



C.R.P(NPD)(MD)No.1194 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(NPD)(MD)No.1194 of 2017

N.Murugan ... Petitioner /Appellant/Petitioner/Landlord
.Vs.

1.K.Lakshmi
2.R.Sankaranarayanan (Died)
... Respondents/Respondents/Respondent/Tenants

3.S.Panjavarnam

4.S.Malliga

5.Muthuselvi

6.Renga

7.Chellam

8.Kannan .. Respondents/Respondents

[Respondents 3 to 8 are brought on record as LR's of the deceased

2nd respondent vide order dated 11.10.2023 in

C.M.P.(MD)No.7177 of 2023]



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PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings [Lease and Rent Control] Act, 1960, to set aside the Fair and Decretal Order dated 12.09.2012 passed in R.C.A.No.20 of 2011 on the file of the Principal Subordinate Judge (Rent Control Appellate Authority), Tirunelveli, confirming the Fair and Decretal order dated 29.01.2011 passed in R.C.O.P.No.19 of 2010 on the file of the Principal District Munsif (Principal Rent Controller), Tirunelveli.

For Petitioner : Mr.J.Anandavalli

For Respondents : No Appearance

ORDER

The unsuccessful landlord is the revision petitioner. The revision petitioner filed R.C.O.P.No.19 of 2010 before the Principal District Munsif (Principal Rent Controller), Tirunelveli on the ground of willful default in payment of rent and owner's occupation under Section 10(2)(i) & 10(3)(a)(i) of the Tamil Nadu (Lease and Rent Control) Act, Act 18 of 1960.

2.The brief case of the revision petitioner before the Rent Controller was that the property belonged to the second respondent and the second respondent had appointed the first respondent as his duly



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constituted power of attorney agent. In pursuance of the said power of attorney, the first respondent, sold the petition premises to the revision petitioner for valuable sale consideration and a sale deed was also duly registered on 21.12.2009 for a consideration of Rs.16,00,000/-.

3.It is the specific case of the revision petitioner that the first respondent requested the revision petitioner to lease the premises to the second respondent for a short period to enable the second respondent to find suitable accommodation and shift and thereafter, hand over vacant possession. It is the further case of the revision petitioner that on 21.12.2009, the first respondent, as power agent of the second respondent, entered into an agreement of lease, fixing the monthly rent at Rs.2,000/-. The grievance of the revision petitioner is that despite undertaking to pay Rs.2,000/- per month and also to vacate within a period of three months, the second respondent did not pay any money towards rent and also did not come forward to vacate and hand over vacant possession. Further, as the petition premises was required for own use and occupation for residential purposes, eviction was also sought under Section 10(2)(i) & 10(3)(a)(i) of the Tamil Nadu (Lease and Rent



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Control) Act. The revision petitioner issued a pre-eviction suit notice on 17.02.2010. The respondents received the same. However, they did not come forward to issue a reply, leave alone comply with the demands made in the said notice. The revision petitioner therefore, approached the Principal District Munsif (Principal Rent Controller), Tirunelveli seeking eviction.

4.The first respondent filed a counter admitting that as power agent, he had sold the property on behalf of second respondent, in favour of the revision petitioner. However, the first respondent has stated that his authority came to an end with the execution of the sale deed and therefore, he could not have executed the lease agreement and the same would not be binding on the second respondent. Further, it is stated that the respondents are residing in the house only as permissive occupants and not as tenants and therefore, he sought for dismissal of the RCOP.

5.The second respondent filed a separate counter statement stating that his daughter has filed a suit in O.S.No.130 of 2010 challenging the sale deed in favour of the revision petitioner and therefore, the eviction



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petition was not maintainable. The further case of the second respondent is that he never authorised the first respondent to sign the lease agreement and therefore, even from this angle, the eviction petition cannot be maintained against the second respondent.

6.Before the Rent Controller, the revision petitioner examined himself as P.W.1 and marked Ex.P.1 to Ex.P.7. Ex.P.4 is the lease agreement entered into between the petitioner and the respondents on 21.12.2009. On the side of the respondents, they did not choose to lead any oral evidence, leave alone mark any documents on their side.

7.The Rent Controller came to a finding that on the execution of the sale deed, the power agent could not have validly executed a lease agreement in favour of the revision petitioner and proceeded to dismissed the RCOP.

8.Aggrieved by the said dismissal of the eviction petition, the revision petitioner preferred R.C.A.No.20 of 2011. Before the Appellate Authority, the power of attorney executed by the second respondent in



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favour of the first respondent was marked as Ex.A.8. The Appellate Authority also concurred with the findings of the Rent Controller and dismissed the appeal.

9.Challenging the said concurrent findings of the Courts below, the revision petitioner has preferred the present revision, on the grounds that the Courts below erred in holding that the power of attorney came to an end with the execution of the sale deed; the Courts below have mislead the evidence of P.W.1; the Courts below failed to see that neither the power of attorney nor the sale deed nor execution of the lease deed were questioned by both the respondents; the interpretation of the Rent Control Appellate Authority to Ex.A.8 was fallacious and erroneous and on these grounds, the concurrent findings of the Courts below are sought to be set aside.

10.I heard the learned counsel for the revision petitioners/landlord. There is no appearance for the learned counsel for the respondents/tenants. In fact paper publication has already been effected on both the respondents by way of substituted service.



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11.I have gone through the records.

12.Admittedly, the respondents have sold the petition premises to the revision petitioner. It is not the case of the respondents that they are not in possession of the petition premises after sale of the said property to the said revision petitioner. It is the specific case of the first respondent that the revision petitioner only permitted the respondents to occupy the petition premises, despite the sale deed executed and registered in favour of the revision petitioner, to enable the second respondent to find suitable alternate accommodation and thereafter, hand over vacant possession. To establish this, both the respondents have not even chosen to enter the witness box and no documents have been exhibited on their side. However, to the contrary, the revision petitioner has marked the original lease agreement entered into between himself and the second respondent represented by the first respondent. The Courts below have non-suited the revision petitioner on the ground that the power of attorney ceased to exist on the execution and registration of the sale deed. Unfortunately, I am unable to agree with the said findings of the Courts below.



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13. On a reading of the power of attorney which has been executed before the Appellate Authority as Ex.A.8, it is clear that it is not merely a power of attorney to enable the power agent, namely, the first respondent to execute the document in favour of the prospective purchaser and register the same. Several ancillary powers have been bestowed in the said power of attorney, in favour of the power agent. One of the clause includes handing over possession and also take care of any kind of litigation, besides taking up of issues with the revenue authorities. The possession was allowed to be retained by the respondents only at their request and the revision petitioner was gracious enough to permit the second respondent to continue to occupy the petition premises, despite the factum of sale of the said property to the revision petitioner. It is seen from Ex.P.4 that a nominal rent of Rs.2,000/- was also fixed. The execution of the said power of attorney is not denied. The defence taken is only that the power of attorney agent did not have any authority to enter into any agreement and the justification given for continuing to occupy the petition premises being that they were permitted to do so, by



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the revision petitioner. However, as already seen there is no iota of evidence on the side of the respondents to establish that the respondents were allowed to occupy the petition premises even after the sale effected by them in favour of the revision petitioner and they were not tenants. The objections taken by them in the counter statement are hyper technical and clearly to defeat the valuable rights of the revision petitioner, who has purchased the property for valuable sale consideration from the second respondent. Even the suit in O.S.No.130 of 2010 appears to be only a collusive action, since the daughter of the second respondent has chosen to file the same, challenging the sale deed executed by the second respondent in favour of the revision petitioner. However, as long as the sale deed is not set aside in a manner known to law, the revision petitioner is entitled to exercise all rights available to him under the different statutes, namely, the Transfer of Property Act as well as the Tamil Nadu Buildings (Lease and Rent Control) Act, Act 18 of 1960.

14.I find that both the Principal District Munsif (Principal Rent Controller), Tirunelveli as well as the Rent Control Appellate Authority



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have been swayed by the fact that the suit filed in O.S.No.130 of 2010 is questioning the very same sale deed executed in favour of the revision petitioner and further, the power of attorney also came to an end on execution of the sale deed and therefore, the lease agreement is not valid. The said findings are perverse and illegal and liable to be set aside under Section 25 of the Act.

15.For all the above reasons, the order in R.C.O.P.No.19 of 2010 dated 29.01.2011 and confirmed in R.C.A.No.20 of 2011, dated 12.09.2012 are set aside. The respondents shall vacate and hand over vacant possession within a period of three months from the date of receipt of a copy of this order.

16.With the above observations, the Civil Revision Petition is allowed. No costs.

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
SJI

08.12.2023



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To

- 1.The Principal Subordinate Judge (Rent Control Appellate Authority),
Tirunelveli.
- 2.The Principal District Munsif (Principal Rent Controller), Tirunelveli.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J.

SJI

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