



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On: 07.12.2023 Pronounced on: 20.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(MD)Nos.667 to 673 of 2017

and

C.R.P(MD)No.1497 of 2017

and

C.R.P(MD)No.2298 of 2016

and

C.M.P(MD)Nos.3002 to 3008 of 2017 & 8022/2017

and 10579 & 10580/2016

C.R.P(MD)No.667 of 2017

S.Rajendran

...Petitioner/Appellant/
Petitioner-landlord

vs.

Savura

... Respondent/Respondent/
Respondent-Tenant

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, to set aside the judgment and decree passed by the learned Rent Control Appellate Authority (Principal Sub-Judge), Tirunelveli in R.C.A.No.39 of 2004 dated 07.03.2016, confirming the Fair and Decreetal order of the learned Rent Controller (I Additional District Munsif), Tirunelveli in R.C.O.P.No.61 of 2002, dated 04.06.2004.



For Petitioner : Mr.S.P.Maharajan
in C.R.P(MD)Nos.1497/2017 & C.R.P(MD)No.2298/2016
: Mr.S.Madhavan
in C.R.P(MD)Nos.667 to 673/2017
For Respondents : Mr.S.P.Maharajan
in C.R.P(MD)Nos.667 to 673/2017
: Mr.S.Madhavan
in C.R.P(MD)Nos.1497/2017 & C.R.P(MD)No.2298/2016

COMMON ORDER

Two sets of revisions are before me. Seven out of the said revisions, viz., C.R.P(MD)Nos.667 to 673 of 2017 are at the instance of the unsuccessful landlords, who suffered concurrent findings at the hands of the Rent Controller as well as the Rent Control Appellate Authority in their petitions for eviction on the grounds of wilful default in payment of rents and denial of title. The remaining two revisions, namely C.R.P(MD)Nos.1497/2017 and 2298/2016 are at the instance of the tenants, who have suffered a concurrent order of eviction passed by the revision petitioners in the other seven (7) C.R.Ps, on the very same grounds of wilful default in payment rents as well as denial of title.



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2. For the sake of convenience, the parties are described as landlord and tenants.

3. The brief facts as pleaded by the landlord are that he is the owner of the petition premises, having purchased the same in the year 1959 and the tenants were inducted several years back and the last rent paid by them was Rs.150/- per month. As the tenants committed default in payment of rents, the landlord issued a notice. However, to his shock, a reply notice was sent by the tenants, denying the title of the landlord and setting up title in themselves. Therefore, the landlord filed the eviction petitions.

4. Before the Rent Controller, in the Rent Control petitions, out of which C.R.P(MD)Nos.667 to 673 of 2017 arise, the landlord examined himself as P.W.1 and one Ashoth was examined as P.W.2 and P.Ws.3 & 4 Mr.M.Sundara Thevar and V.Pattu were also examined on the side of the landlord. The landlord exhibited Ex.P1 to Ex.P24. On the side of the respondent, two of the tenants alone examined themselves as witnesses as R.W.1 and R.W.2 and marked exhibits Ex.R1 to Ex.R5.



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5. It is the specific defence taken by all the tenants that there existed no landlord and tenant relationship between them and in fact all the tenants set up title in themselves claiming that their ancestors have been in possession for several decades and the building belongs to them and more over, the lands are also Natham lands and the landlord himself does not have title to the same. It is also pleaded by the tenants that they have independently applied to the authorities for grant of patta and there is a clear dispute of title involved and under no stretch of imagination, the landlord can seek to evict them on the ground of denial of title or wilful default. At this stage, it is relevant, straightaway to note that non-payment of rents is admitted by the tenants. It is not their case that they are paying the rents to somebody. On the contrary, they have set up title in themselves. The Rent Controller, on examining the oral and documentary evidence adduced by the parties found that the landlord had not come to Court with a consistent case and he had approbated and reprobated with regard to the tenancy details and also with regard to the collection of rents, issuance of receipts etc., Citing such discrepancies in the evidence of the landlord, the Rent Controller dismissed the eviction petitions, holding that the denial of title by the tenants was bonafide. Aggrieved by the said dismissal of the eviction petition, the landlord



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preferred the Rent Control Appeals, 7 in number and the appellate authority concurred with the findings of the rent controller and proceeded to dismiss all the appeals.

6. Insofar as the other two Rent Control petitions against two of the tenants, the Rent Controller found that the witnesses examined on the side of the tenants, namely two of the tenants have categorically admitted that their mother was a tenant and one Masthan was originally a tenant. Though a case has been set up by the tenants that they are the owners of the superstructure, no documents have been filed to establish that they have constructed the building or atleast paying property tax in their name. In fact R.Ws.1 and 2 have admitted that there are no documents to show or evidence that they have been paying taxes.

7. The Rent Controller has found that on the contrary, the landlord has filed the sale deed under which he has purchased the property and besides that he has also assessed the property to tax and he has been paying property tax. Referring to all these exhibits and some of the admissions made by both R.Ws.1 and 2 with regard to the tenancy initially in the name of their mother, proceeded to order eviction. The



tenants aggrieved by the said orders of eviction, filed Rent Control Appeals before the Rent Control Appellate Authority and the Rent Control Appellate Authority confirmed the findings of the Rent Controller and dismissed the appeals, as against which, two of the revisions C.R.P(MD)No.1497/2019 and 2298/2016 have been preferred at the instance of the tenants.

8. I have heard the learned counsel for the landlord Mr.S.Madhavan and the learned counsel for the tenants Mr.S.P.Maharajan.

9. One peculiar factor which is noted is that the same appellate authority, who dismissed the Rent Control Appeals at the instance of the landlord (7 in number) on 07.03.2016, has dismissed the appeals at the instance of the tenant's subsequently on 28.04.2016. The case set up by the landlord and the tenants was one and the same i.e., common and identical in all the 9 cases. The very same witnesses were examined in both sets of cases. Strangely, the very same Judge has on one hand confirmed the dismissal of the eviction petitions and on the other hand, confirmed the order of the eviction passed against the tenants.



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10. Be that as it may, the short question for consideration before me in all these revisions is, as to whether the landlord is entitled to an order of recovery of possession i.e., an order of eviction against the tenants on the ground of wilful default, in payment of rents and also denial of title. As already stated, if the ground of denial of title is decided, there will be no difficulty in consequently deciding the ground of wilful default in payment of rents, as it would follow the result of the finding with regard to the ground of denial of title.

11. The learned counsel for the landlord would state that the landlord has filed rental receipts and in case of one of the tenants, a rental agreement as well and as there is no rebuttal evidence on the side of the tenants. Further, excepting two tenants none of the other tenants even entered into the witness box. Despite taking the strong defence of denial of title, denying the right of the landlord by setting up title in themselves, the tenants have miserably failed in establishing their claims.

12. The counsel would also place the reliance on the decision of this Court in *K.Appa Rao vs. Maragathammal and others* reported in



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Vol.93 L.W.681, where the Division Bench of this Court held that the concept of denial of title is negative in nature and while denying the title of the landlord, the tenant can get by title in himself or in a third party and in either of the cases, the second proviso to Section 10(1) would become applicable and the landlord is entitled to seek for eviction.

13. The learned counsel for the landlord would also rely on the decision of this Court in ***Akbar Ali and 4 others vs. Donian Rodrigo and another*** reported in ***2000(1) CTC 287***, where this Court held that even though the Rent Control Act protects the tenant from unjust eviction, at the same time, it cannot be mean that legitimate request of landlord to recover possession should be turned down and this Court further held that landlord is not bound to prove his case beyond all reasonable doubts and the rigorous test of proof applicable to criminal proceedings cannot be applied to eviction proceedings under the Rent Control Act. The decision of Division Bench of this Court in the ***Executive Officer, Kadathur Town Panchayat vs. V.Swaminathan and others*** reported in ***2004(3) CTC 270*** is also relied on. The Division Bench of this Court held that the Grama Natham lands never vested with the Government or Town Panchayat.



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14. The learned counsel for the landlord would therefore, submit that even though the tenants have set up a case that the lands belongs to the Government and the lands are Grama Natham lands in respect of which the tenants have already applied for grant of patta and the same is pending, it would be no consequences insofar as the Rent Control Proceedings are concerned. He would pray for the 7 revisions being allowed and two revisions at the instance of the tenants being dismissed.

15. Per contra, the learned counsel for the tenants would submit that the landlord has miserably failed to prove that the tenants have been inducted into the premises and that the quantum of rent is Rs.150/- and further that they have all committed default in payment of rents. He would contend that the denial of title is bonafide and the rent controller as well as the Rent Controll Appellate Authority in first batch of 7 cases has rightly held that the denial is bonafide and the same does not warrant an order of eviction to be passed by the Rent Controller.

16. I have carefully gone through the oral and documentary evidence available on record in all these 9 cases. In the first set of cases,



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namely, the 7 revision petitions, the landlord has examined himself as P.W.1 and subsequently one Ashoth, who is said to have collected rents from the tenants during the particular period, has been examined as P.W.2. No doubt, the evidence of P.W.1 and P.W.2, assessed along with the documentary evidence does not indicate that the rental receipts said to have been issued over various points of time are in respect of the tenants in these cases. At the same time, the account books that are produced by the landlord would go to show that there has been rent accounts maintained in the regular course of business and clearly reflects the payment of rents by the tenants at various points of time. Though the learned counsel for the tenant would contend that these documents, namely, rent receipts have not been signed by the tenants and further the account books have been concocted and fabricated for the purpose of the cases, on going through the account books, I am able to see that the accounts that have been maintained are only in the proper course of business. The Rent Controller as well as the appellate authority in the batch of 7 cases, have disbelieved the payment of rents citing that the landlord himself had admitted that for the rents payable for the year 1991, payment was made only in 2000 and that the same creates doubts about the evidence.



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17. The said reasoning of the courts below does not appears to be logical. If the landlord had really wanted to fabricate the documents, he could have straightaway created receipts even upto the period for which, according to him, the tenants paid rents. In fact, on the contrary, P.W.1 admitted that after the particular period of time, he did not maintain the accounts or issued receipts because of other commitments. Further, it cannot be stated that merely because the landlord received the rents from the tenants as and when it was paid, even though in bulk, it would mean that the said payment was to be disbelieved merely because of the fact that it pertains to a much earlier period.

18. The Rent Control appellate authority has also found fault with the evidence of P.W.1 that he was not in a position to state who were the tenants in the year 1959 and what rents they were paying. In fact, it is the categorical evidence of the landlord that he was 22 years and his father was taking care of the tenancy issues. From the evidence of R.W.1 as well as R.W.2 in R.C.O.P.No.71 of 2005, two tenants namely Peer Mohideen and Noorjahan, who were examined as respondents' witnesses in all the rent control original petitions, it is seen that, have stated in their



cross-examination that their mother Avammal was a tenant and one Masthan was also a tenant in respect of the petition premises. They have also stated that none of the documents which have been exhibited on the side of the tenants in any way establish that the tenants have an independent right or title to the tenanted premises.

19. Admittedly, the tenants are in occupation of the petition premises, which is not in dispute. The case of the landlord is that they are all tenants and the fact that the lands and building belongs to him has been established by production of documentary evidence, namely, sale deed as well as the property tax receipts. On the side of the tenants, only one document which has been filed is the electricity connection which too was obtained only just prior to the litigation between the parties. Therefore, much cannot be said about the tenants obtaining electricity service connections in their names. That apart, they have not been able to establish the defence of setting up title in themselves and in such eventuality it can be reasonably presumed that the tenants are in occupation only as tenants under the landlord and they have falsely denied the title with a view to prejudice the rights of the landlord.



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20. As already stated, the very same Peer Mohideen and Noorjahan have been examined in the 7 rent control petitions, I find from the evidence that it is also their specific case that they are aware of the facts in all the cases and they were, therefore, competent to adduce evidence on behalf of all the other tenants. In the said 7 rent control petitions, evidence has been recorded in common and a suggestion has been specifically put to P.W.1 in cross-examination by the learned counsel for the tenants that, upto January 2001 the tenants have paid the rents. The said suggestion was denied by P.W.1. However, the said suggestion only indicates that the tenants have all admitted that they are liable to pay rents, contrary to the defence in the counter statement in all the eviction petitions. By putting a suggestion to P.W.1 that the rents have been paid upto January 2001 it only clearly indicates that the tenants have set up a false plea of denial of title, in order to adversely affect the rights and interests of the landlord. Insofar as the eviction petitions that were allowed, out of C.R.P.No.1497/2017 and 2298/2016 arise, I do not find any illegality or perversity in the findings of the Rent Controller as well as the Rent Control Appellate Authority and there is absolutely no warrants to interfere with the said concurrent findings which is based on the evidence available on record. As already discussed, the very same



Appellate Authority who dismissed the 7 eviction petitions chose to dismiss two appeals filed by the tenants on a later date. Probably, the Appellate Authority realised his mistake and made up for the same while deciding the later appeals.

21. Insofar as 7 eviction petitions that have been dismissed and the dismissal having been confirmed by the Rent Control Appellate Authority, the Rent Controller as well as the Rent Control Appellate Authority have misdirected themselves in appreciating the oral and documentary evidence available on record and rendered a perverse finding which is liable to be interfered with in revision.

22. The fact that the tenants have taken inconsistent stands in the pleadings and evidence and further by pleading a strong denial of title, setting up title to the property itself in themselves and having miserably failed to establish the same by producing satisfactory evidence, the denial of title by the tenants cannot be said to be bonafide. Therefore, the landlord is entitled to succeed in these 7 revision petitions and in respect of the other two revisions also concurrent orders of eviction passed is only to be sustained.



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23. For the above reasons, two revision petitions in C.R.P(MD)Nos.1497/2017 and C.R.P(MD)No.2298 of 2016 are dismissed and the 7 revision petitions in C.R.P(MD)Nos.667 to 673 of 2017 are allowed. The tenants shall vacate and hand over the vacant possession on or before 30.04.2024, subject to filing individual affidavits of undertaking that they would vacate the tenanted premises under their respective occupations on or before 30.04.2024, without driving their landlord to resort to execution proceedings. No costs. Consequently, connected miscellaneous petitions are closed.

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
AM

.12.2023

To

- 1.The Rent Control Appellate Authority
(Principal Sub-Judge), Tirunelveli.
- 2.The Rent Controller (I Additional District Munsif),
Tirunelveli.



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P.B.BALAJI,J.

am

C.R.P(MD)Nos.667 to 673 of 2017
and
C.R.P(MD)No.1497 of 2017
and
C.R.P(MD)No.2298 of 2016

20.12.2023