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CRP(MD)Nos.313, 315 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)Nos.313, 315 of 2022
and
CMP(MD)Nos.1383, 1384 of 2022

Murugesan : Petitioner in both CRPs

Vs.

Dharmaraj (Died)

1.Gnanaguru

2.D.Venkatesh Babu

3.D.Pushpalatha

4.D.Uma Maheshwari : Respondents in both CRPs

PRAYER in CRP(MD)313/2022: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, to call for the records relating to the fair and decreetal order dated 05.01.2022 made in RCA.No. 4 of 2008 on the file of the Rent Control Appellate Authority (Principal Sub Court), Srivilliputhur, confirming the fair and decreetal order dated 23.04.2008, made in RCOP.No.5 of 2003 on the file of the Rent Controller (Principal District Munsif Court), Srivilliputhur and quash the same.



CRP(MD)Nos.313, 315 of 2022

PRAYER in CRP(MD)315/2022: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, to call for the records relating to the fair and decreetal order dated 05.01.2022 made in RCA.No. 6 of 2008 on the file of the Rent Control Appellate Authority (Principal Sub Court), Srivilliputhur, reversing the fair and decreetal order dated 23.04.2008, made in RCOP.No.5 of 2003 on the file of the Rent Controller (Principal District Munsif Court), Srivilliputhur and quash the same.

For Petitioner : Mr.A.Arumugam
for Mr.K.Suresh Kumar

For Respondents : Mr.P.Ganapathi Subramanian

[In both CRPs]

COMMON ORDER

One Dharmaraj / landlord has filed RCOP.No.5 of 2003 before the Principal District Munsif Court, Srivilliputhur / Rent Controller for eviction as against the petitioner / tenant on the grounds of wilful default, own occupation and closure of shop continuously. The landlord, in the eviction petition, described the suit properties as two schedules, viz., the first schedule as a vacant site and the second schedule as a building. The Rent Controller, by order dated 23.04.2008, allowed the petition in respect of the second schedule building on the ground of wilful default and dismissed the petition in respect of the first schedule property holding



that since the landlord has described the first schedule property as a vacant site, it has no jurisdiction under the Tamil Nadu Buildings (Lease and Rent Control) Act.

2.As against the order passed by the Rent Controller with regard to eviction from the second schedule property, the petitioner / tenant has filed an appeal in RCA.No.4 of 2008 before the Principal Sub Court, Rent Control Appellate Authority, Srivilliputhur. Similarly, the landlord has filed an appeal in RCA.No.6 of 2008 as against the finding given by the Rent Controller with regard to the first schedule property. The Rent Control Appellate Authority, by order dated 05.01.2022, dismissed the appeal preferred by the tenant and allowed the appeal preferred by the landlord.

3.Aggrieved over the same, the petitioner / tenant has moved the instant revision petitions. CRP(MD)No.313 of 2022 is filed as against the order passed by the Appellate Authority in RCA.No.4 of 2008 confirming the order of eviction passed by the Rent Controller with regard to the second schedule property. CRP(MD)No.315 of 2022 is filed as against the order passed by the Appellate Authority in RCA.No.6 of 2008 reversing the finding given by the Rent Controller with regard to the first schedule property.



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4.Sum and substance, learned Counsel appearing for the petitioner made his submissions as follows:-

4.1.The petitioner / tenant, pursuant to an unregistered agreement dated 01.04.1995, has taken the property for a monthly rent of Rs.300/- from the landlord and also paid a sum of Rs.5,000/- as advance. Thereafter, based on another agreement dated 20.04.2000, he put up a construction in the second floor by investing a sum of Rs.1,75,000/-, in addition to the advance amount of Rs.5,000/- and the landlord agreed to repay this amount of Rs.1,80,000/-, with interest at the rate of 24% per annum from 20.04.2000. This agreement dated 20.04.2000 was marked as Ex.R3. The monthly rent of Rs.300/- has to be adjusted with this sum of Rs.1,80,000/- and therefore, there cannot be any wilful default. Further, the petitioner / tenant used to give the rents only in lump-sum.

4.2.In fact, the landlord has admitted in his cross examination that the second floor was built by the petitioner / tenant with his own funds and the landlord did not pay amount to the tenant to construct the same. Therefore, by no stretch of imagination, eviction order can be passed in respect of the second floor. Since the landlord has admitted the constructions put up by this petitioner in the second floor spending huge amount and decorated the first floor, the petitioner is



entitled for a benefit under the Tamil Nadu City Tenants Protection Act and he is also ready to purchase the property from the landlord.

4.3.The first schedule property is a vacant site, even as per the schedule of properties in the eviction petition and therefore, Act 18 of 1960 does not apply and the eviction petition cannot be filed under any of the provisions of this Act. The amendment application filed by the landlord to include the building in the schedule of properties in the appeal stage was dismissed by the Appellate Authority and the same has also been confirmed by this Court. As against the order passed by this Court, no appeal was preferred and as such, it became final. Without amending the schedule of properties in the eviction petition, the schedule of properties in the appeal cannot be amended.

4.4.The remedy, if any, for the landlord is to file a civil suit, after issuing notice under Section 106 of the Transfer of Property Act and after terminating the lease in favour of the petitioner / tenant. The Appellate Authority came to a wrong conclusion that there is a building in the first schedule property and therefore, RCOP is maintainable. Such a finding is factually wrong and legally not maintainable.

4.5.The landlord, during the cross examination, has deposed that the petitioner / tenant has encroached the first schedule property. If that be the case,



the landlord has to file a suit for recovery of possession by paying necessary Court fee under Section 30 or Section 25(a) of the Court fee Act on the actual market value of the property. An eviction petition in this regard will not lie.

4.6.The eviction petition on the ground of owner's occupation has been rightly negated by the Rent Controller and there is no appeal by the landlord as against the same. Therefore, the finding of the Appellate Authority that the respondents / legal heirs of the landlord are entitled to evict the petitioner / tenant on the ground of owners' occupation is without any legal basis and there is no convincing evidence, either oral or documentary, for the said conclusion that the legal heirs are entitled to eviction on the ground of owners' occupation. In fact, there is no pleadings with regard to the requirements of the legal heirs.

4.7.The Rent Controller has come to a wrong conclusion that the signature of the landlord found in the agreement Ex.R3 is a forged one, by comparing the signature found in the lease agreement dated 01.04.1995 [Ex.P4]. The Rent Controller ought to have compared the signature with the admitted signature found in contemporaneous document. The lease agreement Ex.P4 is of the year 1995 and it is not a contemporaneous document of Ex.R3, which is of the year 2000. Further, at the time of execution of Ex.R3, dated 20.04.2000, the landlord was aged about 57 years and for his old age, there is some shake in the signature found



in Ex.R3. Therefore, the Courts below should have come to the conclusion that Ex.R3 is true and valid and it was executed by the landlord.

4.8.The petitioner / tenant has paid the tax from 03.04.2002 till date. To prove the same, the petitioner has marked Ex.R1 & Ex.R2. During the pendency of the eviction petition also, the tenant has paid a sum of Rs.39,840/- as tax for the period 2019-20, 2020-21 to the Municipality. The landlord has not taken any steps to pay the tax to the Municipality from the year 1995.

4.9.The landlord claims that there is a wilful default from 01.04.2000, whereas, he has issued a legal notice demanding the rent only on 25.03.2003, after three years. Even assuming that there was any arrears of rent from 01.04.2000, the same cannot be claimed after the period of limitation.

Therefore, he prayed for appropriate orders.

5.Learned Counsel appearing for the respondents, in reply, made his submissions as follows:-

5.1.The property was described as two schedules in the eviction petition, since the property was purchased by the landlord by two different documents in the year 1974 as Ex.P1 & Ex.P2. It was wrongly mentioned as two schedules and the first schedule property was wrongly mentioned as a vacant site.



5.2.It is not the case of the tenant that the site is a vacant site and he has also admitted in his evidence that he has taken the first floor for rent and that the initial agreement was made for both the ground and first floors. When the tenant himself has admitted the existence of the building in the suit schedule properties, the Rent Controller has erroneously rejected the claim of the landlord for eviction holding that the first schedule property was described as a vacant site, which has been corrected by the Appellate Authority.

5.3.The tenant has admitted the existence of the building in his memorandum of appeal in the first appeal and on considering the same, the Appellate Authority has reversed the findings of the Rent Controller with regard to the first schedule property. Therefore, there is no reason to interfere with the findings of the Appellate Authority.

5.4.After the expiry of the tenancy agreement on 31.03.2000, on the request of the petitioner, the landlord has agreed to let out the property for rent till 31.03.2001. However, the petitioner did not paid any rent for the properties since 01.04.2001. Therefore, he has caused a legal notice dated 25.03.2003 [Ex.P5], which was also received by the tenant and the acknowledgment card was marked as Ex.P6. Before the expiry of the three years limitation period, the notice was issued, however, the same was not replied by the tenant.



5.5.The petitioner's case that there was a subsequent agreement dated 20.04.2000 has been rightly rejected by the Courts on the grounds that it is for 15 years; not a registered document; variation in the signatures of the landlord; the agreement was said to have been entered at Rajapalayam, whereas, the document was purchased at Palayamkottai; the signatures found therein varies; and the witnesses to that document were not examined by the tenant. The Rent Controller has compared the signatures of the landlord found in the document Ex.R3 dated 20.04.2000, with the document Ex.P4 dated 01.04.1995 and has given a clear finding that it is not the signature of the landlord, which has also been confirmed by the Rent Control Appellate Authority.

5.6.The petitioner / tenant claimed that he has paid a sum of Rs.39,840/- towards property tax for the year 2019-20, 2020-21. When the property tax is of Rs.3,600/- for the period 2000-01, the stand of the tenant that the monthly rent is only Rs.300/- lacks merits.

5.7.The tenant has not paid any rent for more than 20 years and the tenant has not produced any materials, whatsoever, that he has ever paid the rent and the Courts below have rightly ordered for eviction of the tenant.

Therefore, he prayed for dismissal.



6.This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

7.The landlord and tenant relationship is not disputed in this case. The tenant claims that he entered as a tenant by an unregistered document in the year 1995, for a period of five years and for a monthly rent of Rs.300/- and also paid a sum of Rs.5,000/- as advance. The tenant further claims that the period has been subsequently extended by another document of the year 2000 for a period of 15 years, which has also been marked as Ex.R3. Both the Courts below have not accepted Ex.R3, on the grounds that it is an unregistered document for a period of 15 years; there is a variation in the signature of the landlord; there is a doubt in the manner in which the stamp papers have been purchased at Palayamkottai, when the document was said to be signed at Rajapalayam, where the papers are very much available; and that the witnesses to the document were not examined by the tenant.

8.The Rent Controller has compared the signatures of the landlord in Ex.R3 with Ex.P4. The Court has also compared the signatures on naked eye, as per Section 73 of the Indian Evidence Act. Further, the tenant has not produced any



materials to show that he has ever paid the rent. At one point, the tenant claims that the rent is paid on lump-sum, whereas, he also took a stand that the rent of Rs.300/- was adjusted with the investment made by him for putting up the second floor. The stand taken by the tenant is contrary to each other and there is no material to substantiate his plea. Therefore, this Court is not inclined to interfere with the findings of the Courts below on this issue.

9.Insofar as the issue regarding limitation is concerned, the petitioner / tenant took a stand that the landlord, after suppressing the Ex.R3 agreement, in order to overcome the three years limitation period, has come up with a story of extending the tenancy period by further one year till 31.03.2001. The landlord, on the other hand, in the eviction petition has mentioned that the actual tenancy period expired by 31.03.2000 and on the request of the tenant, the same was extended till 31.03.2001, however, the tenant has not paid any rent since 01.04.2001. Be that as it may, the fact remains that the landlord has caused a legal notice dated 25.03.2003 [Ex.P5] and within a period of three years from 31.03.2000, the date on which the first tenancy expired according to both the parties, the landlord initiated action. Therefore, this contention of the tenant lacks merits.



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10. It is an admitted case that there was a building in the suit schedule property. As rightly pointed out by the Appellate Authority, the petitioner has admitted that there was a building in the first schedule property in the memorandum of appeal, however, the Rent Controller has passed an order with regard to the first schedule property based on the wrong description of the property in the plaint. When the tenant himself admitted that there was a building, that too a commercial building, where he was running some business, this Court finds no error in the order passed by the Appellate Authority in this regard.

For the foregoing reasonings and discussions, this Court is not inclined to interfere with the order passed by the Rent Control Appellate Authority. Accordingly, both the revision petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.

Internet : Yes
Index : Yes / No
NCC : Yes / No
gk

13.03.2023



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To

- 1.The Principal District Munsif,
Srivilliputhur.
- 2.The Principal Subordinate Judge,
Srivilliputhur.



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B.PUGALENDHI, J.

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