



C.R.P.Nos.4174 & 4175 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.4174 & 4175 of 2009

K.Rajendran

.. Petitioner
in both petitions

VS

P.S.Krishnamoorthy

.. Respondent
in both petitions

Petitions filed under Section 25 of the Tamil Nadu Buildings (L & RC) Act to set aside the decreetal order of Rent Control Appellate Authority (VIII Court of Small Causes) Chennai in RCA Nos. 1575 & 1576 of 2003 dated 14.09.2009 as confirmed by Rent Controller (XII Court of Small Causes) Chennai dated 14.11.2003 in RCOP Nos. 69 & 71 of 2003.

For Petitioner : Mr.TS Baskaran

For Respondent : Mr.I.Mohamed Faizal

COMMON ORDER

The original bundles had been lost by the Registry. The same were re-constructed by Mr.T.S.Baskaran, the learned counsel for the petitioner. The revisions were heard on the basis of the re-constructed papers.



C.R.P.Nos.4174 & 4175 of 2009

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2. The civil revision petitions arise against an order in R.C.A.No.1575 of 2003 and R.C.A.No.1576 of 2003 on the file of the VIII Court of Small Causes, Chennai dated 14.09.2009. RCA No. 1575 of 2003 and RCA No. 1576 of 2003 arose against RCOP No. 69 of 2003 and RCOP No. 71 of 2003 on the file of the XII Court of Small Causes at Chennai. The said RCOPs were ordered on 14.11.2003.

3. For the purpose of convenience, the parties will be referred to as landlord and tenant.

4. The revision petitioner is the tenant. The respondent claims to be the landlord. According to the tenant, he entered possession of the property by way of a lease deed entered into between himself and A.S.R.Suryaprakash together with R.Sureshkumar and one Ragunath Prasath Dhanuka. The said lease agreement is said to have been entered into on 21.02.2002. Mr.Suryaprakash had taken loans from the Park Town Benefit Fund and, therefore, in exercise of the powers vested under Section 69 of the Transfer of Property Act, the larger extent of the schedule mentioned property was brought for auction. In the said auction,



C.R.P.Nos.4174 & 4175 of 2009

the property was purchased by the landlord herein. On the purchase, he issued a notice to the tenant calling upon him to start paying the rents to him. Instead of the tenant paying rents to the landlord, they claimed that the erstwhile owner A.S.R.Suryaprakash had issued a notice on 10.08.2002 informing them that he is challenging the auction sale by which the landlord had purchased the property and therefore, had requested them not to pay the amounts to the landlord.

5. Aggrieved over the non-payment of rent, RCOP No. 1970 of 2004 and RCOP No.69 of 2003 were presented. In RCOP No.69 of 2003, the landlord stated that the tenant is occupying the shop for 150 sq ft in the ground floor on a monthly rent of Rs.1500/-. Similarly, in RCOP No.71 of 2003, he pleaded that the tenant was in occupation of 300 sq ft on the ground floor, for which he had to pay monthly rent of Rs.3,000/-. To both RCOPs, a detailed counter was filed by the tenant. The tenant projected the rental agreement dated 22.02.2002 stating that he is in occupation of 602 sq ft in the ground floor and was paying overall rent of Rs.3000/- and had further pleaded, as security for occupation of the premises, he had paid an advance of Rs.16 lakhs. The document has been placed before me for perusal and I have to take note that



C.R.P.Nos.4174 & 4175 of 2009

the lease deed is valid for a period of 36 months and is an unregistered one.

6. The two RCOPs were taken up along with other RCOP in RCOP No. 68 of 2003. By a common judgment, eviction was ordered on 14.11.2003. The grounds on which eviction was ordered were that (i) the tenant had not produced before the Court any document to show that there was dispute with respect to the ownership, (ii) no proceedings were initiated for deposit of rents by the tenant and (iii) the lease deed cannot be looked into because the document is for a period of more than three years. On these findings, the trial Court came to a conclusion, as admittedly, the tenant had not paid the rent to the owner P.S.Krishnamoorthy, there was not only default but also wilful default and ordered eviction. As narrated above, as against the order passed by the Rent Controller, two appeals were preferred before the Rent Control Appellate Authority. RCA Nos. 1575 and 1576 of 2003. The Rent Control Appellate Authority would hold that the respondent had not paid rents to the landlord and that no evidence was produced before the Court to show an application was filed under Section 9 of the Tamilnadu Buildings (Lease and Rent Control) Act and also to prove the payment of Rs.16 lakhs. Assailing this concurrent finding, the tenant



C.R.P.Nos.4174 & 4175 of 2009

is before me.

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7. Mr.T.S.Baskaran, learned counsel appearing for the tenant would vehemently contend as follows:-

(i) the Court below had not taken notice of the application filed in RCOP No.1970 of 2004 on the file of the XIII Court of Small Causes, which was an application under the provisions of Section 9(3) of Tamil Nadu Buildings (Lease and Rent Control) Act.

(ii) The appellate authority had failed to consider that the rent receipts for the rents that had been paid to A.S.R.Suryaprakash, the erstwhile landlord by the tenants from 17.12.2004 to 03.11.2007 have not been considered; and

(iii) Finally in order to demonstrate that the dispute which exists between A.S.R. Suryaprakash and P.S.Krishnamoorthy, a copy of the plaint in C.S.No.21 of 2004 has been produced before the Court.

(iv) He would state all these were produced as additional documents before the Court below but the same were dismissed without assigning reasons.

8. Mr.I.Mohamed Faizal, learned counsel for the respondent would argue that none of these documents are tenable,



C.R.P.Nos.4174 & 4175 of 2009

especially the lease deed. He would state that no proof had been given that the tenant had in fact paid the rents and the lease agreement itself is a ruse in order to get the RCOP defeated.

9. I have carefully considered the arguments of either side and have gone through the records.

10. Dealing with the first point taken by Mr.T.S.Baskaran about the filing of RCOP No.1970 of 2004, it is an interesting argument because, the two eviction petitions that were filed were numbered as RCOP No.69 & 71 of 2003 but the alleged petition filed for deposit of rents was filed in the year 2004 and that too in the fag end of the year on 22.11.2004. Had the petitioner been bonafide, he would have immediately initiated steps under Section 9(3) of the Tamil Nadu Buildings (Lease and Rent Control) Act. He would not have waited for the landlord to file an application for wilful default and merely one year thereafter presented a petition under Section 9(3). Even assuming that Section 9(3) petition had been filed, the major lacuna is that the order passed by the XIII Court of Small Causes is a nullity as it is one without jurisdiction. It is here, I usefully refer to Section 9(3) of the Tamil Nadu Buildings (Lease and Rent Control) Act. Under Section 9 (3), where there is a



C.R.P.Nos.4174 & 4175 of 2009

bonafide dispute as to who is the landlord, an application may be filed before the notified authority. As per G.O.(Ms).No.43 dated 25.01.2001, the Court of Small Causes was not notified as Rent Controller Authority under Section 9(3) of the Act. As per the said G.O., the authority notified for the purpose of Section 9(3) was before the District Collector of the city of Chennai. The Rent Controller is not the civil court possessing right jurisdiction but has to deal within the four corners of the Rent Controller Act. On a perusal of Section 9(3) read with the aforesaid G.O, one can come to a categorical conclusion that the order passed in RCOP No.1970 of 2004 is a nullity as the Court did not have jurisdiction to pass the same.

11. Insofar as the tenant is concerned, he is duty bound to pay the amounts to the person entitled to receive it. Under Section 109 of the Transfer of Property Act, on the sale of the property, there is a statutory atonement from the erstwhile owner to the present owner. The case of the petitioner is that he continues to pay rent to A.P.S.Suryaprakash, who had lost his title by virtue of the sale under Section 69 of TP Act. The bogey of title that was sought to be raised under Section 9 of the Act does not arise here. Section 9 is not concerned with title but it deals only with the "*persons*



C.R.P.Nos.4174 & 4175 of 2009

entitled to receive the rent". Reading Section 9 (3) with Section 109 of the Transfer of Property Act, once the sale had been registered and title passed on to P.S.Krishnamoorthy, the said P.S.Krishnamoorthy, as the landlord was entitled to receive the rent. Therefore, the argument under Section 9(3) gone, all that remains is the rent receipt issued by A.S.R. Suryaprakash pursuant to the order of the Court in R.C.O.P.No.1970 of 2004. When the order of the Court in R.C.O.P.No. 1970 of 2004 itself had been passed by a Court without jurisdiction, any payment made pursuant thereto would be of no avail to the civil revision petitioner. Apart from the fact, there is no reason given in the affidavit as to why these documents were not produced at the time of the trial. Therefore, the lower appellate court rightly came to the conclusion that the documents are neither necessary nor essential for the decision in appeal.

12. Now turning to the argument of the correctness of the order in appeal, what was available before the Court was a lease deed which was filed under Ex.R3. I have already held the document cannot be looked into for any purpose because the same is for a period of three years and it is an unregistered one. What raises a suspicion to a very high level is that the tenant has claimed



C.R.P.Nos.4174 & 4175 of 2009

that he paid an advance of Rs.16 lakhs towards rent for a paltry sum of Rs.3,000/-. No reasonable person, let alone an astute businessman would pay an astronomical figure of Rs.16 lakh as advance. On the very face of it this sounds highly artificial and unbelievable. Even if one were to ignore to take this into consideration, when the tenant was put on notice about the purchase by landlord P.S.Krishnamoorthy through the private auction sale, he should have immediately attorned the tenancy in his favour and started paying rents to him. On the contrary, he wanted to inter meddle in the fight between P.S.Krishnamoorthy and Mr.Suryaprakash. It is pertinent to point out that the tenant has not explained as to whom he paid the rents from the date of purchase by the landlord till the receipts that were filed before the Rent Controller in January, 2008.

13. The Damocles sword of eviction was hanging over his head. He ought to have atleast taken steps in the said eviction petition to deposit the rents. Even now, he did not do so. The idea of the tenant seems to be to get warmth by not paying the rents while squatting over the property and stand by the sidelines and watch the dispute between A.S.R.Suryaprakash and the landlord. I am not convinced with any of the reasons given by Mr.Baskaran.



C.R.P.Nos.4174 & 4175 of 2009

Sitting in revision under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, I am not willing to re-appreciate the evidence as that is not the scope of the same. I do not find any error or irregularity in the order passed by the trial Court or by the lower appellate Court. They have applied correct principles of law to the case. The tenant has not only reflected sanguine indifference but has deliberately attempted to mislead the Court by filing Ex.R3 and the additional documents before the lower appellate court. This shows the idea of the tenant is not to pay the rents but to continue his free ride in the property as long as possible. The defence of Ex.R3 failing, there is no explanation for the default having committed by them. Therefore, I am constrained to confirm the order in R.C.A.Nos.1575 and 1576 of 2003 dated 14.09.2009 on the file of VIII Court of Small Causes, Chennai in confirming the judgment and decree in R.C.O.P.Nos. 69 and 71 of 2003 dated 14.11.2003.

14. Finding no merit, these civil revision petitions stand dismissed. No costs.

12.09.2023

Index:Yes/No
Neutral Citation:Yes/No
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C.R.P.Nos.4174 & 4175 of 2009

To

- 1.The VIII Court of Small Causes,Chennai.
- 2.The XII Court of Small Causes, Chennai.



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C.R.P.Nos.4174 & 4175 of 2009

V. LAKSHMINARAYANAN,J.

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C.R.P.Nos.4174 & 4175 of 2009

12.09.2023