



**C.R.P.(MD).No.1010 of 2019**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 28.07.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**C.R.P.(NPD)(MD)No.1010 of 2019**

**and**

**C.M.P(MD) No.3037 of 2021**

1. Mallika
2. Vimala
3. Kumar
4. Bhuvaneshwari
5. Retchana
6. Harish

All the petitioners represented by their  
Power Agent,  
N.Sivasubramanian  
S/o. Narayanaswamy Padayachi,  
No.24, Banadurai Pathukattu Street,  
Kumbakonam.

... Revision Petitioners/Respondents  
/Petitioners

-VS-

1. Pushpavalli
2. Usha
3. Geetha
4. Shanthi

... Respondents/Appellants/  
Respondents

**PRAYER:** Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, against the judgment and decree in R.C.A.No.4 of 2017 dated 14.02.2019 on the file of the learned



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Principal Sub-ordinate Judge, Kumbakonam as Rent Controller Appellate Authority, reversing the judgment and decree in R.C.O.P.No.20 of 2005, dated 20.12.2016 on the file of the Principal District Munsif Court, Kumbakonam as Rent Controller.

For Petitioners : Mr.K. Balasundharam  
Senior Counsel  
for Mr.R.Paranjothi

For Respondents : Mr.Gomathi Shankar

### **ORDER**

The present Civil Revision Petition has been filed by the petitioners under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, against the judgment and decree in R.C.A.No.4 of 2017 dated 14.02.2019 on the file of the learned Principal Sub-ordinate Judge, Kumbakonam as Rent Controller Appellate Authority, reversing the judgment and decree in R.C.O.P.No.20 of 2005, dated 20.12.2016 on the file of the Principal District Munsif Court, Kumbakonamas Rent Controller.

2. The revision petitioners are the landlord/petitioners, and the respondents herein are the tenants/respondents before the Rent Control Tribunal.



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3. For the sake of convenience, the parties will be referred to as per the litigative status before the Rent Control Tribunal.

4. According to the petitioners, they are the owner of the petition mentioned property by virtue of a sale deed dated 07.07.1960. After they purchased the petition mentioned property, they authorised one Narayanaswamy Padaiyachi who is one of their vendor, to look after the property. The petitioners further submitted that, their father leased out the property to the first respondent through lease deed, dated 27.11.1973 for a period of three years. The agreed rent was Rs.22.50/- per month. Since the lease period had expired, the tenancy of the premises become tenancy at sufferance. The petitioners further submit that the rent was periodically enhanced and the current rent on the date of filing of the petition was Rs.1,500/-. They would further submit that there was arrears of rent of Rs.34,500/- for a period of 22 months. According to the petitioners, the non-payment of rent is wilful. The petitioners further submit that, when the petitioners issued notice calling upon the respondents to pay the arrears of rent, the respondents denied the title of the petitioners and such denial is not *bonafide* one. Apart from the above ground, the petitioners also filed an



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application on the ground of Act of fraud. Hence, the petitioners prayed for the order of eviction.

5. The said application was resisted by the respondents on the ground that, as per the lease deed dated 27.11.1973, they entered into a suit property as a tenant only under Narayanaswamy Padayachi, and not under the petitioners. The respondents also disputed the title of the petitioners and they also disputed the identity of the property. The further submission of the respondents is that, as per settlement deed executed by Srinivasa Padayachi, Pushpavalli the first respondent become the absolute owner of the petition mentioned property. It is the specific submission of the respondents that they do not aware about the sale deed dated 07.07.1960, and in fact, it is the submission of the respondents that they do not know as to who is Periyasamy. Therefore, the respondents prayed to dismiss the petition.

6. Before the Rent Control Tribunal, both the petitioners and the respondents were examined one witness each. On behalf of the petitioners, 11 documents were marked as Ex.P-1 to Ex.P-11. On behalf of the respondents 31 documents have been marked as Ex.R-1 to R-31.



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7. After considering the both side evidence, pleadings and other material on records, the Rent Control Tribunal has allowed the application granting two months time to the respondents to vacate and hand over possession. Aggrieved with the order, the respondents/tenant preferred an appeal in R.C.A.No.4 of 2017. Wherein, the Rent Control Appellate Tribunal has found the denial of the title of the respondents is *bonafide*, and ultimately, the Rent Control Appeal was allowed thereby, dismissing the Rent Control Original Petition. Aggrieved with the order, the petitioners has filed the instant Civil Revision Petition.

8. The learned senior counsel appearing for the petitioners/landlord would vehemently submit that the very denial of title is not *bonafide*, and would invite the attention of this Court in respect of the pleadings of the petitioners and would submit that even in the petition they have mentioned about the authorisation in favour of Narayanasamy Padaiyachi to enter into lease agreement, and that such authorisation was not disputed by the respondents herein, therefore, as per Section 2(6) of the Tamil Nadu Buildings (Lease and Rent) Control Act, the petitioners should be construed



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as a landlord. It is also the further submission of the learned senior counsel that, factum of above authorisation was not disputed by the respondents. Therefore, contended that this would be sufficient to create a relationship between the petitioners and the respondents as landlord and tenant. It is also the submission of the learned senior counsel that the sale agreement which pleaded by the respondents cannot divest the relationship of landlord and tenant between the petitioners and the respondents. It is also the submission of the learned senior counsel that under Ex.P.31, when the respondents have admitted their status as tenant, then as per Section 116 of Evidence Act, they cannot turn around and say that the petitioners are not their landlord. Thus, the learned senior counsel prayed to allow this Civil Revision Petition.

9. However, The learned counsel for the respondents/tenant would submit that, according to the recital of Ex.A1 - Sale Deed, there are certain stipulations imposed upon the petitioners. Whereas, there are no material to prove the compliance of such stipulations. Therefore, he would submit that the findings of the first appellate Court that, the petitioners did not prove their ownership over the petition mentioned property is perfectly in order. It is also submission of the respondents counsel that, even according to the admission



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made by the petitioners, there was no relationship between the landlord and tenant. Therefore, when there is no relationship of landlord and tenant existing between the parties, the very application is not maintainable. Hence, prayed to dismiss the application.

10. This Court has given anxious consideration to the submissions of the learned counsel on either side.

11. While perusing recitals of Ex.A1, qua the sale deed of the petitioners, as rightly submitted by the learned counsel for the respondents, there are certain duties and obligation vest upon the purchasers namely, the petitioners herein. But, admittedly there are no material available before this Court, for fulfilment of those duties and obligation. However, the same is in no way useful to the respondents to dispute the title of the petitioners. Even, if there is any issue, it may be an issue only between the parties to the sale deed Ex.A1 and not to their tenants.

12. In this regard, it is useful to refer the judgment relied by the petitioners reported in **2018 (6) SCC 744 (Apollo Zipper India Limited vs.**



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***Newman and Company limited***). For ready reference Paragraph Nos.40 and 42 are extracted hereunder:

*“40. It is settled principle of law laid down by this Court that in an eviction suit filed by the landlord against the tenant under the rent laws, when the issue of title over the tenanted premises is raised, the landlord is not expected to prove his title like what he is required to prove in a title suit.*

*42. Similarly, the law relating to derivative title to the landlord and when the tenant challenges it during subsistence of his tenancy in relation to the demised property is also fairly well settled. Though by virtue of Section 116 of the Evidence Act, the tenant is estopped from challenging the title of his landlord, yet the tenant is entitled to challenge the derivative title of an assignee of the original landlord of the demised property in an action brought by the assignee against the tenant for his eviction under the rent laws. However, this right of a tenant is subject to one caveat that the tenant has not attorned to the assignee. If the tenant pays rent to the assignee or otherwise accepts the assignee's title over the demised property, then it results in creation of the attornment which in turn, deprives the tenant to challenge the derivative title of*



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*the landlord.”*

13. The learned senior counsel appearing for the petitioners further relied upon the judgment reported in **2018 (2) L.W.211 (Paramasivan vs. Murugesan)** and Paragraph No.12 is extracted hereunder:

*“12. Section 116 of the Indian Evidence Act reads as follows:*

*“116. Estoppel of tenant and of licensee of person in possession, - No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had title to such possession at the time when such license was given”.*

*From the above provision, it is clear that a tenant once inducted as a tenant by a landlord later cannot deny his landlord's title. Here, in this case, the respondent had been paying rent to his previous landlord viz.,*



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*Shanmugam Pillai and when the said Shanmugam Pillai himself asked to pay rent to the petitioner, the respondent refused to pay rent disputing the ownership, even to the said Shanmugam Pillai. Though it is contended by the respondent that he has paid rent to the son of Shanmugam Pillai, he has not produced any document to substantiate the same, under these circumstances, the denial of title of the petitioner by the respondent totally lacks bona fide. Therefore, he is barred from raising so under Section 116 of the Indian Evidence Act.”*

From the ratio of the above judgment, this Court is of the view that the respondents can't have any right to deny the ownership of the petitioners, based upon the stipulation made in Ex.A1 sale deed. Therefore, his denial of title is not *bonafide*. But still the petitioners can't have eviction in view of the reason stated infra.

14. Here the petition mentioned property belongs to the original petitioner under Ex.A1. He, himself has authorised one Narayanasamy Padayachi to execute the lease deed in favour of the respondents herein. In pursuance thereof, the said Narayanasamy Padaiyachi has executed lease



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deed, dated 27.11.1973, for a period of three years. Therefore, it is not in dispute that originally the lease deed was only executed by Narayanasamy Padaiyaci in favour of the respondents, and not the petitioners. If that being the case, it is the pre-mordial duty of this Court to find out whether the petitioners are the landlord or not. Even in the case referred by the learned counsel for the respondents, reported in **2012(2) L.W.41 (Albert Vs. M.Y Mohamed Syed Ibrahim)**, in a case of denial of title, the Court must give a finding in respect of existence of relationship of landlord and tenant, before ordering eviction.

15. In this regard, the learned counsel for the respondents would invite the attention of this Court in respect of the admission made by the petitioners during cross-examination. Wherein he has admitted as follows:

“நான் வழக்கு போட்டுள்ளது கரை  
வீட்டிற்கு: மனுதாரருக்கும் எதிர்  
மனுதாரருக்கும் இடையே மனுசொத்தை பொறுத்து  
வாடகை ஒப்பந்தம் உண்டா என்றால் இல்லை.  
மனுதாரருக்கும் எதிர் மனுதாரருக்கும் இடையே  
மனுசொத்தை பொறுத்து வாய்மொழியாகவோ  
எழுத்து மூலமாகவோ ஒப்பந்தம் கிடையாது.  
மனுதாரருக்கும் எதிர்மனுதாரருக்கும் இடையே



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மனுசொத்ததை பொறுத்து நிலசுவான்தர்/  
வாடகைதாரர் என்ற உறவுமுறை கிடையாது  
என்றால் சரிதான். நாளது தேதிவரையில்  
மனுதாரரும் எதிர்மனுதாரரும் சந்தித்து  
கொண்டதே இல்லை. எனது சிறுவயது முதல்  
எதிர் மனுதாரர்களை எனக்கு தெரியும். அவர்கள்  
என் வீட்டிற்கு அருகாமையில் உள்ளார்கள். என்  
அப்பா வாடகைக்கு வைத்தார்.□

Therefore, from the above admission, it is amply clear that there exist no relationship as landlord and tenant, between the petitioners and the respondents.

16. At this juncture, the learned senior counsel would draw the attention of this Court, in respect of Section 2(6) of the Tamil Nadu Buildings (Lease and Rent) Control Act, and would submit that the definition of landlord, includes the person who is entitled to receive rent. For ready reference, the Section 2(6) of the Act is extracted as under:

*“2.Definitions.- In this Act, unless the context otherwise requires-*

.....



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*(6) “Landlord” includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent if the building were let to a tenant;*

*Explanation.- A tenant who sub-lets shall be deemed to be a landlord within the meaning of this Act in relation to the sub-tenant.”*

As per the above section, the landlord includes a person who is entitled to receive the rent whether on his own account, or on behalf of the another, or on behalf of himself or as an agent.

17. Here, admittedly the petitioners has categorically stated that they have already authorised one Narayansamy Padayachi as their agent to enter into the lease agreement. If such being the case, the same would suffice to bring the petitioners within the definition of landlord. But, here there is no



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proof to show the collection of rent by the Narayanasamy Padayachi on behalf of the petitioners. Further the admission of the petitioners during cross examination would also fortify the non-existence of relationship of landlord and tenant.

18. The learned Senior Counsel would also invite the attention of this Court in respect of the Section 116 of the Indian Evidence Act, and would contend that, when the tenant once admitted that he is tenant, he is estopped to take a different stand subsequently. This Court is in full agreement with the submissions of the learned Senior Counsel. But the issue here is, under whom the respondents are the tenants. Here except the self serving statement made by the petitioners herein, there is no proof available before this Court to prove the existence of relationship of landlord and a tenant.

19. Thus, from the above discussion what emerges is, though the denial of title made by the respondent herein is not *bonafide*, since there was no relationship of landlord and tenant between the petitioners and the respondents, this Court is not in a position to interfere with the order of the learned Rent Control Appellate Tribunal.



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20. At this juncture, this court would like to refer Section 10(2) of the Tamil Nadu Buildings (Lease and Rent) Control Act, which is extracted as follows:

*“A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied.”*

As per the above provision, in order to evict a tenant, the petition can be filed only by the landlord. In this case, as found herein above the petitioners are not the landlord. As such the very petition is not maintainable under the Tamil Nadu Building (Lease and Rent) Control Act. Therefore, this Court could not find any infirmity in the order passed by the Rent Control Appellate Tribunal in rejecting the prayer of eviction.



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21. In the result, this Civil Revision Petition stands **dismissed**. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

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NCC : Yes/No  
Index : Yes / No  
Internet : Yes / No  
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To

1. The Principal Sub-ordinate Judge,  
Kumbakonam.
2. The Principal District Munsif Court,  
Kumbakonam.



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**C.KUMARAPPAN,J.**

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