



CRP No.255 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.255 of 2024 and
CMP No.1223 of 2024

Murphy

... Petitioner

Vs.

1. S.Thangavel
2. Amirthakani
3. Kasthuri
4. Sivagami
5. Srinivasan

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed by the learned IX Judge, Small Causes Court in RCA No.358/2018, dated 11.08.2023, confirming the order passed by the learned XVI Judge, Small Cause Court, Chennai in RCOP No.1955/2012, dated 14.12.2017.

For Petitioner : Mr.S.Jaganathan

For Respondent : Mr.S.Indirajith for the first respondent



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ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned IX Judge, Small Causes Court in RCA No.358/2018, dated 11.08.2023, confirming the order passed by the learned XVI Judge, Small Cause Court, Chennai in RCOP No.1955/2012, dated 14.12.2017.

2. The petitioner herein is the third respondent; the first respondent herein is the petitioner; and the respondents 2 to 5 are the respondents 1,2, 4 and 5 in RCOP No.1955/2012 . The above RCOP was filed to vacate and deliver vacant possession of the property, under the occupation of the respondents. The above RCOP was partly allowed and eviction was ordered, however, dismissed the petition on ground of additional accommodation. Challenging the above order, the petitioner herein has filed RCA No.358/2018, which was also ended against the petitioner, confirming the order passed by the learned Rent Controller in the above RCOP. Challenging the same, the present civil revision petition has been filed.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the first respondent and I have perused the materials on record.

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4. Before going into the discussion, it is useful to narrate the brief background for filing the civil revision petition, which is runs as follow.

Originally one M.Natarajan, who is the father of the petitioner and the respondents 3 to 5 and the husband of the second respondent herein, was a tenant for a shop portion under one Kiliammal. According to the petitioner, the said Kiliammal had promised to sell the shop portion to the father of the petitioner, however, without knowledge of his father, she had sold the entire property to the said M.Natarajan, the first respondent herein, After purchasing the property from the said Kiliammal, the first respondent herein had started demolishing the property. Hence, the said M.Natarajan has filed a suit in O.S.2423/2003 against the said Kiliammal and the first respondent herein and also the Commissioner of Corporation for permanent injunction restraining them from demolishing his shop portion.

4.1. Subsequently, there were several litigations arose between the father of the petitioner and the said Kiliammal as well as M.Natarajan with regard to the said property. In one such occasion, since the electricity



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connection for his shop portion was cut-off, the father of the petitioner herein had filed RCOP No.1705/2004 on the file of the XIII Small Causes Court, Chennai for restoration of the electricity connection against the said Kiliammal as well as the first respondent herein. In the above said proceedings, the said Kiliammal remained absent and was set exparte, but the first respondent herein, had filed a counter affidavit, stating that there is no landlord-tenant relationship between him and the father of the petitioner. In such circumstances, the father of the petitioner had filed a memo stating that he will seek remedy before the civil court and hence withdrawn the RCOP and the RCOP was also ordered on 12.10.2004. According to the petitioner, even prior to the said proceedings, since the said Kiliammal had refused to receive the rent, the father of the petitioner M.Natarajan had deposited the monthly rent in the proceedings in RCOP No.1279/2003 on the file of the XV Small Causes Court, Chennai, however, neither the first respondent herein, nor the said Kiliammal had filed a petition to withdraw the said deposited rental amount. Further, after obtaining order from this Court in W.P.No.35786/2004 he had obtained electricity connection in his



name and after his demise, the petitioner is enjoying the shop portion.

4.2. Thereafter, the first respondent herein had filed RCOP No.1289/2005 for fixation of fair rent to the petition shop portion, in which the father of the petitioner had filed M.P.No.587/2005 to reject the RCOP on the ground that since the first respondent had denied the landlord-tenant relationship in the earlier proceedings in RCOP No.1704/2004, the present RCOP seeking fixation of fair rent is not maintainable. The above petition was allowed on 12.12.2005 by the learned XV Judge, Small Causes Court, Chennai and consequently, the main RCOP itself was dismissed on that day. The appeal filed against the same by the first respondent herein in RCA No.799/2007 was also dismissed on 11.11.2019 by the learned VIII Judge, Small Causes Court, Chennai.

5. The main contention of the learned counsel for the petitioner is that, the learned Trial Judge, had failed to note that, in the earlier proceedings in RCOP No.1705/2004, while seeking restoration of electricity



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connection by the father of the petitioner, the first respondent herein had denied the landlord-tenant relationship and hence the father of the petitioner had withdrawn the said proceedings. Subsequently, when the first respondent filed RCOP No.1289/2005, seeking fixation of fair rent, the father of the petitioner filed M.P.No.537/2005 to reject the proceedings and pursuant to the order passed in the above petitioner, the RCOP proceedings itself was rejected. Further, the appeal filed by the first respondent in RCA No.799/2007 was also dismissed.

6. He also submitted that, as against the above dismissal of the RCA No.799/2007, the first respondent herein had not filed any revision and in such circumstances, the first respondent herein is estopped from filing the application for evicting the petitioner on the ground of wilfull default. Therefore, the order passed by the first appellate court, confirming the order passed by the learned Trial Judge are liable to be set aside.

7. The learned counsel for the first respondent has argued the matter,



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supporting the order passed by the First appellate court as well as the Trial Court.

8. The facum of the above said earlier proceedings, viz., i) filing of RCOP No.1705/2004 for restoration of electricity connection by the father of the petitioner, denial of landlord-tenant relationship by the first respondent; ii) filing of RCOP No.1289/2005 for fixation of fair rent by the first respondent and its dismissal, since he has no locus standi to file RCOP, as he had denied the landlord-tenant relation ship; iii) dismissal of RCA No.799/2007 against the RCOP No.1289/2005, are not denied by the first respondent. Further, it is to be noted that the first respondent has not filed any revision as against the order passed in RCA No.799/2007 and hence, such finding is still in force. In such circumstances, the first respondent has filed RCOP No.1955/2012 seeking eviction on the ground of wilfull default.

9. In the impugned order, though the learned Rent Controller has



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discussed elaborately with regard to the issue of jural relationship of landlord-tenant between the parties, she has not adverted the fact that, initially, the first respondent herein had denied the landlord-tenant relationship, for which RCOP1289/2005 seeking fixation of rent was dismissed; and the RCA 799/2007 filed by him also dismissed and no civil revision petition has been filed by him. In such circumstances, again, the landlord cannot be permitted to revert back to plead that there exists a landlord tenant relationship. Further, the first respondent/ landlord has not assigned any valid reason for such denial of jural relationship of land-lord tenant in the earlier proceedings and for the first time, in the eviction petition, pleaded the existence of landlord-tenant and sought eviction on the ground of willfull default in payment of rent, which cannot be accepted. Therefore, this court is of the view that, once the first respondent/ landlord had disputed the landlord-tenant relationship, which was confirmed by the appellate forum also, he is estopped from filing any application for eviction on the ground of wilfull default. As such, the order passed by the learned Rent Controller and confirmed by the appellate forum need interference by



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this Court and hence, the same are liable to be aside.

10. Accordingly, this civil revision petition is allowed. The order passed by the learned appellate Judge in RCA No.358/2018, dated 11.08.2023 and the order passed by the learned Rent Controller in RCOP No.1955/2012, dated 14.12.2017 are hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

22.01.2024

Index: Yes/No
Internet: Yes/No
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To

- 1.The IX Judge, Court of Small Causes, Chennai.
2. The XVI Judge, Court of Small Causes, Chennai.



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V.SIVAGNANAM, J.,

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