



C.R.P.(MD)No.2751 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.09.2023

Delivered on : 17.11.2023

CORAM:

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

C.R.P.(MD)No.2751 of 2018

A.Athinarayanan

... Petitioner /Appellant/ Petitioner

Vs.

S.Mary

... Respondent / Respondent/ Respondent

Prayer: This Civil Revision Petition is filed under Section 25 of the Tamil Nadu Building (Lease & Rent Control) Act, 18/1960 as amended by Tamil Nadu Act 23/1973, against the fair and decretal order, dated 06.07.2018, passed in R.C.A.No.13 of 2017, on the file of the Principal Subordinate Judge, Nagercoil, confirming the fair and decretal order, dated 12.07.2017, passed in R.C.O.P.No.23 of 2015, on the file of the Rent Controller (Principal District Munsif Court), Nagercoil at Kanyakumari District.

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.R.Murugan



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ORDER

The revision petitioner herein is the appellant / petitioner and the respondent herein is the respondent / respondent before the Court below.

2. Brief averments of the petition are as follows:

This petitioner submits that by virtue of the sale deed, dated 14.08.2013, he is the owner of the petition mentioned property. He purchased the property from the respondent. This petitioner further submits that, on the date of the sale deed, the respondent requested the petitioner to lease out the property for six months as he wants some time to vacate the building. Considering the respondent's request, the petitioner leased out the petition mentioned property for rent. Accordingly, both the petitioner and the respondent entered into a lease agreement on 15.08.2013. As per the lease agreement, the lease period was six months and rent was fixed at Rs.3,000/- per month. However, the respondent paid only one month rent and defaulted thereafter. When the petitioner requested the respondent to vacate the building, the respondent become infuriated and gave a false police complaint against him. This petitioner submits that, now the building requires for his own use and occupation. Hence, he prayed to allow this application.



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3. Brief averments of the counter statement are as follows:

The respondent disputes the ownership of the petitioner, and she disputed the execution of the sale deed to the petitioner, on 14.08.2013. It is the further submission of the respondent that, she came to know about the alleged fraud committed by the petitioner in obtaining the so-called sale deed. This respondent also disputes the execution of the lease agreement dated 15.08.2013. This respondent further submits that the petitioner is a professional money lender and having property in Nagercoil Town, and further the respondent being not the tenant of the petitioner, it is immaterial as to whether the petitioner is having other building or not. In substance, the respondent disputes the landlord and tenant relationship between the petitioner and the respondent. Hence, she prayed to dismiss the application.

4. Documents, Evidence & Findings of both the Court below:-

a) Before the trial Court, the petitioner has filed 10 documents and they were marked as Ex.P1 to Ex.P10, and on behalf of the respondent, 2 documents were marked as Ex.R1 and Ex.R2. On behalf of the petitioner, 2 witnesses were examined as P.W.1 and P.W.2, and on behalf of the respondent, one witness was marked as R.W.1.



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b) After gone into the oral, documentary evidence and material on record, the Rent Controller has dismissed the application with the finding that the relationship of landlord and tenant has not been proved.

c) Aggrieved with the said finding, the petitioner has filed an Appeal before the Rent Control Appellate Tribunal. Even the Appellate Authority has confirmed the finding of the Rent Controller and upheld the finding that there is no proof as to the landlord and tenant relationship, and ultimately, dismissed the Appeal.

5. Aggrieved with the said order, the petitioner is before this Court by way of this instant Civil Revision Petition.

6. Submission of both side counsel:-

a). The learned counsel for the petitioner would submit that the petitioner has purchased the petition mentioned property from the respondent, and that while entering the sale deed, the respondent wanted some time to shift the articles, and requested the petitioner to lease out the property for a period of six months. It is the submission of the learned petitioner counsel that, in pursuance of the request of the respondent, a lease



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agreement was executed on 15.08.2013 on a monthly rental of Rs.3,000/-.

The learned petitioner's counsel would further contend that, the respondent has paid only one month rent and thereafter, willfully failed to pay the rent. Hence, the petitioner sought for the relief of eviction on the ground of wilful default.

b). The learned counsel for the petitioner would also further submit that, the petition mentioned property required for their own use and occupation. It is the further submission of the petitioner that the finding of the Rent Controller as well as the Rent Control Appellate Tribunal that there is no landlord and tenant relationship, is erroneous and without any basis and contrary to the material on record. Hence, he prayed to allow this Civil Revision Petition.

7. Per contra, the learned counsel for the respondent would vehemently submit that the sale deed, dated 14.08.2013, which allegedly stands in the name of the petitioner was not at all executed by the respondent, and that the alleged sale deed, dated 14.08.2013 is the result of misrepresentation and fraud committed by the petitioner. The learned counsel for the respondent would further contend that, the petitioner under the pretext of obtaining mortgage deed, obtained the signature in the sale deed,



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and that this respondent has never handed over the possession to the petitioner and that the alleged rental agreement is a rank one forgery. Hence, they prayed to dismiss this Petition.

8. I have given my anxious consideration to either side submissions.

9. Analysis of the submissions:

From the perusal of the sale deed Ex.P1, the same stands in the name of the petitioner, alleged to have been executed by the respondent. It is pertinent to mention here that, the respondent has admitted the signature found in the said sale deed. However, she disputes due execution. In respect of her objection for due execution, the learned counsel for the respondent would submit that the petitioner, being the money lender, under the pretext of getting signature in the mortgage deed, obtained signature in the sale deed. As such it is the submission of the respondent that still the respondent is the owner of the petition mentioned property.

10. In this regard, the learned counsel for the petitioner would invite the attention of this Court about the pleading of the respondent in para 2 of the counter statement. Wherein, the respondent has reserved her right to challenge the alleged sale deed dated 14.08.2013 before the appropriate



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Forum in the manner known to law. It is the specific submission of the learned counsel for the petitioner that since 2013, till today, no proceedings was initiated to challenge the said sale deed.

11. Therefore, the learned counsel for the petitioner would submit that under Article 56 of the Limitation Act, the period to challenge the sale deed becomes barred as the same now beyond three years. Therefore, by the conduct, the respondent has admitted the ownership of the petitioner over the petition mentioned property.

12. Though, as rightly observed by the Rent Controller as well as the Rent Control Appellate Authority, this Tribunal cannot take any final decision upon the ownership over the property, but, on efflux of time and on the basis of the pleadings and the conduct of the party in the interregnum, this Court with great caution, records that there are abundant basis to hold the title of the property with the petitioner.

13. Therefore, in view of the above finding, now the entire issue becomes narrow down, to decide as to whether, is there any landlord and tenant relationship between the petitioner and the respondent. Only if such relationship exists, this Court can go into the question of eviction. In this regard, the learned counsel for the respondent would submit that the very lease agreement under Ex.P9 is a rank one forgery.



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14. However, the learned counsel for the petitioner would submit that in order to prove Ex.P9 – lease agreement, the petitioner himself, as well as the attester to Ex.P9- lease agreement was examined before the Rent Control Tribunal. Therefore, he would submit that, the burden to disprove such document rests upon the respondent, where she failed to discharge her burden. Therefore, it was contended that the very Ex.P9 lease agreement would exemplify the relationship of landlord and tenant, between the petitioner and the respondent.

15. At this juncture, it is relevant to refer the finding of fact, recorded by the Rent Controller as well as the Rent Control Appellate Tribunal. The learned Rent Controller has disbelieved Ex.P9 - lease agreement. In this regard, it is relevant to extract hereunder the following admissions made by P.W.1 during cross examination:

"வீடு வாங்கும் போது பணம் கடன் உள்ள விவரமே தெரியாது. அதன்பிறகு அசல் ஆவணம் அங்கு உள்ளது தெரிய வந்தது. என் வீட்டினை காப்பாற்றுவதற்காக பணம் செலுத்தினேன். நான் அவரிடம் இது குறித்து கேட்டேன். ஆனால் அறிவிப்பு அனுப்பவில்லை. அசல் ஆவணங்களை வாங்கி என்னிடம் இன்னும் தரவில்லை. கிரையம் பதிவு செய்யும்போது வீட்டை காலி செய்து விட்டு காலிசுவாதீனம் என்னிடம் கொடுத்தார்கள். நான் அன்று இரவு அங்கு தான்



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தங்கினேன். மேரி அவருடைய வீட்டு சாமான்களை அவருடைய மற்றொரு வீட்டில் வைத்திருந்தார்கள். மறுநாள் ஒப்பந்தம் எழுதி 6 மாதத்திற்கு வாடகைக்கு கேட்டு குடி வந்தார்கள். நான் கூறுவது போன்று பொருட்கள் எதையும் காலி செய்யவில்லையென்றும் அவை அங்கேயேதான் இருந்தன என்றும் சொன்னால் சரியல்ல. ம.சா.ஆ.9 வாடகை ஒப்பந்தம் பத்திர எழுத்தர் அலுவலகத்தில் எழுதப்பட்டது."

16. Through the above admission, the Rent Controller had taken a strict view that, when there is no proof as to the stay of the petitioner on the date of the sale, the subsequent handing over of the possession to the respondent is illegal and cannot be believed. However, it is settled principle of law that an admission in the oral evidence should be considered in a harmonious manner and the same cannot be isolated from the entire gamut of issue. Here, it is the specific case of the respondent that, she never handed over possession to the petitioner in pursuance of the alleged sale deed dated 04.08.2013. Therefore, the above admission of the petitioner can be termed as false. Further, the continuance of the respondent's possession in the petition mentioned property cannot be faulted with.

17. Since both the parties, in their pleadings would contend that



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the possession has been continued with the respondent, now we must see whether such possession metamorphed into a new relationship of landlord and tenant. In this regard, both the Trial Court as well as the First Appellate Court disbelieved the evidence of PW2 and also the lease agreement-Ex.P9.

18. The First Appellate Court, to substantiate its finding to disbelieve the Ex.P9-lease agreement has relied upon the evidence of PW2. The relevant portion of the evidence of PW2 is as follows:-

“நான் முத்திரைத்தாளிலும் மேலும் ஒரு தாளிலும் கையெழுத்திட்டேன். அந்த ஆவணத்தை நான் படித்து பார்க்கவில்லை. நான் போகும்போது அங்கே என்ன நடந்தது என்று எனக்கு தெரியாது.”

19. The First Appellate Court was of the opinion that if really PW2 was genuine attester, there could not have been any difficulty for him to speak in respect of his signature in the lease agreement-Ex.P9. Admittedly, in the lease agreement-Ex.P9, only in the second page namely in the unstamped paper, PW2 signature found in place. At this juncture, it is relevant to refer the findings recorded by the First Appellate Court. Wherein the First Appellate Court has stated that, the lease agreement-Ex.P9 was dated 15.08.2013. Further, the said lease agreement was only for the period of six months. Therefore, held that when the rent has been paid only for a



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period of one month and in between there was a police complaint-Ex.P10 in the month of March 2014, the long delay in issuing legal notice-Ex.P2 in the month of August 2014 assumes much significance and caused great suspicion in respect of Ex.P9-lease agreement. Thus, the Trial Court as well as the Appellate Court has disbelieved the evidence of P.W.2.

20. Generally any discrepancy or slip sort evidence will not be given undue weightage, in isolation to the other part of evidence. The Tribunal as well as the Appellate Tribunal has referred the admission made by the petitioner as to the pendency of the complaint against petitioner. Though the veracity of the said complaint is disputed, the fact remains that there was a complaint against him for removing the petitioner's article from the premises. Therefore, the very discrepancy of the evidence of PW-2 assumes much important.

21. If really PW2 was the attester to the document, there cannot be any difficulty for him to speak about his attestation. However, here PW2 says that he has signed in two places. One in the stamp paper and another in the normal paper, but such document is not before this Court. Therefore, the finding of the fact recorded by the Tribunal as well as the Appellate Tribunal as to the veracity of the lease agreement cannot be found faulted. Apart from that even against PW2, there was a police complaint given by the respondent



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which factum was also admitted by the respondent during the cross examination.

22. Thus, the suspicion recorded by both the First Appellate Court and the Trial Court in respect of Ex.P9-lease agreement is based on materials and furthermore, the conduct of the petitioner also assumes relevant as he made false statement during cross examination, which is extracted elsewhere in this order. Therefore, this Court is of the view that, unless there are definite material and strong evidences to deviate from the findings recorded by both the Trial Court as well as the First Appellate Court, since because there is a possibility of different interpretation of the evidence will not entail the Revisional Court to reverse the finding.

23. At this juncture, this Court would like to refer the judgment of ***Khimji Vidhu Vs. Premier High School*** reported in ***(1999) 9 SCC 264***, wherein, the Hon'ble Supreme Court held that the High Court has no jurisdiction to substitute its view in the place of the view taken by the statutory Authority, by exercising powers under Article 227 of the Constitution of India. It is also useful to refer another recent judgment of the Apex Court in ***Puri Investments Vs. Young Friends and Co., and others*** reported in ***2022 SCC Online SC 283***, wherein the Hon'ble Supreme Court



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held that the High Court can interfere with the decisions of a fact and findings under Article 227 of the Constitution of India only when the findings are perverse. The relevant portion of the said judgment are as follows:-

“14.
The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are:—

- (i) Erroneous on account of non-consideration of material evidence, or*
- (ii) Being conclusions which are contrary to the evidence, or*
- (iii) Based on inferences that are impermissible in law.*

15.

16.

17. There was no perversity in the order of the Appellate Tribunal on the basis of which the High Court could have interfered. In our view, the High Court tested the legality of the order of the Tribunal through the lens of an appellate body and not as a supervisory Court in adjudicating the application under Article 227 of the Constitution of India. This is impermissible. The finding of the High Court that the appellate forum's decision was perverse and the manner in which such finding was arrived at was itself perverse.”

(Emphasis supplied by this Court)

24. In view of the above findings, this Court opines that, the Revisional Court cannot go into the reasoning of the Trial Court and the



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First Appellate Court, unless there is a perversity. Here absolutely this Court could not find any perversity in the findings recorded by both the Courts below. Therefore, the suspicion recorded by both the Courts below in respect of the lease agreement-Ex.P9 is liable to be sustained. If the lease agreement-Ex.P9 is not proved, naturally, the landlord and tenant relationship will not manifest. Once the landlord and tenant relationship is not in existence, naturally the very filing of the application under Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is not maintainable. As a concomitant, the orders of the Rent Control Tribunal as well as the Appellate Tribunal is liable to be confirmed.

25. In the result, the Civil Revision Petition is dismissed. The order passed by the Tribunal as well the First Appellate Court is hereby confirmed. There shall be no order as to costs.

17.11.2023

Index : Yes
NCC : Yes
Ls/vca/kmi

To

1.The Principal Subordinate Judge,
Nagercoil.

2.The Rent Controller (Principal District Munsif Court),
Nagercoil at Kanyakumari District.



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3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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Order made in
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