



CRP(NPD)(MD).No.2082 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 31.07.2023

PRONOUNCED ON : 11.08.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(NPD).(MD).No.2082 of 2014

B.Madhava Pushpavanam

.....Petitioner

Vs

K.Ganapathi (died)

2.Rajeswari

3.Sundareswaran

4.Malathi

5.Gnanavel

6.Kalyanasundaram

...Respondents

(Respondents 2 to 6 are brought on record as legal heirs of the deceased sole respondent vide Court order dated 10.03.2023)

PRAYER:- Civil Revision Petition filed under Section 115 C.P.R r/w Section 6 of the Tamil Nadu Cultivating Tenant Protection Act, 1955, to set aside the order dated 23.01.2014 in TCTP.No.65 of 2005 passed by Special Deputy Collector, Revenue Court, Tiruchirappalli.



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For Petitioner : Mr.D.Venkatesh
R1 : Died
For R2 to R6 : Mr.M.P.Senthil

ORDER

The present revision petition has been filed by the landlord challenging the order passed by the Revenue Court/Special Deputy Collector, Trichy rejecting his application for eviction of the cultivating tenant.

2.The petitioner herein had filed an application under Section 3(4) (a) of the Tamil Nadu Cultivating Tenant Protection Act 1955 for evicting the respondent on the ground that the tenant had sublet the property and he had not paid the rent for the past 8 years from 1996 -97 onwards.

3.The respondent had filed a counter and contending that he was the tenant of one Kannammal and after the death of the said Kannammal, he is paying rent regularly to one Jeyalakshmi. After the death of his mother, he is continuing as a cultivating tenant till date. He had further contended that the petitioner is not the only legal heir of Bashyam Iyengar and two other blood brothers of the petitioner have not been impleaded. Therefore, the petition has to be dismissed for non-joinder of



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necessary parties.

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4.The respondent had further contended that the petitioner is not the absolute title holder of the petition mentioned property and he is entitled only to a share in the rent. The tenant had clarified in his counter that he is not denying the petitioner's limited title and share in the land but only denies his full and absolute title. He had not sublet the land to third parties but on the other hand, he is doing personal cultivation with the help of his family members. Though the respondent had denied the default in payment of rent, he has stated that he is ready and willing to pay the arrears of rent, if any, as per provisions of law.

5.The Revenue Court after considering the pleadings, oral and documentary evidence on either side, arrived at a finding that the petitioner has not produced the copy of the Will said to have been executed by one K.S.Rajagopalachari. Since the vested remainder under the said Will had predeceased the life interest holder, the petitioner has not established his title. The Revenue Court had further found that the petitioner had not established the title by producing the documents.

6.Based on the said findings, the eviction petition is dismissed by the Revenue Court. Challenging the same, the present revision has been



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filed.

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7. According to the learned counsel for the revision petitioner, the property in dispute originally belonged to one Rajagopalachari and he had executed a Will, whereunder he had bequeathed his property granting life interest to his wife Kannammal and vested remainder to his brother-in-law (wife's brother Bashyam Iyengar). After death of Bashyam Iyengar, his wife Jeyalakshmi was in enjoyment of the property and receiving rents. The petitioner is one of the sons of Jeyalakshmi and therefore, he is entitled to file the present application for eviction. Even in the counter, the tenant has admitted his title but has only contended that the other sharers have not been impleaded. Therefore, there is no dispute with regard to the title or landlord and tenant relationship.

8. The learned counsel for the petitioner had further contended that the tenant had admitted in the counter that he has paid the rent to Jeyalakshmi. The said Jeyalakshmi had passed away on 14.12.2001. Therefore, even as per the case of the tenant, he has not paid the rent till the date of filing of the eviction petition i.e. on 14.02.2005 by the petitioner. He had further contended that any one of the co-owners can maintain eviction petition as against the tenant for subletting the



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property and for default in payment of rent.

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9.Per contra, the learned counsel for the respondent/tenant had contended that the revision petitioner has not filed a copy of the Will and not proved the same. Even according to the petitioner, the vested remainder namely Bashyam Iyengar had predeceased the life interest holder namely Kannammal. Therefore, the Will is void in nature and the petitioner does not derive any title under the same. As an alternative plea, he had contended that the property would not only devolve upon the petitioner, but also on the other legal heirs of Bashyam Iyengar. Therefore, the present petition filed by the petitioner is not maintainable. There is no default in payment of rent and the entire rent has also been paid after the date of filing of the eviction petition.

10.I have considered the submissions made on either side and perused the materials available on record.

11.It is the case of the petitioner that the property in dispute originally belonged to one Rajagopalachari who had executed a Will granting life interest in favour of his wife Kannammal and vested interest in favour of his brother-in-law Bashyam Iyengar. The said Bashyam Iyengar's wife is Jeyalakshmi. In the counter, the tenant had categorically



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admitted that originally Kannammal was the landlady and he was paying rent to the said Kannammal. In the counter, the tenant had further admitted that after the death of Kannammal, he was paying rent to Jeyalakshmi. Therefore, it is clear that the tenant had knowledge about the devolving of property on Jeyalakshmi. The present petitioner is none other than the son of Jeyalakshmi. Hence, it is clear that the Revenue Court was not right in arriving at a finding that the petitioner has not established his title over the property ignoring the fact that the same has been admitted in the counter by the tenant.

12.As per the case of the tenant, he had been paying rent to Jeyalakshmi and he does not know who the petitioner is. Admittedly, the said Jeyalakshmi had passed away on 14.12.2001 and the eviction petition has been filed on 14.02.2005. After the death of Jeyalakshmi, the tenant had not paid the rent to any one, even as per counter. Though the tenant had contended that he had paid rent up to 2005, there is no record to establish the same.

13.It is not the case of the tenant that he had paid rent to the other legal heirs of Jeyalakshmi after 2001. Hence, it is clear that the tenant had committed default in payment of rent from 2002 onwards till the date



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of filing of the eviction petition in the year 2005.

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14.As per Section 3(2)(aa) of Tamil Nadu Cultivating Tenants Protection Act, if the tenant has not paid the rent within a period of one month from the date of due, he is liable to be evicted. Therefore, it is clear that the tenant having committed default from January 2003 onwards till the date of filing of the petition, is liable to be evicted. The Revenue Court has erroneously arrived at a finding that the petitioner has not established his title ignoring the admission made by the tenant in his counter.

15.In view of the above said deliberations, the order impugned in the revision petition is set aside and this civil revision petition is allowed. The respondents are granted three months time to vacate and hand over possession of the property to the petitioner. No costs.

11.08.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To
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- 1.The Special Deputy Collector,
Revenue Court, Tiruchirappalli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery order made in

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