



CRP No. 4073 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED :23.11.2023

CORAM :

**THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI**

Civil Revision Petition No.4073 of 2022

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N.Rameshkumar

... Petitioner

Versus

1.L.Mahendran

2.V.Chandran

3.C.Manjula Chandran

... Respondents

Civil Revision Petition filed Under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973, praying to set aside the Judgment and decree dated 20.10.2022, passed in RCA.No.458 of 2018, before the learned VII Judge, Court of Small Causes, Chennai and confirm the Judgment and decree dated 09.04.2018 in RCOP.No.1441 of 2011 before the learned XII Judge, Court of Small Causes, Chennai.

For Petitioner : Mr. M.Ganesh

For Respondent : Mr. G. Paul Einstein

**ORDER**

The petitioner has filed this petition to set aside the Judgment and decree dated 20.10.2022, passed in RCA.No.458 of 2018, before the learned VII Judge, Court of Small Causes, Chennai and confirm the Judgment and decree dated 09.04.2018 in RCOP.No.1441 of 2011 before the learned XII Judge, Court of Small Causes, Chennai.



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WEB COPY 2. Heard, Mr. M. Ganesh, learned counsel for the petitioner and Mr. G.

Paul Einstein, learned Counsel for the respondent and perused the materials available on record.

3. The learned counsel for the petitioner submitted that before the trial Court, the petitioner has filed RCOP.No.1441 of 2011, for the relief of eviction of the 1<sup>st</sup> respondent in the petition property, under Section 10(2)(i) and 10(2)(vii) of Tamil Nadu Buildings (Lease and Rent Control) Act 1960 R/w Rule 11 of Tamil Nadu Buildings (Lease and Rent control) Rules 1974. The petitioner is the owner of the premises measuring an extent of 481.25 sq.ft situated at plot No.62 bearing oldest Door No.13, New No.16, Sundaramudali Street, 2<sup>nd</sup> lane, comprised in re-survey number 7800(part), old survey no.5964 (part ) of George Town, Muthialpet Village, Chennai District and Superstructure there on consisting of ground and 1<sup>st</sup> floor each measuring 350 sq.ft. And 150 sq.ft respectively within specified boundaries mentioned in the scheduled annexed to the petition, by virtue of sale deed dated 05.07.2010 executed by the respondents 2 and 3.



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WEB COPY 4. Initially, 2<sup>nd</sup> and 3<sup>rd</sup> respondents are the owners of the property from whom the landlord / revision petitioner herein had purchased the property. The tenant denied the contention of the landlord stating that RCOP is not maintainable on the ground that the property belongs to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents with whom he entered in to agreement to enjoy the property by paying Rs.1,50,000/- as advance in view of rent the 2<sup>nd</sup> and 3<sup>rd</sup> respondent shall refund amount at the time of vacating the premises. From the year 2005 onward he is in possession of the property. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents are vendors borrowed several amount from the revision petitioner for repayment of loan to the bank and for his family needs on various occasions, totally Rs.9,40,000/- paid to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. On 20.03.2010, the 2<sup>nd</sup> respondent executed a confirming affidavit acknowledging receipt of the above payments.

5. Based on these allegations, the 2<sup>nd</sup> respondent offered to sell the premises for Rs.17,00,000/-, the respondents consented for the same out of total consideration of Rs.17,00,000/-, in which Rs.9,40,000/- was already paid by the revision petitioner and a sum of Rs.3,00,000/- was paid towards the lease advance, thereby total of Rs.12,40,000/-. Accordingly, the petitioner



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paid Rs.12,40,000/- on various occasion. Therefore, he denied the landlords

claim and also not accepted that purchase made by him from the 2<sup>nd</sup> and 3<sup>rd</sup>

respondent. In total, he denied the Jural relationship. On hearing both sides,

accepted the claim of the landlord and also held that as he is a tenant under

the vendor / original owner. Through legal notice – Ex.P3, the landlord has

intimated the purchase of the property from the original owner on 16.09.2010

and calling upon the 1<sup>st</sup> respondent to pay the rent a sum of Rs.3,000/- per

month from July 2010 onwards, but the 1<sup>st</sup> respondent has not sent any reply.

At this juncture, the Court below inclined to hold that the consent of the

tenant is not required for attornment of tenancy. As per the definition of

landlord under the Act, the petitioner is entitled to receive the rent on his

account. Likewise a tenant is a person who is liable to pay the rent as per the

definition clause. While being so the 1<sup>st</sup> respondent who came as a tenant

under lease agreement remains to be the tenant. Even though the 1<sup>st</sup>

respondent contended that he was in possession as an agreement holder for

usufructory mortgagee, to support his claim no evidence has been adduced to

show that he was put in possession in furtherance of sale agreement as an

agreement holder not as a tenant. So in the absence of specific clause in the

sale agreement, the 1<sup>st</sup> respondent is deemed to be a tenant. At this juncture,

the Court below inclined to hold that the relationship between the petitioner



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and the 1<sup>st</sup> respondent as landlord and tenant has come into existence. The petitioner, purchased the petition premises and then the legal notice has been sent to the 1<sup>st</sup> respondent on 16.09.2010.

6. During the cross examination of RW1, the 1<sup>st</sup> respondent denied the petitioner's title over the petition property, thereafter the Civil Court has declared that the petitioner is a *bona fide* purchaser and the sale agreement is not *bona fide*. So, it is clearly established that denial of title by the 1<sup>st</sup> respondent is not *bona fide*. The learned trial Judge partly allowed. The petition under Section 10(2)(i) was dismissed and petition was allowed under Section 10(2)(vii) and directing two months time to the tenant to vacate the premises. Aggrieved the same the 1<sup>st</sup> respondent has preferred RCA No.458 of 2018 before the learned VII Court of Small Causes, Chennai, under Section 10(2)(vii) of the Tamil Nadu Building (Lease & Rent Control) Act, against the eviction order. On considering both side submissions the learned trial judge held that the appellant has not questioned the title of the landlord but only the title of a derivative title of a transferee of the landlord which is clearly permissible under law. Therefore no case is made out against the appellant under Section 10(2)(vii) of the Act for seeking eviction on the ground of denial of title and the respondent has to workout his remedy only before a



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competent Civil Court. Aggrieved the same the landlord / revision petitioner has preferred this revision petition.

7. The learned counsel for the revision petitioner submitted that the appellate authority has misconstrued the decision of "**the Hon'ble Supreme Court** in the case of *AVGP.Chettiar and other Vs T.Palanisamy Gounter reported in CDJ 2002 SC 655*" and also failed to appreciate the law under Section 109 of Transfer of Property Act does not make it necessary for the subsequent transferee to have the tenancy attained in his favour. The learned trial Judge wrongly decide that the Jural relationship between the tenant and the landlord, but never had between the 1<sup>st</sup> respondent and the petitioner. The suit filed by the 1<sup>st</sup> respondent herein for specific performance of sale agreement was dismissed by the Civil Court. Further he submitted that, the appellate authority has failed to consider the fact that the denial of the title by the first respondent based on the inchoate sale agreement and the Civil Court, in the suit filed by the first respondent herein, gave a findings that the sale agreement is unenforceable.

8. On a perusal of the records, it is brought to the knowledge of this Court by the landlord that already tenant has filed a suit for specific



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performance against the original vendor in the suit in O.S.No.7800 of 2011 on the file of the IV Additional City Civil Court, Chennai. The suit was contested by the purchaser and the original owner remained ex-parte. The learned trial Judge partly allowed the suit and ordered to repay the advance amount of Rs.1,50,000/-, but the alleged agreement as well as the advance amount said to be received by the vendor has not been proved by the tenant. Accordingly, the claim of specific performance is dismissed and only he was directed to pay a sum of Rs.54,000/-. From the year 2011 onwards the tenant denied the jural relationship between the tenant and the landlord. The petitioner proved that he is a *bona fide* purchaser and he issued notice to the tenant, but he was not replied and his denial is not a *bona fied* one.

9. This Court is inclined to set aside the findings rendered by the learned VII Appellate Judge dated 20.10.2022 in RCA.No.458 of 2018, thereby confirmed the order dated 09.04.2018 made in RCOP.No.1441 of 2011 passed by the learned XII Judge, Court of Small Causes, Chennai. The 1<sup>st</sup> respondent is directed to vacate the premises within a period of two months from the date of receipt of a copy of this Order.



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**T.V.THAMILSELVI, J.**

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10. Accordingly, this Civil Revision petition is Allowed. There shall be no order as to costs.

**23.11.2023**

Index : Yes/No  
Speaking/Non Speaking order  
Neutral Citation:Yes/No

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To

1. The VII Judge, Court of Small Causes, Chennai.
2. The XII Judge, Court of Small Causes, Chennai.
3. The Section Officer,  
VR-Section, High Court of Madras.

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