



CRP. No.4281 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13 .12.2023

CORAM:

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

CRP. No.4281 of 2023
& CMP No. 26031 of 2023

1.Suresh Kumar
2.Santhi Bhoopathy

...Petitioners

Vs

1.Jayakumar
2.Venkatesh

...Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order and decretal order dated 11.10.2023 made in E.A.SR.No. 40021 of 2023 in E.P No. 736 of 2022 on the file of the 10th Court of small causes(Rent Controller).

For Petitioners : Mr.R.Thiagarajan

For R1 : Mr.V.Shivakumar

For R2 : Door locked.



CRP. No.4281 of 2023

ORDER

WEB COPY This petition has been filed to set aside the order and decretal order dated 11.10.2023 passed by the 10th Court of small causes(Rent Controller) in E.A.SR.No. 40021 of 2023 in E.P No. 736 of 2022 in RLTOP No. 525 of 2020.

2. The revision petitioners herein are the third party to the RLTOP proceedings in RLTOP No. 525 of 2020. It is an admitted fact that the revision petitioners are the brother and sister of the second respondent herein/judgment debtor and the first respondent herein is the land lord.

3. The Revision Petitioners herein filed E.A.SR.No. 40021 of 2023 in E.P No. 736 of 2022 in RLTOP No. 525 of 2020, to implead them as necessary parties to the execution proceedings in E.P No. 736 of 2022 in RLTOP No. 525 of 2020 as judgment debtor 2 and 3 and enable them to file the counter statement and hereby decide the maintainability of the execution petition. The said application was rejected by the execution court and the order of Court is extracted hereunder:

Heard. Records Perused. Even according to paragraph 4 of the affidavit filed along with the petition, the judgment debtor was only looking after the business in the premises after the demise of the father of the petitioners. The statement " Our brother has not informed



CRP. No.4281 of 2023

about order of eviction passed as against the tenant" in paragraph 6 of the affidavit clearly shows that the judgment debtor was only the tenant even according to the petitioners. It is not the case of the petitioners that there was a division in interest off the demise of their father and that the rent was being paid separately. In fact, the petitioners have stated in paragraph 6 of the affidavit the rent was paid through the judgment debtor. The judgment debtor represented all the heirs if the facts as stated are to be believed. While so, the decree passed on against the judgment debtor is binding on all the members of the family covered by the tenancy, as held by the Hon'ble Supreme Court in the case Ashok Chintaman Juker and other Vs Kishore Pandurany mantri and another, reported in (2001) 5 SCC 1. Hence petition to implead rejected for the above reasons.

4. Aggrieved over the said order the petitioners filed this Civil Revision petition.

5. The learned counsel for the petitioners submit that the petitioners are brother and sister of the second respondent herein/judgment debtor Venkatesh, who are legal heirs of the original tenant/S.Ramlingam. Originally the petitioners' grandfather O.M.Sambandam Chettiyar, was a statutory tenant under the first respondent/decreed holder herein from the year 1940 onwards running a provision store in the shop premise at No.90/10, Pondy Bazaar, Theyagaraya Road, Chennai – 600 017. After the demise of the the petitioners' grandfather the petitioners' father Ramalingam was



CRP. No.4281 of 2023

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carrying on business in the said premises running furniture mart in the year 1975 onwards and subsequently he carried on Sweet Shop and from the year 1989 onwards he was running Garments shop under the name and style of Ramsons Readymade Garments. During his life time the petitioners' father paid a rent to the landlord. In the year 2007 the first respondent/decree holder filed petition for fixation of fair rent, during the pendency of the proceedings his father died leaving behind the petitioners and the second respondent herein as legal heirs. After the demise of the petitioners' father their brother/second respondent herein look after the business and the petitioners also helping and assisting the petitioners' father during his life time, after the demise of their father the second respondent herein was looking after the business with necessary authority from the petitioner. Admittedly, the second respondent herein ostensibly represented other in their business but did not inform the landlord about the other legal heirs in the said proceedings and the tenancy rights inherited by other legal heirs. The second respondent deliberately implead him as a party to the said proceedings and the rent was fixed. Thereafter, the petitioners came to know about the execution proceedings hence they were constrained to file the application to implead them as necessary parties but the Court below without



CRP. No.4281 of 2023

giving opportunity to them erroneously rejected the application without taking on filed by holding that the decree passed against the judgment debtor will bind all the legal heirs of the tenant as such is erroneous and liable to be set aside.

6. By way of reply the learned counsel for the first respondent submit that the first respondent/judgment debtor alone running the business and participate all the proceedings and also adduced evidence before the Court below and as there was no written tenancy agreement as contemplated under the new Act, the rent controller ordered for eviction, against which the tenant preferred RLTA No. 37 of 2021 and the same was dismissed by confirming the findings of the rent controller, against which, SLP was preferred by him in SLP No. 2318 of 2023 challenging the order of the vacation when the case was listed on 24.03.2023 the tenant/second respondent herein, considering the business activities of the second respondent herein the Apex Court passed order by granting 6 month time to vacate the premises and he filed undertaking affidavit within a period of three weeks and declined to interfere in the impugned order. Accordingly, as per the direction of the Apex Court the first respondent filed affidavit of undertaking before the Hon'ble Apex court on 10.9.2023. Accordingly, the second respondent undertaking to



CRP. No.4281 of 2023

vacate the premises on or before 24.09.2023. Now contrary to the said undertaking affidavit the petitioners filed these petition at the instigation of the second respondent to implead them as necessary parties as such is clear violation of the undertaking affidavit given by the second respondent before the Apex Court and same was rightly appreciated by the Court below which needs no interference.

7. Considering both side submissions and also on perusal of records, it reveals the rent control proceedings has been initiated against the second respondent by the first respondent for committed default in payment of rent and also not entered into new written tenancy agreement. Hence the first respondent filed the petition to vacate the second respondent under Section 21 (2) (a) and (b) of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, During that proceedings the second respondent/tenant contested the case and admitted that he has not entered into any new written tenancy agreement with the land lord. The rent controller also ordered the second respondent to vacate the premises and the same was confirmed by the Apex Court. Now, the petitioners herein brother and sister of the second respondent herein filed a petition in execution proceedings to implead them as necessary parties stating that their father



CRP. No.4281 of 2023

Ramalingam was the original tenant they were not aware about the proceedings initiated by the first respondent/land lord recently they came to know about the legal proceedings hence in order to submit their submissions they want to implead them as necessary parties to the proceedings but the Court below rejected the said application stating that the judgment debtor is binding on all the members of the family covered by the tenancy. In fact, the second respondent herein/judgment debtor paid the rent to the land lord and he represented all the legal heirs. Therefore, the facts reveals that the rent was paid by the present judgment debtor/second respondent herein even during the pendency of the proceedings. Thereafter, the Court ordered for eviction and the Apex Court confirmed the order of the Court below and directed the second respondent to vacate the demised premise within 24.09.2023 and he filed undertaking affidavit to that effect. Furthermore. As rightly mentioned by the Court below, as per the ratio held by the Hon'ble Apex Court in Ashok Chintaman Juker and other Vs Kishore Pandurany mantri and another, reported in (2001) 5 SCC 1, all the family members are covered by tenancy. Hence, order passed by the court below needs no interference.



CRP. No.4281 of 2023

8. Further, the second respondent filed undertaking affidavit before the

Hon'ble Apex Court that he vacate the premises on or before 24.09.2023 on contrary to the undertaking affidavit now the petitioners filed this petition as such is clear violation of the affidavit filed by the second respondent before the Apex Court. Further, the learned counsel for the respondent submitted that the second respondent vacated the premise and it was locked, all these facts established that tenant has not handed over the possession as per the undertaking affidavit as per order of the Apex Court. The Court below rightly dismissed the application needs no interference. Further, the first respondent shall take possession of the premise through execution proceedings within a period of six weeks from the date of receipt of a copy of this order since undertaking given by second respondent has lapsed.

9. In the result, this Civil Revision Petition is dismissed. No cost. Consequentially, connected miscellaneous petition is closed.

13.12.2023

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T.V.THAMILSELVI,J.



CRP. No.4281 of 2023

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To

The 10th Court of small causes(Rent Controller)

CRP. No.4281 of 2023
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