 31.01.2003 is upheld. The respondents are directed to vacate the premises within a period of two months from the date of receipt of a copy of this order.

14.The Civil Revision Petition is allowed on the above terms. No costs. Consequently connected miscellaneous petition stands closed.

02.09.2022

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To

1.The Sub Judge,
Tuticorin.

2.The District Munsif,
Sathankulam



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B.PUGALENDHI, J.

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