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CRP.No. 3060 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.06.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Civil Revision Petition No. 3060 of 2021

and

CMP No. 21624 of 2021

1. Krishnan

2. M. Krishnaveni

... Petitioners

Versus

Bhuvaneswari

... Respondent

Civil Revision Petition filed under Section 25(1), (2) of the Tamil Nadu Buildings [Lease and Rent Control] Act, 1960 read with under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decretal order dated 21.10.2021 passed by the learned Appellate Authority cum VIII Small Causes Court Judge, Chennai in RCA No.269 of 2017 confirming the order passed by the Rent Controller cum Small Causes Court Judge, Chennai, in RCOP. No. 1120 of 2015 dated 20.02.2017.

For petitioner : Mr. M. Jayakumar

For Respondent : Mr. N. Murali Mohan



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ORDER

The respondent herein has filed R.C.O.P. No. 1120 of 2015 before the learned Rent Controller under Sections 10 (2) (i) and 10 (3) (a) (i) of the Tamil Nadu Buildings [Lease and Rent Control] Act, 1960, for eviction of the revision petitioners from the property in question on the grounds of willful default and owner's own use and occupation. The learned Rent Controller allowed the RCOP. No.1120 of 2015 on the ground of willful default in payment of rent alone, but dismissed it insofar as the plea relating to owners own use and occupation. Aggrieved by the order dated 20.02.2017 in RCOP. No. 1120 of 2015, the revision petitioners herein have filed RCA. No. 269 of 2017 before the learned Rent Control Appellate Authority. By the Judgment dated 21.10.2021, the learned Rent Control Appellate Authority confirmed the order passed by the learned Rent Controller and dismissed the Rent Control Appeal. As against the same, the present Civil Revision Petition is filed by the tenants.



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2. The respondent has filed R.C.O.P. No. 1120 of 2015 by contending that she is the owner of the property in question in which the revision petitioners herein were inducted as tenants. The property in question measuring about **150 sq.ft.**, situated at Door No.26, L.G.N. Road, Border Thottam, Anna Salai, Chennai - 600 002 was acquired by her father by way of an unregistered sale deed dated 10.09.1982 and it was inherited by her from her father. Subsequently, on 10.02.1986, the revision petitioners herein were inducted as tenants by the respondent. As per the rental agreement dated 10.02.1986, the rent for the premises in question was fixed at Rs.35/- per month and a sum of Rs.100/- was paid as advance. While so, in the year 2012 it was decided by the respondent along with her brothers to demolish the existing superstructure and put up a new building thereon. Therefore, they have called upon the revision petitioners to vacate and hand over the property within two months. Even though the revision petitioners agreed to do so they did not vacate from the premises. When the respondent along with her brothers reiterated their demand for vacating the property, the revision petitioners threatened and abused the respondent and her brother. Therefore, the respondent has given a complaint on 16.03.2015 to the Inspector of Police, Anna Salai



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Police Station, however, the Police Officials did not take any action.

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While so, the second revision petitioner sent a notice dated 01.04.2015 making a rival claim over the property and asserted that the revision petitioners herein are the owners of the property and the respondent has no manner of right, title or interest over the same. On receipt of the notice dated 01.04.2015, the respondent sent a reply on 20.05.2015 repudiating the averments raised therein. Thereafter, the respondent has filed R.C.O.P. No.1120 of 2015 for eviction.

3. The Original Petition was contested by the revision petitioners by contending that they are in occupation and possession of the property in question for more than 60 years. It is stated that the revision petitioners were never in occupation of the property as a tenant under the respondent. The building in question is old and is in a dilapidated condition. The forefathers of the revision petitioners were in occupation of the premises and subsequently, they continued to remain in possession of the property. When the respondent attempted to evict the revision petitioners forcefully, they have given a complaint to the Inspector of Police, D2, Anna Salai, Police Station but the Police Officials directed



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them to resolve the dispute before a competent Civil Court. Accordingly, the revision petitioners prayed for dismissal of the RCOP. No. 1120 of 2015.

4. In RCOP. No. 1120 of 2015, the respondent herein examined herself as PW1 and one Mr. Ganesan was examined as PW2 and Exs. P1 to P16 were marked. On behalf of the revision petitioners, the second revision petitioner herein was examined as RW1 and Exs. R1 to R18 were marked.

5. The learned Rent Controller on appreciation of the rival submissions as also oral and documentary evidence has concluded that the revision petitioners herein are the tenants under the respondent and the non payment of rent since February 2012 is unjustified. Therefore, for non payment of rent the RCOP. No. 1120 of 2015 was allowed directing the revision petitioners herein to vacate and hand over the vacant possession of the property to the respondent herein within two months.



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6. As against the order dated 20.02.2017 in RCOP. No. 1120 of 2015, the revision petitioners herein have unsuccessfully filed RCA. No. 269 of 2017 before the Appellate Authority as the learned Rent Control Appellate Authority by Judgment dated 21.10.2021 confirmed the order passed by the Rent Controller and dismissed the RCA. No. 269 of 2017 filed by the revision petitioners herein. It is as against the order passed by the learned Rent Control Appellate Authority in RCA. No. 269 of 2017, the present Civil Revision Petition is filed.

7. During the pendency of R.C.O.P. No. 1120 of 2015, the second revision petitioner herein namely, Krishnaveni, has filed a suit in O.S. No. 3649 of 2015 before the learned XII Assistant City Civil Court, Chennai, for permanent injunction. According to the plaintiff in O.S. No. 3649 of 2015 she is in occupation of the property in question for a period of 60 years. Further, she is in possession of the property in her own right. Therefore, she has filed the suit to protect her possession from being disturbed by the defendants thereon namely the respondent in this revision petition and two others.



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8. In the suit in O.S. No. 3649 of 2015, the respondent herein was arrayed as third defendant. The respondent herein has filed her written statement and contested the suit. In the suit also the respondent raised a defence that the plaintiff/second revision petitioner herein was a tenant under her and she cannot make any independent claim of title over the property in question. The contention of the plaintiff that she is in possession for more than 60 years is false. In the written statement reference was also made to the filing of RCOP. No. 1120 of 2015 before the learned Rent Controller.

9. In the suit in O.S. No. 3649 of 2015, the second revision petitioner examined herself as PW1 and Exs.A1 to A7 were marked. The respondent herein was examined as DW1 and Ex.B1 to Ex.B19 were marked.

10. The trial Court on consideration of the oral and documentary evidence has concluded that the plaintiff/2nd revision petitioner herein has produced sufficient documents to prove her possession, which was also



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admitted by the defendants/respondent herein. The trial Court also stated that there is a dispute between the parties as landlord and tenants. However, such a dispute will not be a ground to evict the plaintiff from her possession. Accordingly, the trial Court decreed the suit and granted a permanent injunction.

11. Aggrieved by the same, the defendants in O.S. No. 3649 of 2015 have filed A.S. No. 98 of 2018 before the Appellate Court. The first Appellate Court, by the judgment dated 30.07.2019, set aside the judgment and decree passed by the trial Court and allowed the appeal.

12. The learned counsel for the revision petitioners would vehemently contend that the Courts below have erred in not considering the fact that the revision petitioners are in possession and occupation of the demised premises on their own right. The learned Rent Controller as well as the Appellate Authority did not consider that the revision petitioners were never in occupation of the premises as a tenant. There was no relationship between the parties as landlord and tenant and therefore, the question of non payment of rent will not arise. It is also



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submitted that the Rent Control Appellate Authority failed to consider the deposition of the parties in the suit in O.S. No. 3649 of 2015 which led to miscarriage of justice. The courts below also did not consider the oral and documentary evidence in the proper perspective. Therefore, the learned counsel for the revision petitioners prayed for allowing the Civil Revision Petition.

13. Per contra, the learned counsel for the respondent has invited attention of this Court to the order passed by the learned Rent Controller, the learned Rent Control Appellate Authority as well as the judgment and decree in A.S.No. 98 of 2018 and submitted that even though the revision petitioners claimed a right and title in respect of the premises in question, the second revision petitioner herein has clearly admitted that she has not produced any document to prove her so called long and continued possession over the property. Both the learned Rent Controller as well as the Appellate Authority have also concluded that the claim of the revision petitioners that they have title to the property in question has not been substantiated by any acceptable evidence. The ration card, Aadhar card and other documents are filed to prove their identity in the property in



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question but those documents will not confer them any right to claim title over the property. The learned counsel would submit that the revision petitioners have been inducted as a tenant in the property in question during 1986 and they have been paying rent until February 2012. However, from February 2012, even without paying the admitted rent, they are squatting over the property by falsely claiming a right and title in the said property. Therefore, the learned Rent Controller as well as the learned Rent Control Appellate Authority have rightly directed the eviction of the revision petitioners herein. Furthermore, the revision petitioners, having suffered a decree in AS. No. 98 of 2018, did not prefer any Second Appeal before this Court and therefore, the judgment and decree passed in A.S. No. 98 of 2018 has reached a finality. In such circumstances, the learned counsel for the respondent prayed for dismissal of this Civil Revision Petition with exemplary costs.

14. Heard the learned counsel for the revision petitioners as well as the learned counsel for the respondent and perused the materials placed on record.



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15. On appreciation of the above submissions, this Court had perused the oral and documentary evidence made available. On going through the averments in the petition in RCOP. No. 1120 of 2015, it could be seen that the respondent herein claimed that she is the landlord and she had let out the property in question to the revision petitioners herein for rent during the year 1986. The copy of rental agreement dated 10.02.1986 was marked as Ex.P4 in RCOP. No. 1120 of 2015. That apart several other documents were also filed to show that the property tax in respect of the demised premises was paid in the name of the respondent. On the other hand, the revision petitioners herein have filed 8 documents as Ex.R1 to Ex.R8. None of those documents pertains to the claim for title made by the revision petitioners. The documents filed are (i) Voter ID (ii) Family Card (iii) Aadhar Card (iv) a copy of the legal notice dated 01.04.2015 and copy of the plaint in O.S. No. 3649 of 2015. In such circumstances, it is futile on the part of the revision petitioners to contend that they are in possession of the property in question on their own right and such possession cannot be disturbed by the respondent or others.



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16. Coming to the averments made in the plaint in O.S. No. 3649 of 2015 filed by the second revision petitioner herein, a perusal of the averments in the plaint would only show that they are bald, vague and bereft of any material particulars relating to the so called title to the property. In the plaint in O.S. No. 3649 of 2015, the second respondent has merely averred that she is in possession of the premises for over 60 years or she is in possession of the property in her own right. In this context the statement of the second revision petitioner, as PW1, during her cross examination in O.S. No. 3649 of 2015 assumes significance. This was also elucidated in para No. 14 of the judgment dated 11.08.2017 in O.S. No. 3649 of 2015 and it reads as follows:-

"14. The plaintiff has to prove on what basis she has perfected her title in the suit property. To prove the said fact there is no piece of evidence is produced before this Court. The PW1 has been cross examined by the defendants counsel. During her cross examination she has deposed that "நான் தாவா சொத்தில் 50 ஆண்டுகளாக வசித்து வருகிறேன் என்பதை காண்பிக்க எந்த ஆவணமும் தாக்கல் செய்யவில்லை என்றால் சரிதான். தாவாச்சொத்து என்னுடையது என்பதை நீருபிக்க வரி ரசீதோ அல்லது பட்டாவோ இந்த வழக்கில் தாக்கல் செய்துள்ளேனா என்றால் இல்லை"

17. The trial Court in the judgment in O.S. No. 3649 of 2015 has



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verbatim extracted the deposition of the plaintiff as well as the defendants, but come to a conclusion that the possession of the plaintiff/second revision petitioner herein has to be protected and granted a permanent injunction. However, the judgment and decree of the trial court was set aside by the Appellate Court. The appellate Court in the judgment in A.S. No. 98 of 2018 referred to the deposition of the parties as also the oral and documentary evidence filed by them and concluded that the plaintiff did not prove that she is in possession of the property in question in her own right. This Court also perused the deposition made by the second revision petitioner as PW1, the respondent herein as DW1, the Judgment of the Appellate Court in A.S. No. 98 of 2018. On such perusal, it is glaringly evident that the second revision petitioner has not produced any documentary evidence to prove the claim for title over the property.

18. Yet another point to be noted in this case is that Ex.P1 and Ex.P2 as well as Ex.P5 to Ex.P10 are the property tax, water sewerage tax, paid in the name of the father of the respondent herein namely, Parthasarathy. Ex.P5 is the receipt to show payment of license fee made by Mr. Parthasarathy in the year 1986 to 1987. These documents prove



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that the averments made in R.C.O.P. No. 1120 of 2015 that the father of the respondent acquired the property and from her father, the respondent has inherited the right over the property has been proved. On the contrary, the revision petitioners merely raised a claim for title, but they have not produced any scrap of document to substantiate the same. Furthermore, the respondent has proved, by marking the rental agreement that the relationship between the parties is that of the landlord and tenant.

19. Another legal aspect for consideration in this case is that the suit in O.S. No. 3649 of 2015 has been filed by the 2nd revision petitioner herein for a bare injunction. The suit was decreed on 11.08.2018. As against the same, the respondent herein and two others have filed A.S. No. 98 of 2018. The appeal in A.S. No. 98 of 2018 was allowed on 30.07.2019 by setting aside the judgment and decree in O.S. No. 3649 of 2015. Admittedly, as against the same, the revision petitioners herein did not prefer any second appeal and therefore, the grounds in raised in the present Civil Revision Petition cannot be countenanced.



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20. This Court in exercise of Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, can interfere with the order passed by the learned Rent Controller or the Rent Control Appellate Authority only if they are perverse, legally not sustainable or material evidence have not been taken in to account for consideration. In the present case, on going through the order passed by the Rent Controller as well as the Rent Control Appellate Authority, this Court can only conclude that there is no perversity or illegality or irregularity in such orders passed by the learned Rent Controller in RCOP. No. 1120 of 2015 and confirmed in R.C.A. No. 269 of 2017. Therefore, this Court declines to interfere with those orders in the present Civil Revision under Section 25 of the Act and the Civil Revision Petition filed by the revision petitioners is liable only to be dismissed.

21. Accordingly, the Judgment dated 21.10.2021 passed by the learned Appellate Authority cum VIII Small Causes Court Judge, Chennai in RCA No.269 of 2017, confirming the order passed by the Rent Controller cum Small Causes Court Judge, Chennai, in RCOP. No. 1120 of 2015 dated 20.02.2017, are confirmed. Consequently, the Civil Revision



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Petition is dismissed. The revision petitioners are directed to vacate and hand over the vacant possession of the premises in question to the respondent herein within a period of three months i.e., on or before 07.09.2023. No costs. Consequently, connected miscellaneous petition is closed.

07.06.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation: Yes/No.
MSM

To

1. The VIII Small Causes Court Judge, Chennai.
2. The Section Officer, High Court of Madras.



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V. BHAVANI SUBBAROYAN, J

msm

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