



C.R.P.No.2085 of 2021

IN THE HIGH Court OF JUDICATURE AT MADRAS

Reserved On : 27.06.2023

Delivered On : 17.04.2024

CORAM :

The Hon'ble Mr. Justice Sathi Kumar Sukumara Kurup

CRP.No.2085 of 2021

and

C.M.P.No.15862 of 2021

Rajendran

... Petitioner

Vs.

1.Sadagoban (Died)

2.S.Premavathy

3.S.Devananthan

... Respondents

[Respondents 2 and 3 brought on record as LR's of the deceased sole Respondent viz., Sadagoban vide Court order dated 30.08.2022 made in C.M.P.No.4704 of 2022 in C.R.P.No.2085 of 2021 by SSKJ]

PRAYER: Civil Revision Petition filed under Section 25 of the Puducherry Buildings (Lease and Rent Control) Act, 1969, praying to set aside the judgment and decree dated 04.03.2021 passed in R.C.A.No.26 of 2018 on the file of the learned III Additional District Judge at Pondicherry reversing the order in HRCOP No.46 of 2009 passed by the learned Rent Controller No.I at Pondicherry.

[Substituted vide Court order dated 07.12.2022 made in C.M.P.No.19726 of 2021 in C.R.P.No.2085 of 2021 by VBSJ]



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For Petitioner : Mr.C.T.Mohan
Senior Advocate

Respondent 1 - Died

For Respondents : Mr.K.B.Vivekanandhan
2 and 3

ORDER

This Civil Revision Petition had been filed seeking to set aside the judgment and decree dated 04.03.2021 passed in R.C.A.No.26 of 2018 on the file of the learned III Additional District Judge at Pondicherry reversing the order in HRCOP No.46 of 2009 passed by the learned Rent Controller No.I at Pondicherry.

2. The learned Counsel for the Revision Petitioner submitted his arguments. As per his submission, the Revision Petitioner herein was originally a tenant. Subsequently on 10.03.2006, he had entered into the Bogiyam Agreement. Till such date, he had paid the rent regularly. In the course of the Petitioner being a tenant there was a call from the Respondent/landlord to sell the property. The Petitioner herein being a tenant offered to purchase the property. Subsequently, the landlord changed his mind. At that stage, the tenant after discussing with the landlord entered



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into a Bogiyam Agreement, thereby, he had paid a sum of Rs.1,00,000/- with the conditions that the interest from the amount has to be adjusted as rent for monthly payment. At the time for vacating the premises, the landlord has to pay back the entire amount. Subsequently, the Petitioner herein had sent a notice directing the landlord to refund the Bogiyam amount to enable the Petitioner to vacate the property or in the alternative to execute the sale deed in favour of the Petitioner after receiving the balance of sale consideration from the Petitioner.

3. After receipt of the said notice, the landlord had replied that Bogiyam is not genuine and he has to surrender the same to the Superintendent of Police, Puducherry, as the landlord had given a complaint against him. Subsequently, he had filed HRCOP.No.46 of 2009 before the learned District Munsif, Puducherry who is the Rent Controller at Puducherry on two grounds:

- (i) for willful default and
- (ii) for denial of title.

4. After due enquiry, the learned Rent Controller had dismissed the HRCOP No.46 of 2009. Aggrieved by the same, the landlord had filed



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RCA.No.26 of 2018 before the learned III Additional District Judge, who is the Rent Control Appellate Authority. The learned Rent Control Appellate Authority by an order dated 04.03.2021 had partly allowed the R.C.A.No.26 of 2018 but the learned Rent Control Appellate Authority had reversed the finding of the Rent Controller regarding willful default. Aggrieved by the same, erstwhile tenant who had entered into the Bogiyam Agreement with the landlord is now before this Court by filing this Civil Revision Petition.

5. The learned Senior Counsel for the Revision Petitioner further submitted that in the course of the discussion in the judgment, the learned Rent Control Appellate Authority had discussed the above Bogiyam Agreement, wherein, the Rent Control Appellate Authority had referred to transfer the property being put to test before the Court as well as Indian Evidence Act regarding marking of documents relating to mortgage.

6. It is the submission of the learned Senior Counsel for the Revision Petitioner that those discussions are not at all required. Considering the fact that, during the course of enquiry before the learned Rent Control Appellate



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Authority, the Bogiyam Agreement was marked as a document on the side of the Respondent in HRCOP which was not denied or objected by the Petitioner in HRCOP. Therefore, the detailed discussion invoking the principles of transfer of property regarding mortgage and Indian Evidence Act regarding proof of mortgage and the learned Judge had misdirected himself and given a negative findings against the Revision Petitioner and thereby after finding that there is a wilful default.

7. The learned Senior Counsel for the Revision Petitioner also submits that in this Civil Revision Petition stay was granted in C.M.P.No.15826 of 2021 by the learned Single Judge of this Court directing the Petitioner to deposit 25% of the rent till the disposal of this Civil Revision Petition. Therefore, in case, this Civil Revision Petition is allowed in favour of the Revision Petitioner, the learned Senior Counsel seeks refund of the amount deposited by the Revision Petitioner as per the order in C.M.P.No.15826 of 2021 to be refunded to the Revision Petitioner.

8. Also, in case this Civil Revision Petition is allowed, the amount agreed by the parties – Petitioner and Respondent under the Boggiam deed,



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which was marked during the HRCOP enquiry also to be refunded with appropriate orders.

9. The learned Counsel for the Respondents 2 and 3 Thiru.K.B.Vivekanandhan submitted his argument by way of reply to the submission of the learned Senior Counsel for the Petitioner Mr.C.T.Mohan on behalf of the Petitioner. The learned Counsel for the Respondents invited the attention of this Court to the Bogiyam Agreement dated 10.03.2006, furnished in the typed set, which is for a period of three year and the cross-examination of the Respondent in H.R.C.O.P.No.46 of 2009 wherein he had admitted that the alleged Bogiyam deed expires after three years. It is the contention of the learned Counsel for the Respondents in the Civil Revision Petition that the so-called Bogiyam deed is a bogus deed. The Respondents in this Civil Revision Petition had given a Police complaint regarding the bogus Bogiyam deed. The learned Counsel for the Respondents invited the attention of this Court to the discussion of the evidence before the learned Rent Control Appellate Authority. Also, the learned Counsel for the Respondents relied on the discussion in paragraph 15 of the judgment in H.R.C.A.No.26 of 2018 had to examine the attesting witnesses, since the



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witnesses had not been examined, the Boggiam Agreement is not proved and had reversed the finding given by learned Rent Controller and submits that the discussion of evidence by the learned Rent Control Appellate Authority is well a reasoned order. The Revision Petitioner had approached this Court without clean hands. Therefore, this Civil Revision Petition is to be dismissed and the judgment of the learned Rent Control Appellate Authority is to be confirmed.

Point for consideration:

Whether the order passed by the learned Rent Control Appellate Authority, the learned III Additional District Judge, Puducherry in R.C.A.No.26 of 2018 reversing the findings of the learned Rent Controller, Puducherry in H.R.C.O.P.No.46 of 2009, holding the Respondent in the R.C.A.No.26 of 2018 has committed willful default, is perverse and is to be set aside?

10. Heard the learned Senior Counsel for the Revision Petitioner Thiru.C.T.Mohan and the learned Counsel for the Respondents



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Thiru.K.B.Vivekanandhan.

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11. Perused materials available in the typed set including the order of the learned Rent Controller and the judgment of the learned Rent Control Appellate Authority.

12. On perusal of the typed set which contained the copy of the notice issued by the Counsel for the Revision Petitioner dated 01.03.2008 seeking refund of the Bogiyam agreement, an amount of Rs.1,00,000/- executed as on 10.03.2006. The reply sent by the learned Counsel for the Respondent on 29.03.2008 and the rejoinder sent by the learned Counsel for the Petitioner on 10.06.2008 to the learned Counsel for the Respondent. The copy of the HRCOP.No.46 of 2009, the examination-in-chief of the Petitioner and the Respondent and cross examination of the Petitioner in RCOP the landlord as P.W.1 and the tenant as R.W.1. The documents marked in the course of the enquiry on the side of the Petitioner's notice dated 01.03.2008, reply notice dated 29.03.2008 and rejoinder notice dated 10.06.2008 on the side of the Petitioner and the documents executed as Ex.R-1 Bogiyam deed dated 10.03.2006 and Ex.R-2 attested copy of the



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FIR against the tenant, the Respondent in HRCOP No.46 of 2009, the Petitioner in the present Civil Revision Petition.

13. On perusal of the order passed by the learned Rent Controller, it is found that the learned Rent Controller in the order passed in H.R.C.O.P.No.46 of 2009 dated 10.11.2017 had discussed the facts and thereby on a conclusion that based on the document/Bogiyam deed executed between the Petitioner and the Respondent. The claim of the Petitioner in H.R.C.O.P.No.46 of 2009, the landlord that the Respondent in H.R.C.O.P.No.46 of 2009 committed willful default by not paying the rent from September 2007, was rejected by the learned Rent Controller.

14. Also, the learned Rent Control Appellate Authority found that after execution of the Bogiyam Deed (unregistered deed), the Respondent in H.R.C.O.P.No.46 of 2009/tenant to the Bogiyam Deed is not bound to pay the rent. It is stated that the first party, the landlord had to return the Bogiyam deed after three years, the amount handed over to the landlord under the Bogiyam deed. If the landlord is not willing to sell the property to the Respondent, as per the Bogiyam deed, the rent has to be adjusted towards the Bogiyam amount which was already transferred to the



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Petitioner in H.R.C.O.P.No.46 of 2009. After three years period on the second part in the Bogiyam Deed, the tenant sought return of the advance Bogiyam money in the alternative Bogiyam deed had stated that the landlord if intending to sell the property, the tenant is ready to purchase the property by paying the balance of sale consideration.

15. Notice given by the Revision Petitioner was dated 01.03.2008. The landlord had sent reply notice on 29.03.2008 denying Bogiyam Deed and also directing the Respondent in H.R.C.O.P.No.46 of 2009 to pay the entire arrears of rent from September 2007 at the rate of Rs.800/- per month within 15 days from the date of receipt of the notice. The Respondent, in short, earlier proceedings had replied to the notice of the landlord by sending rejoinder dated 10.06.2008 denying the Respondent's notice stating that the Petitioner in H.R.C.O.P.No.46 of 2009 had entered into the Bogiyam Deed dated 10.03.2006 in the presence of witnesses. If the landlord, the Petitioner in H.R.C.O.P.No.46 of 2009 denies the same, the period of second part in the Bogiyam deed deserves his right to resist any legal action taken on behalf of the landlord.



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16. While discussing the evidence before the learned Rent Controller, the learned Rent Controller had held that from the date of execution of the Bogiyam deed dated 10.06.2006 instead of paying the rent, the Bogiyam deed mentioned party on the first part (landlord) as to return the amount to the party of the second part (tenant). Instead of, if H.R.C.O.P.No.46 of 2009 is filed the tenant is within his powers to resist the same. After execution of the Bogiyam deed, as per the Bogiyam deed, the landlord had to adjust the interest from Rs.1,00,000/- paid under Bogiyam by the tenant towards the rent by the landlord. The Petitioner in H.R.C.O.P.No.46 of 2009, after three years Rs.1,00,000/- has been paid as principal amount, that has to be returned to the tenant. This facts had been stated in the counter regarding the status of the Petitioner in H.R.C.O.P.No.46 of 2009/landlord and the Respondent in H.R.C.O.P.No.46 of 2009/tenant. Therefore, the learned Rent Controller had arrived at a finding that there is no wilful default committed by the Respondent in H.R.C.O.P.No.46 of 2009.

17. The second ground that the denial of title of the landlord on which ground also the Petitioner in H.R.C.O.P.No.46 of 2009/landlord had sought eviction of the tenant from the leased out premises. The learned Rent



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Controller had held that after Bogiyam deed, the tenant need not pay the rent. After three years, when the tenant seeks refund of the Bogiyam amount, the landlord has to refund the same. In the light of the said Bogiyam deed, the learned Rent Controller had arrived at a conclusion, that there is no wilful default. Regarding the same Bogiyam deed, the Respondent in H.R.C.O.P.No.46 of 2009 had claimed that he is the enjoyment of the property only as Bogiyam holder. Therefore, he had denied the contention of the Petitioner in H.R.C.O.P.No.46 of 2009 as he is the landlord and the Respondent as tenant. That status is lost after the executing of Bogiyam deed.

18. After that the Petitioner in H.R.C.O.P.No.46 of 2009, the landlord had issued notice directing the tenant to pay the entire arrears of rent within 15 days of notice and directing the Respondent in H.R.C.O.P.No.46 of 2009 to vacate and hand over the possession.

19. In the light of the Bogiyam deed, the learned Rent Controller had dismissed the H.R.C.O.P.No.46 of 2009. In the appeal in RCA filed by the landlord, the learned Rent Control Appellate Authority had confirmed the



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finding of the learned Rent controller stating that after execution of the Bogiyam deed, there is no wilful default committed by the Respondent in H.R.C.O.P.No.46 of 2009. At the same time, the learned III Additional District Judge, Pondicherry who is the Rent Control Appellate Authority had ignored the evidence available before the learned Rent Controller and mis-directed himself by stating that the landlord had denied the Bogiyam deed. To prove the Bogiyam deed, the Respondent in H.R.C.O.P.No.46 of 2009 ought to have examined two independent witnesses to the Bogiyam deed.

20. Also, as per the provisions of the Indian Evidence Act, a document has to be proved through attesting witness or the scribe who wrote the deed. In this case, the Respondent in H.R.C.O.P.No.46 of 2009 had not examined those persons and therefore holding that the Bogiyam deed is not a genuine document. Thereby, the finding of the learned District Munsif, that there is no wilful default was reversed. On perusal of the judgment by the learned Rent Control Appellate Authority, it is found that the learned Rent Control Appellate Authority had mis-directed himself by discussing about the Bogiyam deed, treating it as mortgage. Therefore, as per the transfer of Property Act, witnesses have to be examined. Only on



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that finding, the learned Rent Control Appellate Authority held that the Respondent in RCA, the Respondent in H.R.C.O.P.No.46 of 2009 have committed wilful default and ordered eviction of the premises.

21. The submission of the learned Senior Counsel for the Revision Petitioner, the learned District Munsif, on the appreciation of evidence, dismissed the H.R.C.O.P.No.46 of 2009. That the two grounds raised by the Petitioner in H.R.C.O.P.No.46 of 2009 is held as under:

(i) committing wilful default

(ii) denying title of the landlord had not been proved in the evidence and therefore the learned rent controller had dismissed the RCOP.

22. In the Rent Control Appeal, the learned III Additional District Judge, Pondicherry had unnecessarily discussed about the Bogiyam deed, thereby invoking the provisions of Indian Evidence Act and Section 65 and 66 of the Transfer of Property Act.

23. In the light of the above, the learned Rent Controller had arrived at a conclusion that there had been arrears of rent by the Respondent in RCA. Since Bogiyam deed was not proved, the learned Rent Control



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Appellate Authority had arrived at a conclusion that the Respondent in H.R.C.O.P.No.46 of 2009 had committed wilful default. On that ground, the Respondent in H.R.C.O.P.No.46 of 2009 and the Respondent in RCA was directed to vacate and hand over the vacant possession.

24. In the light of the Bogiyam deed, what had been argued by the learned Senior Counsel for the Revision Petitioner is found acceptable.

25. Particularly, when the Bogiyam deed is not a registered document and during the enquiry proceedings in H.R.C.O.P.No.46 of 2009, the Bogiyam deed was marked as Ex.R-1 on the side of the Respondent in H.R.C.O.P.No.46 of 2009 and the Petitioner in RCOP/landlord had not objected to marking of the documents as Ex.R1 which was a photo copy, as the original deed was destroyed by the son of the Petitioner in H.R.C.O.P.No.46 of 2009.

26. On the complaint of the Respondent in H.R.C.O.P.No.46 of 2009, FIR in Crime No.285 of 2008 on the file of the Mudhaliarpur Police Station was registered by the Police against Devanadhan, the son of the



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Petitioner in H.R.C.O.P.No.46 of 2009 for having destroyed the documents under which the Petitioner in H.R.C.O.P.No.46 of 2009 ought to have returned a sum of Rs.1,00,000/- borrowed by the Petitioner in H.R.C.O.P.No.46 of 2009 from the Respondent in the H.R.C.O.P.No.46 of 2009.

27. As rightly submitted by the learned Senior Counsel for the Revision Petitioner, during the enquiry in H.R.C.O.P.No.46 of 2009, the Petitioner in H.R.C.O.P.No.46 of 2009 had not objected to the same. Therefore, it was a needless exercise by the learned Rent Control Appellate Authority to refer the provisions of Section 59 of the Transfer of Property Act and Sections 65 and 66 of the Indian Evidence Act and thereby confusing himself that the Bogiyam is not proved in evidence as per the Section 59 of the Transfer of Property Act and as per the Sections 65 and 66 of the Indian Evidence Act.

28. Regarding the enquiry held in proceedings under Puducherry Buildings (Lease and Rent Control) Act, as well as the Tamil Nadu Buildings (Lease and Rent Control) Act, the enquiry conducted by the



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learned Rent Controller is only a summary proceedings, where the strict procedures of Civil Court is not followed as per Code of Civil Procedure or the Indian Evidence Act.

29. The evidence is recorded only as to prove the contention of the rival parties in the H.R.C.O.P.No.46 of 2009. The strict rule of evidence of Indian Evidence Act is not followed. It is only a summary proceedings, as in the enquiry is a domestic enquiry. By unnecessarily discussing the document styled as "Bogiyam deed" the learned Judge had confused himself and arrived at a perverse finding. In the cross examination of Petitioner and the Respondent in H.R.C.O.P.No.46 of 2009 these documents were not denied in evidence. In the course of the evidence of the Respondent in the H.R.C.O.P.No.46 of 2009, the Respondent had offered explanation that the attesting witnesses to the Bogiyam deed Ex.R-1 had died. Therefore, he was unable to summon them as witnesses. In the cross examination, he had admitted that from the date of execution of the Bogiyam deed, till the filing of the H.R.C.O.P.No.46 of 2009 he had not paid the rent. It is his explanation, that the interest amount was adjusted towards monthly rent.



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30. The Petitioner in H.R.C.O.P.No.46 of 2009 was cross-examined by the learned Counsel for the Respondent. In the cross examination, he had stated that his son and friends have gone to the rental premises seeking rent. At that time, he had informed that there is a Bogiyam deed executed between the Petitioner and the Respondent in the Civil Revision Petition.

31. According to which, monthly rent need not be paid by the Respondent. The monthly interest from the Bogiyam amount is to be settled in favour of the Bogiyam holder/the Respondent in H.R.C.O.P.No.46 of 2009. The Petitioner in H.R.C.O.P.No.46 of 2009 had admitted his son and friend gone to the premises but had denied the suggestion that the son of the Petitioner/landlord had gone to the residence of the Respondent in H.R.C.O.P.No.46 of 2009.

32. On confronting the Petitioner's son and his friend, the Petitioner's son had taken away the Bogiyam deed by force from the Petitioner in H.R.C.O.P.No.46 of 2009 resulting in the Respondent in H.R.C.O.P.No.46 of 2009, preferring a criminal complaint before the Mudaliarpur Police Station.



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33. While so, the learned Rent Controller, on proper appreciation of evidence, had arrived at a conclusion that the two grounds raised by the Petitioner in H.R.C.O.P.No.46 of 2009 had not been proved. On the contrary, there is sufficient proof that after execution of Bogiyam deed, the tenant in the premises had not paid the rent and the interest over the principal amount is adjusted towards the monthly rent.

34. Also, it is found that the learned Counsel for the Respondent had not objected to the marking of the documents under Ex.R-1 and Ex.R-2. Therefore, the Court can peruse it for the limited purpose.

35. Since it is a summary proceeding, there are sufficient materials for the learned Rent Controller to arrive at a conclusion that the tenant had not committed wilful default and not denied the title of the landlord.

36. Under those circumstances, the learned Rent Controller had dismissed the H.R.C.O.P.No.46 of 2009, whereas in the appeal, the learned III Additional District Judge, Puducherry as the Appellate Authority under



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Puducherry Buildings (Lease and Rent Control) Act had only reiterated his power, that he is residing in the property only as Bogiyam holder. Therefore, the contention raised by the Petitioner in H.R.C.O.P.No.46 of 2009, had not been proved. Instead, the learned Rent Control Appellate Authority had confused himself by referring to provision of Indian Evidence Act and provisions of Transfer of Property Act, thereby had partly allowed the RCA.

37. It is to be noted that in the summary proceedings, when the landlord as Petitioner in H.R.C.O.P.No.46 of 2009 had not objected to marking of the documents as Ex.R-1 and Ex.R-2, based on which, the learned Rent Controller had himself given a clear finding that there is no denial of title of the landlord, whereas in the RCA, there was no wilful default was admitted by the learned Judge confirmed by the Appellate Judge, whereas, there is a wilful default. The Petitioner's contention was considered and answered in favour of the appellant in RCA.

38. The said findings is found perverse on the ground that even though it is not a properly stamped document and not registered, in the summary proceedings, it could have been considered.



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39. The learned Rent Controller had rightly considered it, whereas, in the RCA, the learned Appellate Judge had found fault with relying on the said documents by the learned Rent Controller.

40. Since the Bogiyam deed was destroyed by the son of the Petitioner in H.R.C.O.P.No.46 of 2009, the Respondent was forced to file a criminal complaint, based on which, FIR was registered against the son of the Petitioner in H.R.C.O.P.No.46 of 2009.

41. Under those circumstances, the rival findings of the learned Rent Controller is unwarranted and the same is held as perverse in the eyes of law.

42. The submission of the learned Counsel for the Revision Petitioner that the H.R.C.O.P.No.46 of 2009 filed by the Petitioner himself is not maintainable, is also found acceptable.

43. Considering the fact that when there is exchange of notice between Petitioner and the Respondent in H.R.C.O.P.No.46 of 2009, the



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landlord who is the Petitioner in H.R.C.O.P.No.46 of 2009 had given 15 days time only for payment of entire arrears of rent and granting 15 days time for the Respondent in H.R.C.O.P.No.46 of 2009 as well as in RCA, to vacate and hand over possession.

44. As per Section 10(3) of the said Act, two months prior notice is to be given by the landlord before invoking the powers of the rent Controller under the Puducherry Buildings (Lease and Rent Control) Act.

45. By not following the said provisions by granting only 15 days time by the Petitioner in H.R.C.O.P.No.46 of 2009 to the tenant/Respondent in H.R.C.O.P.No.46 of 2009 and after 15 days the H.R.C.O.P.No.46 of 2009 had been filed, is found to be not maintainable.

46. The submission of the learned Senior Counsel for the Revision Petitioner relying on those provisions is found to be acceptable and therefore, the same is accepted.

47. Bogiyam as defined in the Transfer of Properties Act, 1882, is



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the usufructuary mortgage where the mortgagor delivers possession [or expressly or by implication binds himself to deliver possession] of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of mortgage-money, and to receive the rents and profits accruing from the property [or any part of such rents or profits and to appropriate the same] in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest [or] partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

48. Here in this case, as per the deed (Bogiyam deed), the first party is the mortgagor and the second party is the mortgagee. The second party has advanced Rs.1,00,000/- (Rupees One Lakh only) on the date of entering into the mortgage (Bogiyam) as on 10.03.2006 wherein it is clearly stated that the second party, instead seeking interest, shall reside in the property and instead interest will be treated as rent and after three years, the first party shall return Rs.1,00,000/- (Rupees One Lakh only) to the second party. While so, the learned Rent Controller had held that there is no willful default and had dismissed H.R.C.O.P.No.46 of 2009. In the appeal, the



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learned Rent Control Appellate Authority reversed the finding by misdirecting himself by quoting the Transfer of Property Act, 1882 as well as the Indian Evidence Act, 1872. It is to be noted that the Rent Control proceedings are summary in nature. The proceedings are not directed as in a suit violating the provisions of Code of Civil Procedure and the strict rule of evidence. While so, the learned Rent Control Appellate Authority had confused himself by quoting Indian Evidence Act, 1872 and Transfer of Property Act, 1882 and had reversed the findings given by the learned Rent Controller.

49. The learned Rent Controller had stated in his order in H.R.C.O.P.No.46 of 2009 that the Bogiyam deed under Ex.R-1 is torn. Original was not marked since pasted along with the copy of the same in the hands of the Respondent as the landlord in H.R.C.O.P.No.46 of 2009 had not objected to marking the photostat copy.

50. In the evidence, the Respondent had admitted in cross-examination that he had issued notice before expiry of three years period seeking refund of the amount as he came to know about the sale of the



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property for about Rs.2,00,000/-. Therefore, he had issued notice. Also, he had admitted that the Bogiyam expires on three years from the date of execution of the Bogiyam deed dated 10.03.2006. He had in his cross-examination stated clearly that the witnesses to the Bogiyam deed viz., Maragatham and Arjunan died by the time the document was marked as Ex.R-1. H.R.C.O.P.No.46 of 2009 was filed on the ground of willful default and denial of the title, the learned Rent Controller had arrived at a conclusion that there is no tenant and landlord relationship. The relationship between the parties are mortgagor and mortgagee and there is no denial of title of the Respondent in H.R.C.O.P.No.46 of 2009. Therefore, the H.R.C.O.P.No.46 of 2009 was dismissed. The observation of the learned Rent Control Appellate Authority in paragraph 15 is found to be beyond the powers of the Rent Control Appellate Authority as the Rent Control proceedings are held as summary proceedings and the strict rule of evidence are not followed. The learned Appellate Judge failed to appreciate the fact that the learned trial Judge had perused the original of Ex.R-1 which was torn and along with that, copy of the same also furnished by the Respondent in H.R.C.O.P.No.46 of 2009. Also, there was FIR against the son of the Petitioner in H.R.C.O.P.No.46 of 2009 given by the Respondent.



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Also, in the cross-examination the Respondent had stated that the witnesses to the Bogiyam deed are not alive on the date of marking of Ex.R-1. More importantly, the learned Rent Controller had observed that the petition in H.R.C.O.P.No.46 of 2009 had not denied the signature in Ex.R-1. Under those circumstances, when there is no relationship of tenant and landlord, invoking of Puducherry Buildings (Lease and Rent Control) Act, 1969 was not accepted by the learned Judge on the ground that there is no relationship of landlord and tenant. Also, the learned Rent Controller had in the order stated that as per the evidence available before the trial Court/Rent Controller, the Respondent had not denied the title of the landlord. Therefore, dismissed the H.R.C.O.P.No.46 of 2009 on merits and on appreciation of evidence. As rightly pointed out by the learned Senior Counsel for the Revision Petitioner Mr.C.T.Mohan that the learned Rent Control Appellate Authority had reversed the finding upholding that there is no landlord and tenant relationship and the so-called Bogiyam document is not a genuine document, by confusing himself by invoking the provisions of Indian Evidence Act, 1872 and Transfer of Property Act, 1882 which is unwarranted considering the nature of proceedings as summary proceedings. When the learned Rent Controller had, on proper appreciation



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of evidence, arrived at a conclusion that there is no landlord and tenant relationship and also there is no denial of title, the learned Rent Control Appellate Authority had reversed the findings on the ground that the so-called Bogiyam deed was not proved as per the Indian Evidence Act is not correct. When there is clear evidence before the learned Rent Controller in the cross-examination of the Respondent as R.W-1 that the witnesses to the Bogiyam deed was not alive on the date of marking of both the witnesses. Added to that, the Petitioner in H.R.C.O.P.No.46 of 2009 is one of the parties to the Bogiyam, he had not denied his signature. Added to that, the contention of the Respondent in H.R.C.O.P.No.46 of 2009 that the son of the Petitioner came to the residence of the Respondent for clarification regarding the original Bogiyam deed, when it was shown to him, he torn it into pieces. Based on that, he had given a complaint against the son of the Petitioner in H.R.C.O.P.No.46 of 2009. Those facts had been discussed by the learned Rent Controller and arrived at a finding that after institution of the suit, it has to be torn and pasted along with it. The photostat copy was also enclosed by the Respondent. Therefore, the learned Rent Controller had arrived at a conclusion that there was mortgagor and mortgagee relationship as per Ex.R-1. The tenant and landlord relationship is not



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available and it cannot be invoked under the Puducherry Buildings (Lease and Rent Control) Act, 1969 and therefore, dismissed the H.R.C.O.P.No.46 of 2009.

51. In the light of the clear discussion of evidence and in the light of the clear finding that there was no jural relationship of landlord and tenant by the learned Rent Controller in H.R.C.O.P.No.46 of 2009, the reversal of the findings by the Rent Control Appellate Authority in paragraph Nos.15 to 17 is unwarranted. Therefore, the same is set aside.

52. In the light of the above discussion, it is found that the judgment of the learned III Additional Judge, the learned Rent Control Appellate Authority under the Puducherry Buildings (Lease and Rent Control) Act is found perverse.

53. After concluding the arguments. the learned Counsel for the Revision Petitioner invited attention of this Court to the order passed by the learned Single Judge of this Court, whereby, the Revision Petitioner was directed to deposit 25% of the admitted rent before the learned Rent



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Controller and the same is ordered to be refunded to the Revision Petitioner.

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The bogiam amount of Rs.1,00,000/- is also to be refunded.

54. As rightly pointed out by the learned Senior Counsel for the Revision Petitioner, the amount already ordered to be deposited by this Court at the time of admission of this Civil Revision Case is ordered to be refunded to the Revision Petitioner. Also the Respondent in this case is directed to refund Rs.1,00,000/- as per Ex.R-1 to the Revision Petitioner. On such refund, the Revision Petitioner is directed to vacate and hand over possession to the Respondent.

55. In the result, this Civil Revision Petition is allowed. The order passed by the learned Rent Control Appellate Authority in RCA.No.26 of 2018 dated 04.03.2021 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

17.04.2024

JAS/SRM

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

SATHI KUMAR SUKUMARA KURUP, J.



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JAS/SRM

To

- 1.The III Additional District Court,
Pondicherry.
- 2.The Rent Controller No.I,
Pondicherry.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.

Order made in
CRP.No.2085 of 2021

17.04.2024