



C.R.P.No.3356 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.09.2023

DELIVERED ON: 09.10.2023

CORAM :

The Hon'ble Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3356 of 2009

1.K.J.A.S.Ravi
2.K.J.A.A.Vasanth
3.K.J.A.M.Rajakumar ... Petitioners

VS

1. Begum Jan
2.Ameer Basha
3.Iqbal Basha
4.Beema Begum
5.Khader Basha Respondents

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973 against the order and decree dated 14.08.2009 in R.C.A.No.113 of 2005 passed by the learned VII Small Causes Judge cum Rent Control Appellate Authority, Chennai, confirming the order and decree dated 17.12.2004 made in RCOP No.1300 of 1998 passed by the learned XVI Small Causes Judge cum



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Rent Controller, Chennai.

For Petitioners :Mr.R.Swaminathan
for Mr.S.Sathish Rajan
For Respondents :Mr.B.K.Srinivasan

ORDER

The tenants are the civil revision petitioners. R.C.O.P.No.1300 of 1998 on the file of XVI Court of Small Causes, Chennai, was filed by the landlord as against the tenants on the grounds of wilful default and acts of waste. For the sake of convenience, the parties will be referred to as landlord and tenants.

2. The landlord is the owner of the property, situated at New Door No.8, Old Door No.6, State Bank 1st lane, formerly Byran Jung Bahadur 1st lane, Mount Road, Chennai-2. The tenants are put in possession of the property on lease at the rate of Rs.600/-per month. They had given three months rent as advance and Rs.10,200/- as security deposit at the time of inception of the tenancy in the year 1990. The landlord alleged that the tenants are chronic and wilful defaulters and had not paid rents from 01.07.1996 to 30.04.1998, in all 22 months on the date of filing of Rent Control Original Petition.

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3. The landlord further alleged that without their knowledge and consent, the tenants had raised brick walls partitioning the petition premises constituting acts of waste. They stated that due to the constructions made by the tenants, the value and utility of the petition premises had been impaired materially.

4. This petition was taken on file as RCOP No.1300 of 1998.

5. The tenants filed a counter stating that originally the father of the landlords was the owner of the premises. They stated that his brother had filed a suit in O.S.No.1045 of 1989 and obtained a preliminary decree. They further alleged that the respondents' mother had taken the premises on rent and it was in a dilapidated condition in the year 1990. After her, the tenants 1 and 2 had entered into an oral agreement to continue the tenancy. According to them, they had made improvements to the structure and the entire building would have fallen down if not for the dividing wall. They would state that in the registered partition deed entered into between the father of the landlords and his brother, payment of Rs.50,000/- by the tenants had been acknowledged which was



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towards an agreement of sale that had been entered into between the parties.

They would allege that since agreement of sale was entered between the tenants and the landlords' father, the nature of relationship had changed and they are not liable to pay any rents. They would also state that they filed a suit for specific performance of an agreement of sale in C.S.No.675 of 1998 and that a sum of Rs.2,48,000/- alone remains to be paid. They would allege that as they are not liable to pay rents, the question of wilful default does not arise.

6. The learned Rent Controller found that the alleged sale agreement that has been projected by the tenants is not true and genuine document and found on an admitted case, there is wilful default and therefore, ordered eviction. An appeal was preferred by the tenants in R.C.A.No.113 of 2005. The Rent Control Appellate Authority concurred with the view of the Rent Controller and dismissed the appeal on 14.08.2009. This Civil Revision Petition is before me against the concurrent findings of the Courts below.

7. I heard Mr.R.Swaminathan, learned counsel for the revision petitioners and Mr.B.K.Srinivasan, learned counsel for the respondents.



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8. Mr.R.Swaminathan, learned counsel for the revision petitioners would submit as follows:

i) The sale agreement having been entered into between the tenants and the landlord, it put an end to the relationship of landlord and tenant and therefore, they are not liable to pay rents at all.

ii) Since they are in possession of the property as agreement holders, the question of payment of rents does not arise.

9. Mr.B.K.Srinivasan, learned counsel for the respondents would submit as follows:

i) that the agreement is a forgery and the landlords' father never entered into such an agreement.

ii) this Court must not re-appreciate the evidence sitting under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act when concurrently the Courts below have come to the conclusion as against the civil revision petitioners.



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iii) even assuming the agreement to be true, mere entering into of such an agreement does not determine the lease/tenancy.

10. I have carefully considered the arguments on either side.

11. Insofar as the genuineness of the agreement is concerned, there are two facts which have to be stated. The trial Court has found that the signature of the deceased landlord varies from the partition deed to that found in the lease deed. It has specifically found that the landlord has signed the admitted partition deed as “ABDUL RAZACK BASHA”, whereas, in the agreement of sale, it is shown as “ Razack Basha”. It also came to a conclusion that the signature differs from each of the pages.

12. Further, the landlord had filed RCOP No.1429 of 1998 for fixation of fair rent and the said agreement of sale was not filed before the Court as long as Abdul Razack Basha was alive. It is only after his death, the said document has been produced before the Court. On the basis of these findings, the Rent Controller came to a conclusion that the agreement is a forgery. The Rent



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Controller also found the plea of the tenants that they had spent Rs.2,00,000/-

for maintenance of the property had not been proved. Further, it held that the Corporation tax assessments are all in the name of the deceased landlord. It also took into consideration the fact that in the civil suit filed by the tenants, it was not shown as land alone in the schedule of property, but shown as land and building. If the tenants had put up the superstructure, then the question of filing the suit for the purpose of superstructure also would not arise. This finding of the trial court has been confirmed by the lower appellate court.

13. I have independently gone through the records and I have to enter my concurrence with the findings of the Courts below on these aspects. Even if I were to assume that there was an agreement of sale between the landlord and tenant for the sale of the property, the position of law has been clearly laid down by the Supreme Court in the case of *H.K.Sharma vs Ram Lal (2019) 4 SCC 153*. The court held that upon execution of an agreement of sale, the relationship of a landlord and tenant does not come to an end. It very categorically stated that mere entering into an agreement of sale does not determine the lease or tenancy between the parties. The agreement of sale itself



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should have stated that the tenancy comes to an end and the tenant is no more in occupation of the property as a tenant, but assumes the character of an agreement holder. Such an averment is absent in the alleged agreement of sale. Therefore, even if I were to ignore the findings of the courts below with respect to the genuineness of the document, in the light of the judgment in the case of *H.K.Sharma vs Ram Lal (2019) 4 SCC 153*, I necessarily have to come to a conclusion that the agreement of sale did not put an end to the tenancy between the landlord and the tenant. Having come to this conclusion, I have to see whether there is any default and if there is default, it is wilful.

14. The tenants have admitted to the fact that they have not paid the rents for the property from July of 1996 till date. In fact, in the suit for specific performance, this Court had passed an order directing the tenants to pay rents month on month. This is clear from Ex.P.6. The tenants have admitted that despite an order of this Court directing them to pay rents on or before 01.09.2000, commencing from the period July 1996, they have not complied with the same. These two aspects show that not only is there default in payment of rent, but also the default is wilful. Consequently, the tenants are liable to be



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evicted on the ground of wilful default.

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15. Insofar as the damage to the building under the Tamil Nadu Buildings (Lease and Rent Control) Act as well as Transfer of Property Act, a tenant cannot raise a permanent superstructure without the permission of the landlord. In this case, though the landlord has specifically pleaded that the construction of the partition wall in the building was without his consent and on account of such construction, the entire building has been damaged, no evidence has been let in by the respondents denying the construction of the wall or to the fact that such construction does not impair materially the value of the building. The Rent Controller has found to this effect and ordered eviction. This has been confirmed by the lower appellate Court.

16. I have to add, going through the evidence of the tenants, I am able to perceive that the tenants have not only accepted the construction of the partition wall, but also pleaded that such construction was made with the permission of the landlord. Unfortunately, there is no evidence to show that the construction was with the permission of the landlord. That argument failing and the



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existence of the partition wall having been admitted, I necessarily have to come to a conclusion that the construction is illegal. Therefore, this would be an act of waste within the meaning of the Rent Control Act.

17. I have to agree with Mr.B.K.Srinivasan on the scope of a civil revision under the Rent Control Act, I cannot re-appreciate the evidence, but I have to see whether the orders of the courts below are tainted with any illegality or irregularity. A careful perusal of the record shows neither. On the contrary, I come to a conclusion that the position of law as well as the factual narration reflects the true evidence that has been let in by the parties before the courts below. Being a concurrent finding of facts, I am not in a position to re-appreciate the evidence.

18. In the result, the Civil Revision Petition is dismissed. No costs. Time for eviction – 3 months.

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Index: Yes/No
Internet : Yes/No
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To

1. VII Small Causes Judge cum Rent Control Appellate Authority, Chennai,
2. XVI Small Causes Judge cum Rent Controller, Chennai.



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V.LAKSHMINARAYANAN,J.,

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