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CRP.No.74 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.74 of 2007 and
CMP.No.1033 of 2018

1.A.Nizam Basha
2.H.A.Begum

... petitioners

Vs.

1.Lakshmiammal(died)
2.Nallaveerappan @ Nallathambi
3.Karunakaran
4.Karpagam
5.Janagan
6.Ayyadurai
(R2 to 6 impleaded as LR's of the first
respondent vide court order dated 07.02.2023
in CMP.Nos.2291, 2297 & 2299 of 2023
in CRP.No.74 of 2007)

... Respondents

PRAYER:

Civil Revision Petition filed under Section 25 of Tamilnadu Buildigs (Lease and Rent Control) Act, 1960 as amended by (TN Act 23 of 1973) to set aside the order dated 08.11.2005 and made in RCA.No.142 of 2004 on the file of the Rent Control Appellate Authority and III Additional Subordinate Judge, Coimbatore.



CRP.No.74 of 2007

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

ORDER

This civil revision petition has been filed to set aside the order dated 08.11.2005 and made in RCA.No.142 of 2004 on the file of the Rent Control Appellate Authority and III Additional Subordinate Judge, Coimbatore, 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.394 of 1994, thereby ordering eviction on the ground of willful default.

2. The petitioners are the landlords and the respondents are the tenants. The petitioners filed petition for eviction as against the tenants on the ground of willful default and denial of title. The case of the petitioners is the respondents were inducted as tenants for monthly rent basis for a sum of Rs.50/-. For the past 18 years, the respondents did not pay the rent to the petitioners. The petitioners are the recent purchasers of the petition premises and they already intimated the respondents to pay arrears of rent. However, they failed to pay the same. Hence, the petitioners filed the petition for eviction on the ground of default in payment of rent and denial of title.



CRP.No.74 of 2007

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.

4. On the side of the petitioners, they had examined P.W.1 and also marked documents in Ex.P.1 & Ex.P.2. On the side of the respondents, they examined R.W.1 and marked documents in Ex.R.1 to Ex.R.7. 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 respondents preferred an appeal in R.C.A.No.142 of 2004 before the learned Rent Control Appellate Authority and the same was allowed by reversing the finding of the learned Rent Controller and dismissed the eviction petition. Aggrieved by the same, the landlords filed the present Civil Revision Petition.



CRP.No.74 of 2007

WEB COPY

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 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 respondents had neither paid any rent nor deposited into Court. Therefore, they committed willful default in payment of rent. In fact, the petitioners have purchased the petition premises from the erstwhile owners, who obtained the property by virtue of the judgment and



CRP.No.74 of 2007

decree passed in O.S.No.567 of 1976. Therefore, he prayed to allow the present

Civil Revision Petition.

6. Heard Mr.N.A.Nissar Ahmed, learned Senior Counsel appearing for the petitioners.

7. 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 respondents were inducted as tenant for the monthly rent. However, they did not pay rent Therefore, the petitioners filed eviction petition on the ground of willful default. The learned Rent Controller allowed the eviction petition on the ground of willful default.

8. Aggrieved by the same, the respondents 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



CRP.No.74 of 2007

of Section 28 of the Registration Act, 1908, as such the sale deed become invalid.

9. Admittedly, the petitioners had purchased the petition premises by the registered sale deed dated 23.06.1994. The respondents 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.

10. 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 respondents, 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 admitted that the petition premises owned by the erstwhile owner and the petition



CRP.No.74 of 2007

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

11. As a general rule, the vulnerability of denial of title by the tenant shall be tested by reference to rule of estoppel 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. Though the respondents were 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 bonafide one, since so far the respondents did not pay any single paise and still they are squatting over the petition premises.

12. 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



CRP.No.74 of 2007

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.

13. 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 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.

14. 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.142 of 2004, is hereby set aside and the order of eviction passed by the learned Rent Controller, I Additional District Munsif,



CRP.No.74 of 2007

Coimbatore, by the orders dated 11.10.2004 made in R.C.O.P.No.394 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.

15. With the above directions, the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

07.02.2023

Speaking/non-speaking
Index : Yes/No
Internet : Yes
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WEB COPY



CRP.No.74 of 2007

G.K.ILANTHIRAIYAN, J.

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To

- 1.The III Additional Subordinate Judge,
Coimbatore
- 2.The I Additional District Munsif,
Coimbatore

CRP.No.74 of 2007

07.02.2023