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C.R.P.(NPD)No.446 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.446 of 2022

S.B.Vijayakumar

.. Petitioner

Vs.

Rubi Hazizcos

.. Respondent

Prayer : The Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the fair and final order dated 02.11.2021 made in R.C.A.No.33 of 2019 on the file of the Rent Control Appellate Authority-cum-the Principal Subordinate Judge at Coimbatore reversing the fair and final order dated 05.01.2019 made in R.C.O.P.No.59 of 2012 on the file of the Rent Controller-cum-Principal District Munsif at Coimbatore.

For Petitioner : Mr.Nivas Gokul

For Respondent : Mr.K.S.Karthik Raja

ORDER

R.C.O.P.No.59 of 2012 was filed by the civil revision petitioner as against the respondent.

2. It is his case that the respondent was a tenant under his vendor one



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P.Arunachalam. According to him, the tenant has paid the monthly rents of Rs.5,000/- and the tenancy was oral. Since the monthly rents were not paid invoking the jurisdiction of the Rent Controller at Coimbatore, he initiated R.C.O.P.No.59 of 2012.

3. To the said rent control proceeding, the respondent filed a counter stating that there is no relationship of landlord and tenant between the petitioner and the respondent. According to the respondent, she never entered into the possession of the property as a tenant either under the petitioner or under P.Arunachalam.

4. Her plea was one P.Arunachalam had taken a bank loan from Indian Overseas Bank, Redfields Branch, Coimbatore to put up a construction. He was unable to repay the same and therefore, he entered into an agreement with the respondent for the purpose of alienation of the property.

5. Pursuant to the said agreement, he received an advance of



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Rs.60,000/- and the total sale consideration was fixed at Rs.7,10,000/-. Her plea was that as there is no relationship of landlord and tenant, the R.C.O.P. is not maintainable.

6. Before the Rent Controller, the petitioner examined himself as P.W.1 and his vendor as P.W.2. He marked Ex.P1 to Ex.P21. On the side of the respondent, one Prabhu was examined as R.W.1 and he marked Ex.R1 to Ex.R9.

7. The learned Rent Controller concluded that as the suit for specific performance of an agreement of sale filed by the husband of the respondent, namely, one Hazizcos Joseph in O.S.No.463 of 2012 had been dismissed for default, the respondent cannot claim that she is in a possession of the property as an agreement holder. Consequently, the Rent Controller came to the conclusion that the R.C.O.P. is maintainable and she ordered eviction proceeding.

8. As against the said order, an appeal was preferred before the



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learned Rent Control Appellate Authority-cum-Subordinate Judge at
Coimbatore.

9. The learned Rent Control Appellate Authority came to the conclusion from the evidence of P.W.2, namely, vendor of the plaintiff that at no point of time Rubi Hazizcos, the alleged tenant, had ever paid rents to him and therefore, allowed the Rent Control Original Petition and dismissed the petition. Against the reversal finding, the present revision has come up before this Court.

10. This Court did not admit the revision but had ordered notice regarding admission on 24.02.2022. On being served with the summon, the respondent has entered appearance through Mr.K.S.Karthik Raja.

11. Heard Mr.Nivas Gokul, appearing on behalf of the petitioner and Mr.K.S.Karthik Raja, appearing on behalf of the respondent.

12. In order to invoke the jurisdiction of the Rent Controller, the



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jurisdictional fact has to be proved is the relationship of landlord and tenant.

The title to the property is irrelevant for the purpose of the Rent Control Act.

In fact, the Rent Controller cannot go into the question of title at all. If a person is an occupant of the property paying rents as defined under Act 18 of 1960, then, he becomes the tenant for the purpose of the Act. Similarly, whether a person is a owner of the property or not, if he is entitled to collect the rents from a tenant, he is a landlord for the purpose of the case. Unless and until, the jural relationship of the landlord and tenant is proved, the Rent Controller does not get a jurisdiction to pass orders on the matter. The jurisdictional fact being an existence of the relationship of the landlord and tenant.

13. In this particular case, though the alleged landlord has pleaded that he had let in the respondent as a tenant under him, no evidence, worth its name, has been let in before this Court. There are no proof of payments of rents nor for the payment of advance. Contrarily, the vendor of the petitioner has entered into the witness box and has deposed that at no point of time, there existed a relationship of landlord and tenant between himself and the respondent.

14. The alleged tenant has produced xerox copy of the power of



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attorney under Ex.R2 and the sale agreements under Ex.R3 and Ex.R4. She has also produced Ex.R5 and Ex.R6 to show that she had been making payments on behalf of the erstwhile vendor to the bank. The fact that a suit specific performance has been filed and dismissed is a good ground for the present petitioner to file a suit for recovery of possession. A Rent Control Petition is not a substitute for a regularly instituted suit for recovery of possession.

15. As pointed out above, as the jurisdictional fact of the relationship between the landlord and tenant has not been proven, the R.C.O.P. is not maintainable. Consequently, the Civil Revision Petition stands dismissed. No costs. It is left open to the civil revision petitioner to file a suit for recovery of possession as against the tenant before the jurisdictional Civil Court.

24.04.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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V. LAKSHMINARAYANAN, J.

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- 1.The Rent Control Appellate Authority-cum-
the Principal Subordinate Judge,
Coimbatore
- 2.The Rent Controller-cum-Principal District Munsif,
Coimbatore

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