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C.R.P.No.4642 of 2015



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.4642 of 2015

V.M.Kailasam(Died)

2.Vasanthamani

3.Raja

4.Gowrishankar

(sole petitioner died. P2 to P4 brought on record
as LR's of deceased sole petitioner viz., V.M.Kailasam
vide court order dated 09.01.2024 made in
CMP.No.14110, 14111, 14114, 14119 & 14123/2023
in CRP.No.4642 of 2015)

... Petitioner

Vs.

1.V.Sathish Kumar

2.Sudha

...Respondents

PRAYER: Civil Revision Petition filed under Section 25 of Tamil Nadu Building Lease and Rent Control Act, 18/1960,as amended by Act 23/1973 and Act.1/1980, praying to set aside the fair and final order passed in RC.A.No.22 of 2013 dated 06.08.2014 on the file of the Rent Control Appellate Authority,(Principal Sub-Judge, Erode) confirming the order passed



C.R.P.No.4642 of 2013

in R.C.O.P.No.11 of 2007 dated 30.08.2013 on the file of Rent Controller,
Principal District Munsif, Erode.

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For Petitioner

:M/s.S.Parthasarathy

Senior Counsel

for M/s.J.Titus Enock

For respondent 1

: served-no appearance

For respondent 2

: M/s.V.Anandhamurthy

ORDER

The revision petitioner is the landlord. He filed a rent control eviction petition against the respondents on the grounds of wilful default, different user, owner's occupation and denial of title. The learned Rent Controller dismissed the eviction petition and aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed. Aggrieved by the concurrent findings against him, the petitioner is before this Court.

2. According to the petitioner, the respondents are tenants under a tenancy arrangement and agreed rent was Rs.4000/- per month. It was claimed by the petitioner that the respondents failed to pay rent willfully from February 2006 onwards. It was also stated that demised building was let out to respondents for residential purpose and without the knowledge of the petitioner, the respondents converted the same and has been running a beauty



parlour therein. Therefore, the petitioner claimed that the respondents were liable to be evicted on the ground of different user also. The petitioner further claimed that he was suffering from thyroid problem and hence, he required the same for his own occupation. It was further claimed by the petitioner that respondents denied the title of the petitioner *malafidely* and hence, liable to be evicted on that ground also.

3. The respondents herein filed a counter denying the landlord-tenant relationship between the petitioner and the respondents. It was the case of the respondents that the petition mentioned premises is the ancestral property of 1st respondent's family. The petitioner is a close relative of 1st respondent. The 2nd respondent filed a suit for partition against the petitioner, 1st respondent and others in O.S.No.203 of 2006 and petitioner was arrayed as 6th defendant in the suit. The petition mentioned property was shown as item 1 of "A" schedule property to the plaint in O.S.No.203 of 2006. Suppressing the said suit, the present application has been filed. The other allegations made in the eviction petition regarding the wilful default, different user, owners occupation and *malafide* denial of title were also denied.



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4. Before the Rent Controller, the petitioner was examined as P.W.1 and 11 documents were marked on behalf of the petitioner as Ex.P1 to Ex.P11. On behalf of the respondents, the 2nd respondent was examined as R.W.1 and no exhibit was marked on behalf of the respondents. The Advocate Commissioner's report and plan were marked as Ex.C1 and Ex.C2.

5. It is seen from the pleadings that 2nd respondent herein filed a suit for partition in O.S.No.203 of 2006 on behalf her minor daughter Keerthana in respect of the petition mentioned property and other properties of the family. Therefore, it is the claim of the 2nd respondent that her minor daughter is a co-owner of the petition mentioned property.

6. The learned Rent Controller came to the conclusion that oral testimony of petitioner was not sufficient to prove landlord-tenant relationship in the absence of any documentary evidence and hence, dismissed the eviction petition. Aggrieved by the same, the petitioner preferred an appeal.



7. The Appellate Authority also came to the conclusion that petitioner failed to lead any oral or documentary evidence to prove landlord-tenant relationship between the petitioner and respondents and confirmed the findings of the learned Rent Controller. Regarding the absence of jural relationship, the First Appellate Court also observed that Ex.P5, partition deed relied on by the petitioner was not acted upon and petitioner has not been put into exclusive possession in the petition mentioned property under Ex.P5. Ultimately, the Appellate Authority came to the conclusion that petitioner has not proved that Ex.P5, partition deed relied on by him and the same was not acted upon and petitioner was not put into the possession of the petition mentioned property. In view of the absence of jural relationship, the rent control eviction petition filed by the petitioner was dismissed by the learned Rent Controller and the same was confirmed by the Appellate Authority. Aggrieved by the said concurrent findings, the petitioner is before this Court.

8. Both the Courts below, on appreciation of evidence available on record, came to the conclusion that petitioner failed to prove jural relationship by leading any oral and documentary evidence.



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9. The learned Senior Counsel for the petitioner could not point out any evidence on record to show the existence of landlord-tenant relationship. The 2nd respondent herein specifically denied the jural relationship in her counter. The petitioner failed to establish the same by leading any evidence. In the absence of jural relationship, the rent control eviction petition filed against the respondents is not at all maintainable and therefore, the said findings reached by the Courts below need not be disturbed in this revision.

10. However, the Rent Control Appellate Authority made certain observations regarding the validity of Ex.P5, partition deed relied on by the petitioner. The learned Appellate Authority observed that Ex.P5 was not acted upon and the petition mentioned property was not allotted to the share of the petitioner and he had never taken possession of the same. Whether there was a partition under Ex.P5, whether it was acted upon are all the matters which can be decided only by the Civil Court. Therefore, the Appellate Authority need not have gone into that aspect and the observation made by the Appellate Authority with regard to the legality of Ex.P5 is accordingly set aside.



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11. In view of the discussions made above, the Civil Revision Petition is dismissed by confirming the orders passed by the learned Rent Controller as well as Rent Control Appellate Authority. However, it is clarified that findings rendered by the Appellate Authority with regard to the legality of Ex.P5 is not conclusive and both the parties are at liberty to agitate the same before the regular Civil Court.

12. With these clarifications, this Civil Revision petitions stands dismissed. No costs.

20.03.2024

Index : Yes / No
Internet : Yes / No
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To

1. The Rent Control Appellate Authority,(Principal Sub-Judge), Erode.
2. The learned Rent Controller,(Principal District Munsif), Erode.



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S.SOUNTHAR, J.

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