



WEB COPY



CRP.Nos. 218 & 228 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CRP.Nos. 218 and 228 of 2020
and
CMP.Nos. 1193 and 1220 of 2020

1. Pukhraj
2. Sugan Bai

.. Petitioners in both CRPs

Versus

Lakshmi Bai

.. Respondent in both CRPs

Prayer in CRP.No.218 of 2020:

Civil Revision Petition filed under Section 25 (1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 [as amended] to set aside the fair and decretal order passed in RCA. No. 694 of 2012 on the file of VIII Judge, Small Causes Court, Chennai, dated 06.08.2019 confirming the fair and decretal order passed in RCOP. No. 1091 of 2009 on the file of the XV Judge, Small Causes Court, Chennai, dated 07.09.2012.

Prayer in CRP.No.228 of 2020:

Civil Revision Petition filed under Civil Revision Petition is filed under Section 25 (1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (as amended), to set aside the fair and decretal order passed in RCA.No. 419 of 2016 on the file of VIII Judge, Small Causes Court, Chennai, dated



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06.08.2019 confirming the fair and decretal order passed in RCOP.No. 2057 of 2012 on the file of the XV Judge, Small Causes Court, Chennai, dated 01.08.2016.

For Petitioners : Mr. P. Dinesh Kumar
in both the Civil Revision Petitions

For Respondent : M/s. Shah and Shah
in both the Civil Revision Petitions

COMMON ORDER

These Civil Revision Petitions have been filed seeking to set aside the fair and decretal orders passed in RCA. Nos. 694 of 2012 and 419 of 2016 on the file of the learned VIII Judge, Small Causes Court, Chennai, dated 06.08.2019, confirming the fair and decretal order passed in RCOP. Nos. 1091 of 2009 and 2057 of 2012 on the file of the learned XV Judge, Small Causes Court, Chennai, dated 07.09.2012 and 01.08.2016 respectively.

2. Heard both sides and perused the materials available on record.

3. On a perusal of the records, it is seen that the respondent herein has filed RCOP. No. 2057 of 2012 under Sections 10 (2) (i) and 10 (2) (ii) (a) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 (as amended), by Act 23 of 1973, against the revision petitioners herein seeking to



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residential business, more-fully described in the schedule of the Original Petition. Similarly, the revision petitioners have filed RCOP.No. 1091 of 2009 under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, (as amended Act 23 of 1973) against the respondent herein before the Court of Small Causes, Chennai, seeking to permit them to deposit the rent into the Court for the months of March, April and May 2009 and in the future, till the respondent starts to receive the rent.

4. After perusing the records, the Court below allowed RCOP. No. 2057 of 2012 on 01.08.2016 which was filed by the respondent/landlord herein and dismissed RCOP. No. 1091 of 2009 on 07.09.2012, which was filed by the revision petitioners/tenants.

5. Challenging the aforesaid orders, the revision petitioners/tenants have filed appeals in RCA. Nos. 419 of 2016 and 694 of 2012 under Section 23(1) (B) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. After perusing the records, the learned Rent Control Appellate Authority dismissed both RCA.No. 419 of 2016 and RCA.No. 694 of 2012, by judgments dated 06.08.2019 confirming the above said respective orders passed in the above said RCOPs. Aggrieved by the said judgments, the present Civil Revision



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6. It could be seen that one Sri Lalchand was inducted as tenant in the property in question and after his demise, the tenancy was attorned in favour of his wife Smt. Parvathi Devi from 1972. It is the case of the revision petitioners that the 1st petitioner is the adopted son of the said Parvathi Devi, whereas it is the contention of the respondent herein that deceased Parvathi Devi had only one daughter and she attorned the tenancy in favour of the respondent.

7. The learned counsel for the respondent/landlord argued that the Adoption Deed does not bear the signature of the natural mother and father and hence the entire deed is invalid. Smt. Parvathi Devi herself has stated in her evidence that she has only one daughter and her son-in-law is assisting in the business. The documents filed on behalf of the 1st petitioner, like Ration Card, Passport and other documents have been obtained by misrepresentation and fraud. Moreover, the 1st petitioner was more than 15 year old at the time of adoption, whereas the Hindu Adoption and Maintenance Act, 1956 stipulates that the person to be adopted must be less than 15 years. The name of the person who was adopted is given as Parvathi Bai, whereas the tenants under the respondent is Parvathi Devi. It is well settled that, the widow has no right to adopt another child in the absence of consent of her husband.



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WEB COPY 8. It is also seen that, after the demise of Sri Lalchand in 1971, his wife Parvathi Devi has been carrying on business in the name of M/s. Sha Rathajee Lalchand. The learned counsel for the respondent/landlord stated that the name board of M/s.Sha Rathajee Lalchand is still available in the petition premises. On a perusal of Ex.P33 letter sent by Smt.Parvathi Devi, it could be seen that she has sent the same in the capacity of sole proprietor of M/s.Sha Rathajee Lalchand. Notice sent on her behalf also shows the same and it is further stated that her only daughter and son-in-law is assisting Smt.Parvathi Dvi in her business. It is seen from the records that the name board of Sha Rathajee Lalchand is still in existence even at the time of giving evidence. The current consumption charges card of the petition premises and other relevant records stand in the name of Sha Rathajee Lalchand. It is the stand of the 1st petitioner that he was associated with the business along with his mother Parvathi Devi and continuing the same as one of the legal heirs of the deceased tenant.

9. The learned counsel for the respondent/landlord stated that, after the demise of Lalchand in 1971, tenancy was attorned to Smt.Parvathi Devi by the landlord and from 1971 till her demise she was sending all rents to the landlord, whereas RW1 in his cross examination has stated that after his



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adoption in 1975 by Smt.Parvathi Devi, he alone was doing business in the petition premises and both Smt.Parvathi Devi and respondent did not do business in the premises and he alone was sending rents to the respondent/ landlord. The rental receipts were issued to Sha Rathnajeelalchand. On a perusal of the money order receipts, it could be seen that they were sent by Smt.Parvathi Devi. Ex.P36 letter marked in RCOP.No.2057 of 2012, dated 08.02.2005 sent by Parvathy Devi shows that rents were tendered even just one month before her death on 12.09.2008. From the above documents, it is clear that Smt.Parvathy Devi was only sending rents to the respondent and nowhere it is referred that the 1st revision petitioner is paying the same. During cross examination of RW1 it is admitted that till 2009, Parvathi Devi was only tendering rents. He further stated that he paid rents only one or two times. It is settled proposition that rent can be paid by tenant directly or through someone on his behalf. The rents so received, do not mean that someone is not recognized by a landlord as tenant. Here though RW1 says that he only sent rents, no documents have been filed to show that the 1st revision petitioner tendered rents to the respondent. Therefore, the revision petitioners have not proved that the rents sent by him.



10. It is also seen that RW1 himself has admitted in his cross examination that he is running business in the name of Hitesh Textiles.

Ex.R12 to Ex.R18 letters filed on behalf of the respondent/landlord show that the 2nd respondent therein is carrying on business in the petition premises. From the evidence of RW1, it is clear that the 1st respondent therein is not doing the business activities at the petition premises after the demise of Parvathi Devi. The 2nd revision petitioner herein has not been examined and no documents have been filed to show that she was carrying on business on the petition premises. The tenancy offered to the 2nd revision petitioner herein was not accepted. The learned counsel for the respondent/landlord argued that the 1st revision petitioner cannot claim the right as tenant, as contemplated under Section 2(8) of the Act, as there is no jural relationship of landlord and tenant between the respondent herein and the 1st revision petitioner.

11. According to Section 2(8), a person claiming to be a tenant in case of a non-residential building, should be in continuous association with the tenant for the purpose of carrying on business upto death of tenant and continues thereafter also. The 1st petitioner herein has not proved that he was in continuous association with the tenant for the purpose of carrying on business during her life time. In fact, RW1 himself admitted that he was



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Textiles, and the documents filed by the respondent/landlord also shows the same. The onus is heavily on the 1st petitioner herein to prove the same in order to qualify him as a tenant under Section 2(8) of the Act. In the absence of any such proof no relationship of landlord and tenancy is established and the sub-letting is proved.

12. According to the 2nd revision petitioner, he has not sent rents in her individual name to the respondent/landlord. The records and evidence further reveal that the first respondent in RCOP is totally unconnected with the business activities in the petition premises and she has never done any business in the petition premises. RW3, son of the 1st respondent also admitted that his mother was not doing any business in the petition premises and only the 2nd respondent is doing business in the petition premises. The learned counsel for the respondent/landlord stated that the tenancy was not accepted by her and she has sublet the premises to the 2nd revision petitioner. The tenants have failed to tender rents in her individual name as demanded by the respondent and has thus committed wilful default in payment of rents for the default period and thereafter also.

13. In view of the above discussion, this Court comes to a conclusion

that the 2nd revision petitioner herein has sub let the premises to the 1st



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revision petitioner herein and the 2nd revision petitioner has committed wilful default in payment of rent by not sending rents as claimed by the respondent/landlord. Hence, this Court is not inclined to allow the above Civil Revision Petition. There is no illegality or irregularity in the impugned orders passed by the Court below.

14. For the reasons stated above, the Civil Revision Petitions are dismissed. The revision petitioners/tenants are hereby directed to pay the arrears of rent directly to the respondent/landlord herein on or before 30.06.2023 and the tenants are granted time to vacate from the petition premises on or before 30.09.2023, failing which the respondent/landlord is directed to take appropriate action in the manner known to law. There shall be no order as to costs. Consequently, connected CMP.Nos. 1193 and 1220 of 2020 are closed.

09.02.2023

Index : Yew/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

msm

To

1. The VIII Judge, Small Causes Court, Chennai

2. The XV Judge, Small Causes Court, Chennai.

3. The Section Officer, High Court, Madras



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V. BHAVANI SUBBAROYAN, J

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