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C.R.P.No.73 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.73 of 2007

1. A.Nizam Basha
2. H.A.Begam

... Petitioners

Vs.

1. Beer Basha (died)
 2. R.Vasantha
 3. R.Vijayakumar
 4. Shoba
 5. Sakina
 6. Reshma
- (Respondents 5 & 6 brought
on record as legal heirs of the
deceased R1 viz., Beer Basha
vide common order dated
15.02.2022 made in C.M.P.
Nos.1030 to 1032 of 2018
in C.R.P.No.73 of 2007)

... Respondents

Prayer :- Civil Revision Petition filed under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, against the decree and judgment dated 08.11.2005 rendered in R.C.A.No.140 of 2004 on the file of the Rent Control Appellate Authority and 3rd Additional Subordinate Judge, Coimbatore made in R.C.O.P.No.344 of 1994 dated 11.10.2004 on the file of Rent Controller and First Additional District Munsif Court, Coimbatore.



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For Petitioners : Mr.N.A.Nissar Ahmed
Senior Counsel
For Mr.I.Kowser Nissar

For Respondents
R1 & R2 : Died
For R3 & R4 : Mr.T.M.Hariharan
For R5 & R6 : Not ready in notice

ORDER

The Civil Revision Petition has been filed as against the fair and decree order dated 08.11.2005 passed by the learned Rent Control Appellate Authority, III Additional Subordinate Judge, Coimbatore made in R.C.A.No.140 of 2004, reversing the order findings of the learned Rent Controller, I Additional District Munsif, Coimbatore, by the orders dated 11.10.2004 made in R.C.O.P.No.344 of 1994, thereby ordering eviction on the ground of willful default.

2. The petitioners are the landlord and the first respondent is the tenant. The petitioners filed petition for eviction as against the tenant on the ground of willful default and subletting. The case of the petitioners is the first respondent was inducted as tenant for monthly rent basis for a sum of Rs.500/-. From the month of February 1992, the first respondent is not



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paying the rent to the petitioners and also he sub-let the petition premises to one Ramamoorthy, without the knowledge of the petitioners herein. The petitioners are the recent purchasers of the petition premises and they already intimated the first respondent to clear the sublet and also pay arrears of rent. Hence, the petitioners filed the petitions for eviction on the ground of default in payment of rent and also for subletting.

3. Resisting the same, the respondents filed counter by denying the petitioners' title in respect of the petition premises, since they are not the owners of the petition premises in view of the earlier Court proceedings in O.S.No.567 of 1976 on the file of the Sub Court, Coimbatore and also in the appeal suit in A.S.No.120 of 1990 on the file of the District Court, Coimbatore. They also denied the very tenancy itself of the petition premises. They further denied the ownership of the petition premises and the petitioners have got no right to collect arrears of rent of the petition premises from February, 1992.



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4. On the side of the petitioners, they had examined P.W.1 and no marked were marked. On the side of the respondents they examined R.W.1 and marked documents in Ex.R.1 to Ex.R.4. On a perusal of oral and documentary evidence, the learned Rent Controller allowed the petition and directed the respondents to vacate and hand over the vacant possession of the petition premises. Aggrieved by the same, the legal heirs of the said Ramamoorthy preferred an appeal in R.C.A.No.140 of 2004 before the learned Rent Control Appellate Authority and the same was allowed by reversing the finding the learned Rent Controller and dismissed the eviction petition. Aggrieved by the same, the landlords filed the present Civil Revision Petition.

5. The learned Senior Counsel appearing for the petitioners submitted that the learned Rent Control Appellate Authority without considering the order passed by the learned Rent Controller mechanically allowed the appeal on the ground that the petitioners failed to prove their title over the petition premises and they failed to examine any one of the witnesses in order to prove that they purchased the petition premises from



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the original owner and also they registered the sale deed in Kerala Registrar Office in respect of the petition premises.

5.1. He further submitted that the item No.3 of the property in the sale deed situated in Palghat District within the jurisdiction of the Sub Registrar, Agali. Therefore, the sale deed was registered in Agali Registration Office by the registered sale deed dated 23.06.1994 and it is a valid one. Even till today, even after receipt of the notice, the first respondent had neither paid any rent nor deposited into Court. Therefore, they committed willful default in payment of rent. Further the first respondent sub let the petition premises without the knowledge and without notice of the petitioners, to one Ramamoorthy. In fact, the petitioners have purchased the petition premises from the erstwhile owners, who obtained the property by virtue of the judgment and decree passed in O.S.No.567 of 1976. Therefore, he prayed to allow the present Civil Revision Petition.

6. Per contra, the learned counsel appearing for the respondents submitted that as per the Section 28 of the Registration Act, any document



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registered outside Tamil Nadu in contravention of the provisions of Clause

(a) is deemed to be null and void. Admittedly, the petition premises allegedly purchased by the petitioners was registered in Kerala. Therefore, the sale deed itself is not valid one. He further submitted that in the landlord-tenant suit, the landlord is required to prove his title of the suit property. When the landlord's derivative title is challenged, the same has to be established in some form. The petitioner failed to prove the same before the Court below viz., before the Rent Controller.

6.1. He further submitted that the estoppel under Section 116 of the Indian Evidence Act is restricted to the denial of the title at the commencement of the tenancy and by implication it follows that the tenant is not estopped from contending that the title of the lessor had since come to and end. In fact, the petitioners did not purchase the petition premises from the original owners. In that regard, already suit was pending in respect of the title.



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6.2. He further submitted that the tenant is not estopped from denying the title of the landlord if it comes to an end subsequent to the creation of the tenancy not is he estopped from questioning the derivative title of a transferee of his landlord. However, the rule of estoppel contained in Section 116 of the Indian Evidence Act is not exhaustive. To operate against the tenant as providing a ground for eviction under Section 10 of the Rent Control Act, a mere denial of the title of the landlord is not enough. Such denial has to be not bonafide which mean absence of good faith or non genuineness of the tenant's plea. If denial of title by the tenant is an outcome of good faith or honesty or sincerity, and is intended only to project the facts without any intention of causing any harm to the landlord it may not be not bonafide. Therefore, the learned Rent Control Appellate Authority rightly dismissed the petition for eviction. Hence he prayed for dismissal of the present Civil Revision Petition.

7. Heard Mr.N.A.Nissar Ahmed, learned Senior Counsel appearing for the petitioners and Mr.T.M.Hariharan, learned counsel appearing for the respondents 3 & 4.



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8. The petitioners are the owners of the subject property.

According to them, they purchased the petition premises vide the sale deed dated 23.06.1994. The first respondent was inducted as tenant for the monthly rent. However, from the month of February, 1992, he is not paying rent and also he sub let the petition premises to one Ramamoorthy without the knowledge or consent of the petitioners herein. Therefore, the petitioners filed eviction petition on the ground of willful default and subletting. The learned Rent Controller allowed the eviction petition on the ground of willful default.

9. Aggrieved by the same, the legal heirs of the deceased Ramamoorthy filed appeal and the learned Rent Control Appellate Authority allowed the appeal on the ground that the petitioners failed to prove that they purchased the petition premises from the legal heirs of the original owner of the petition premises and failed to mark the original sale deed and they failed to examine any of the vendor of the petition premises and the sale deed was registered in Kerela and it is violation of Section 28 of the Registration Act, 1908, as such the sale deed become invalid.



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10. Admittedly, the petitioners had purchased the petition premises by the registered sale deed dated 23.06.1994. The first respondent had taken the petition premises for the monthly rent from one Lakshmi Ammal. Thereafter, she died and in respect of the petition premises, there was a dispute between the legal heirs of the original owner and the suit was also filed in O.S.No.567 of 1976. In the said suit, Ramasamy Naidu and Rengasamy Naidu were declared as owners of the property and they had $\frac{1}{2}$ equal share in the petition premises and the same was confirmed by the first appellate Court in A.S.No.120 of 1990.

11. Thereafter, the petitioners purchased the petition premises for the said Ramasamy Naidu and Rengasamy Nidu by the registered sale deed dated 23.06.1994. As per the sale deed dated 23.06.1994, the petitioners caused legal notice dated 06.07.1994 to the first respondent, thereby calling upon to pay rent along with arrears of rent. Though the respondents denied the title over the property, they have not paid rent to any one. The respondents have been admitted that the petition premises owned by the



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erstwhile owner and the petition premise was purchased by the petitioners by the registered sale deed. Therefore, the respondents cannot take stand of denial of title.

12. The learned counsel appearing for the respondents relied upon the judgement reported in **CDJ 2002 SC 158** in the case of **JJ.Lal Pvt. Ltd & ors Vs. M.R.Muali & anr**, in which the Hon'ble Supreme Court of India held that the tenant is not estopped from denying the title of the landlord if it comes to an end subsequent to the creation of the tenancy nor is he estopped from questioning the derivative title of a transferee of his landlord.

13. As a general rule the vulnerability of denial of title by the tenant shall be tested by reference to rule of estopped contained in Section 116 of the Indian Evidence Act which estoppes the tenant from denying the title of the landlord at the commencement of the tenancy and the estoppel continue to operate so long as the tenant does not surrender possession over the tenancy premises to the landlord who inducted him in possession.



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Though the first respondent was inducted as tenant by the erstwhile owner, subsequently it was purchased by the petitioners and it was duly informed to the respondents by the legal notice. Therefore, the denial of title by the respondents is not a bona fide one, since so far the respondents did not pay any single pisa from the year 1994 and still they are squatting over the petition premises.

14. Insofar as the registration of sale deed at Kerela is concerned, the learned counsel appearing for the petitioners relied upon the judgment reported in **2011(1) CTC 694** in the case of **Gopi & anr Vs. H.David & ors**, in which this Court held that to declare a document void for having contravened the provisions of Section 28 of the Registration Act, there must be cogent evidence of fraud and collusion between the parties and in the absence of such cogent evidence the document cannot be held as invalid.

15. It is not the case of the respondents that the sale deed dated 23.06.1994 is a fraud and collusive document. There was a title dispute between the legal heirs of the said Lakshmi Ammal. As per the judgment



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and decree, the petitioners had purchased the petition premises from Rengasamy Niadu and Ramasamy Naidu. Therefore, there is no fraud and collusion between the parties. Hence the sale deed cannot be held as invalid. Without considering the above facts, the learned Rent Control Appellate Authority allowed the appeal and set aside the order of eviction. Hence, the order passed by the learned Rent Control Appellate Authority cannot be sustained and it is liable to be set aside.

16. Accordingly, the Order dated 08.11.2005 passed by the learned Rent Control Appellate Authority, III Additional Subordinate Judge, Coimbatore made in R.C.A.No.140 of 2004, is hereby set aside and the order of eviction passed by the learned Rent Controller, I Additional District Munsif, Coimbatore, by the orders dated 11.10.2004 made in R.C.O.P.No.344 of 1994 is hereby confirmed. The respondents are directed to vacate the petition premises and hand over the vacant possession of the petition premises to the petitioners forthwith.



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WEB COPY 17. With the above directions, the Civil Revision Petition stands allowed. There shall be no order as to costs.

30.01.2023
(3/4)

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

To

1. The Rent Control Appellate Authority,
III Additional Subordinate Judge,
Coimbatore.
2. The Rent Controller,
I Additional District Munsif,
Coimbatore.



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G.K.ILANTHIRAIYAN, J.

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