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C.R.P.No.92



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.92 of 2019

and

C.M.P.No.797 of 2019

Maragatham Ammal

...Petitioner

Vs.

Viswanathan (Died)

1.Meenambal

2.Anandan

3.Devaki

4.Vasu

5.Sankar

6.Kavitha

7.Raghunathan

8.Parasuraman

...Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 06.12.2018 passed in R.C.A.No.3 of 2012, on the file of the Rent Control Appellate Authority/Subordiante Judge, Ponneri, confirming the fair and decretal order dated 14.06.2011 passed in R.C.O.P.No.2 of 1999, on the file of the Rent Control Authority/District Munsif, Thiruvottriur.



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For Petitioner : Mr.Elizabeth Ravi
For Respondents : Mr.K.Prabhakaran

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ORDER

This Civil Revision Petition arises against the concurrent findings of eviction against the tenant.

2.R.C.O.P.No.02 of 1999 was filed by one Vishwanathan against the present Civil Revision Petitioner, Maragatham Ammal. The admitted case is that the property was originally let out by the mother of the respondent, Viswanathan.

(i). As she passed away his legal representatives have been brought on record.

(ii).The Civil Revision Petitioner had paid a sum of Rs.28,000/- by way of an advance which was to be adjusted at the rate of Rs.500/- per month. This, Rs.500/- per month, was split into two categories namely Rs.300/- to be adjusted from the advance and Rs.200/- to be paid by cash. This arrangement went on properly till December 1991. All of a sudden, the tenant stopped paying the rent. Therefore, on grounds of willful default from April 1993 to January 1999, the Rent Control Petition was presented under Section 10 (2) (1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

3.The Civil Revision Petitioner, without the consent of the



respondent/landlord started putting up a construction. This constrained the landlord to file O.S.No.1360 of 1997 on the file of the District Munsif Court at Thiruvottriyur. The suit was decreed holding that the tenant cannot put up the construction independent of the land-lord. The appeal preferred therefrom came to be dismissed. The second appeal has also, according to the learned counsel for the respondent, dismissed as abated. In fine, the finding that the landlord tenant relationship exist between the parties has been concluded by the City Civil Court.

4.Nonetheless, since a plea of denial of title was taken by the tenant, the Rent Controller also went into that issue. According to the tenant, she received a notice from one Shyamala Devi which was marked as Ex.R8. Under the said notice, Shyamala Devi staked claim to the property. Shyamala Devi had pleaded that her property belonged to her father one Malligarjuna Rao and he had purchased the same by way of a sale deed dated 02.03.1961.

5.The Learned Rent Controller was moved on several grounds namely willful default, denial of title, as well as on grounds of nuisance. The ground of nuisance was dismissed by the Trial Court and confirmed by the Rent Controller Appellate Authority, therefore I am not going in to that issue.



6. Insofar as willful default is concerned, if I conclude that there exists a relationship of landlord and tenant between the petitioner and the respondent and that the denial of title is willful and not *bonafide*, then from the admitted facts it is clear that rents have not been paid from April 1993 onwards. Therefore, willful default also would be a consequential order.

7. I heard Mr. Elizabeth Ravi, learned Counsel for the petitioner and Mr. K. Prabhakaran, learned counsel for the respondents on the either sides.

8. The Civil Revision Petitioner as R.W.1 entered the witness box and has admitted that in 1984 she had entered into a tenancy with Pattammal, the mother of the respondent. She had also admitted that the monthly rent was Rs.500/- and that it had to be adjusted at the rate of Rs.300/- to be deducted from the advance and Rs.200/- to be paid by cash. She has also admitted in the witness box that from April 1993 onwards, she has not paid any rents.

9. The only defense that has been taken is that she has purchased the property from one Shyamala Devi. In order to substantiate the same, the sale deed has been filed as Ex.R2.

10. It is settled position of law that a tenant who takes possession of the



property from another is not permitted to deny the title of the landlord during the inception of the tenancy. The landlord must have lost the title or the title paramount should have initiated eviction proceedings against the landlord as well as the tenant.

11.The tenancy having been admitted from 1994, the tenant is estopped from pleading that Pattammal was not the owner of the property. This is more so when she has entered the witness box and has admitted to the same. For ready reference I am extracting the evidence of R.W.1 as hereunder:-

மனுக்கட்டிடத்திற்கு 1992ல் ரூ.4 வந்தேன் அது பட்டம்மாருக்கு சொந்தமானது என்று சொன்னார்கள் அதை நம்பி தான் பட்டம்மாளிடம் அந்த கட்டிடத்தை வாடகைக்கு கொடுத்தேன். ரூ.28,000/- அட்வான்ஸ் கொடுத்தேன் மாத வாடகை ரூ.500/- ஆகும். மாத வாடகைக்காக அட்வான்ஸ் கழியும் வரை மாதாமாதம் ரூ.300/- அதில் பிடித்தம் செய்யவும் பாக்கி ரூ.200/- ஐ ரொக்கமாக நான் கொடுக்கவும் எங்களுக்குள் ஏற்பாடானது என்றால் சரிதான். ஏப்ரல் 1993 வரை அவ்வாறு வாடகை கொடுத்தேன் அதன்பிறகு ஜியமளா தன்னுடைய இடம் என்று நோட்டீஸ் கொடுத்ததால் வாடகை கொடுப்பதை நிறுத்தி விட்டோம். சொத்துவரி 1992ல் பட்டம்மாள் பெயரில் இருந்ததா என்று எனக்கு தெரியாது. என் பிரமாண வாக்குமூலத்தில் நாங்கள் அடிமனைக்கு தான் வாடகைக்கு வந்ததாக கூறியுள்ளேன். அதற்கு ஆதாரம் இல்லை. மேல் கூரையை நாங்கள் 1984 கட்டிய சொத்து வரி ரசீதை தாக்கல் செய்யவில்லை.

12.A perusal of the evidence would show that the Civil Revision Petitioner



had admitted to the tenancy and had also admitted that she has no proof that she has put up construction. The decree of the City Civil Court also has held that the petitioner is a tenant under Pattammal. A permanent injunction has been granted restraining Maragatham Ammal from putting up any further construction. If the plea of Maragatham Ammal that she is the owner of the premises were to be right then the issue of City Civil Court granting an order in favour of the respondents in this civil revision does not arise at all.

13.In order to prove that she had put up the construction and she had assessed the property for property tax, one Nagoor Meeran Ali was examined as R.W.2. The said Nagoor Meeran Ali went into the witness box and had stated that the building for which the assessment was given in the name of the civil revision petitioner is different from the building which is the subject matter of this civil revision petition. I am extracting the evidence of Nagoor Meeran Ali for ready reference:-

நான் திருவொற்றியூர் நகராட்சி 2வது கோட்ட வருவாய் ஆய்வராக பணிபுரிகிறேன். எனக்கு சாட்சி சொல்ல அனுமதி கொடுத்துள்ளார்கள். நீதிமன்ற சம்மன் அடிப்படையில் ஆஜராகியுள்ளேன். TSR நகர் ஒத்தவடைத்தெரு கதவு எண். பழையது 13A, புதிய எண் 4 ற்கு உரிய சொத்து வரி பட்டம்மாள் என்பவர் பெயரில் எங்கள் ஆவணங்களில் உள்ளது அதற்கு Assessment No:6945 அதே தெருவில் கதவு எண்;/Old 13 A New 4 A என்று மரகதம்மாள் என்பவர் பெயரில்



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Assessment No:7035 உள்சாது மேற்படி இரண்டு Assessment சம்மந்தப்பா

சொத்து வரி குறிப்பேடு இது தான் அது Ex.A11 ஆகும்.

14.The evidence of Nagoor Meeran Ali would go to show that the case of the respondent is correct and not as sought to be projected by the civil revision petitioner. The civil revision petitioner wanted to obfuscate the proceeding and produced a property tax, related to some other property, as if it relates to the subject matter of this civil revision petition. Unfortunately for her, RW2 entered the witness box and gave her case away.

15.I am convinced that the case of the petitioner that she is the owner of the property is not only barred by estoppel but is also a willful denial of the title of the landlord. It is the petitioner who has deliberately taken a stand, after entering possession into the property through the respondent's mother, that the respondent's mother has no connection with the property. In a vain attempt, she also attempted to project title in favour of one Shyamala Devi. Unfortunately she did not examine the said Shyamala Devi in the court. In any event, a rent controller is not concerned with the title to the property but he is concerned as to whether there exists a relationship between the landlord and tenant, in terms of Section 2 (6) and 2 (8) of the said Act.

16.The courts having concurrently come to a conclusion that there exists a

<https://www.mhc.tn.gov.in/judis>



relationship of landlord and tenant, I am not in a position to re-appreciate the evidence. Nonetheless, in order to satisfy myself, I went through the evidence of RW1 and RW2 and I am convinced that the case as projected by the Civil Revision Petitioner is a false one. Consequently, the petitioner is liable for eviction on the grounds of denial of title.

17.Insofar as, willful default is concerned, R.W.1 has entered the witness box and has clearly deposed that the rents were paid only between 1984 to 1993. After adjustment of the advance lying in the hands of the landlord, there has been a continuous willful default from 1997 onwards. In fact, the tenant had paid the rents into court only after the interim orders were passed by this court. It is the duty of the tenant to pay the rents without waiting for the orders of court. Therefore, I find that there is willful default on the date of filing of petition and consequently the petitioner will have to suffer the consequences of the defense taken by her.

18.In fine, the orders of the court below are confirmed. The CRP stands dismissed. Considering the fact that the petitioner is running a school, time for eviction is granted till 30.04.2024 to the petitioner. This time will apply to the petitioner if and only if:-



(i).The petitioner files an affidavit of undertaking before this court on or before 11.08.2023.

(ii).The affidavit of undertaking must specifically state that the petitioner would hand over peaceful possession of the property and she will not let any third party into the premises.

(iii).The petitioner will also have to pay directly to the landlord the rents that are due and liable to be paid.

(iv).She will pay the same as long as she is in occupation of the property.

19.The landlord/respondent is permitted to withdraw the rents deposited.

20.I make it clear in case the tenant does not file the affidavit of undertaking, the landlord is free to proceed with the execution.

21. Call the matter on 11.08.2023 under the caption “ for compliance”.

22.With the above, this civil revision petition stands allowed. No costs.

Connected Miscellaneous Petition is closed.

31.07.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No



C.R.P.No.92

To:
The District Munsif,
Thiruvottiur.

V. LAKSHMINARAYANAN, J,

nsl

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and
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