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CRP NPD.No.5134 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 29.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP NPD No.5134 of 2024

A.N.Muthukaruppan

... Petitioner

Versus

P.Venkateshwaran

... Respondent

PRAYER : Petition filed under section 25 of of Tamilnadu Lease and Rent Control Laws to set aside the fair and final Order dated 19.06.2024 made in R.C.A.No.6 of 2016 on the file of the Rent Control Appellate Tribunal, Sub Court, Nagapattinam by reversing the Order dated 24.10.2016 made in RCOP.No.1 of 2014 on the file of the Rent Control Tribunal, District Munsif cum Judicial Magistrate, Vedharanyam and direct the respondent herein to vacate and handover the demise building to the petitioner within the time frame fixed by this Court by allowing this Civil Revision Petition.

For petitioner : Mr.S.Lakshmanasamy
For respondents : Mr.T.R.Sathyamohan



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for M/s.S.V.V.Law firm

ORDER

Challenge has been made against Order of the appellate authority setting aside the Order of eviction of the Rent Control Court and remanding back the matter for fresh adjudication, the present revision has been filed.

2. The revision petitioner has filed a petition under section 10[2][i] of the Tamilnadu Buildings [Lease and Rent Control] Act. It is the case of the petitioner that the respondent is a tenant under him for a monthly rent of Rs.2000/-. The respondent has committed willful default from March 2011. After repeated demands, he has paid a sum of Rs.30,000/- towards arrears of rent. The respondent has to pay arrears of Rs.52,000/- from April 2013 to March 2023. Despite the legal notice issued in this regard, the arrears of rent has not been paid. Hence, a petition has been filed to evict the tenant.



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3. In the counter, it is the case of the respondent that there was no jural relationship between himself and the landlord and he was inducted into possession by one Meenakshi Aachi on account of usufructuary mortgage (ஒத்தி). According to him, he paid a sum of Rs.2 lakhs. Therefore, he deny the jural relationship of landlord and tenant.

4. The rent controller, taking note of the fact that despite several opportunities given to the respondent, he has not cross examined PW.1 and considering the fact that delaying tactics adopted by the respondent, allowed the petition. Challenging the same, an appeal has been filed before the rent control appellate authority. The appellate authority has set aside the Order of the rent controller mainly on the ground that rent controller has not decided the issue properly and the matter has been remanded to the rent controller. Challenging the same, the present revision petition has been filed.

5. The learned counsel appearing for the revision petitioner mainly would submit that the respondent is practicing lawyer and he denied the title of the landlord by suppressing material facts. It is his further contention that



plea taken by the respondent is not a bonafide one and his contention is that he occupied the building on the basis of usufructuary mortgage with one Meenakshi Aachi, who is non other than the grandmother of the revision petitioner is nothing but false. The very plea that he was inducted into possession by Meenakshi Aachi in the year 2011 itself is false. Ex.B.7 death certificate of the Meenakshi Aachi indicate that the said Meenakshi Aachi died in the year 1988 itself.

6. The further contention of the learned counsel for the petitioner is that originally the petitioner was set exparte and thereafter, an application has been taken out to set aside the exparte Order and the said application has been allowed. Not stopping with that, in order to drag on the proceedings an application under Order VII Rule 11 of Code of Civil Procedure has been filed to reject the petition and the same has been dismissed. Thereafter, despite the opportunity given to the respondent, cross examination has not been done. Therefore, the rent controller has allowed the petition after analysing the documents filed by the petitioner. Hence, submitted that the rent controller has rightly ordered eviction and the Order of the appellate authority has to be



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set aside.

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7. Whereas, the respondent has denied the jural relationship of landlord and tenant and this aspect has not been considered by the rent controller. In support of his contentions he relied on the judgment in **Kanaklota Das and others Vs. Naba Kumar Das and others** reported in **AIR Supreme Court 682**. Further it is his contention that respondent may be given opportunity to cross examine P.W.1 to prove his contention.

8. Heard both sides and perused entire materials available on record.

9. The petitioner has filed a petition for eviction of the respondent on the ground of willful default. It is the categorical stand of the petitioner that the respondent was a tenant under the petitioner on a monthly rent of Rs.2000/- and he had committed default from the year 2014. Whereas the respondent denied the title of the landlord. According to him, he was never a tenant and was put in possession of the premises on the basis of usufructuary mortgage by one Meenakshi Aachi. Further stand taken by the respondent is that the



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property is a charitable trust property and the petitioner is not the owner of the property.

10. It is relevant to note that when a tenant denies the title of the landlord, such a denial must be bonafide. When the denial is not a bonafide and made only for the purpose of protracting the proceedings, it cannot be said that the rent controller has no jurisdiction to pass an Order of eviction. The only contention of the respondent is that he was put in possession by Meenakshi Aachi, who is none other than the grandmother of the landlord. It is further to be noted that Ex.A.1 to Ex.A.5 have been filed to show that after the death of Meenakshi Aachi, the property is in the name of the landlord, viz., the petitioner herein. Therefore, it cannot be said that there is no jural relationship at all. It is further contention of the respondent that he was inducted into possession only in the year 2004 which is absolutely falsified by Ex.A.5, the death certificate of Meenakshi Aachi, which clearly show that Meenakshi Aachi died in the year 1988 itself. Therefore, the very contention that he was put in possession by the said Meenakshi Aachi is nothing but a false statement made only in order to squat on the property.



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11. It is to be noted that the respondent is not an ordinary citizen and he is a practicing lawyer. When he makes such a false statement before a Court law, such a statement cannot be ignored as that of an ordinary litigant. The very defence taken by the respondent on the face of it appears to be false and such a stand is taken only to take undue advantage to protract the rent control proceedings.

12. Though it is stated that no opportunity is given to the respondent for cross examination of the P.W.1, it is relevant to note in an earlier occasion, the respondent was set exparte on 09.02.2015 and thereafter, the exparte Order has been set aside on 08.07.2015 and the matter has been posted for further proceedings. Thereafter, instead of contesting the matter, an application under Order VII Rule 11 of Code of Civil Procedure filed by the respondent, which has been rightly dismissed by the rent controller. Therefore, the evidence was let in in the rent controller proceedings and P.W1 was examined and Ex.P.1 to Ex.P.5 were marked. Despite the opportunity given to the respondent, he has not cross examined PW.1. Therefore, it cannot be said that no opportunity has



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been given to him to put forth his case. When the plea of the petitioner is clearly established, the respondent who denies the title of the landlord, he has not even replied to the legal notice sent by the petitioner. That apart, evidence of P.W.1 clearly indicate that the respondent is a tenant under the landlord.

13. The very contention of the respondent in his pleadings is that he was inducted into possession by the grandmother of the petitioner. Further to contend that he was inducted only in the year 2005 by Meenakshi Aachi itself is falsified by Ex.P.5. Therefore when a denial of title is made, which is not a bonafide, that itself is a ground for eviction. Therefore, being a member of a noble profession, he cannot take advantage to make himself unjust enrichment in squatting over the property of others by way of false defence before the rent controller. No doubt, in the judgment in **Kanaklota Das and others Vs. Naba Kumar Das and others** cited supra, the Supreme Court has held that the landlord is required to plead and prove the existence of relationship, the fact remains that the documents filed by the petitioner clearly not only prove that he is the owner of the property, but also falsify the very defence of the respondent that he was inducted into possession by the grand mother of the



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petitioner. The so called usufructory mortgage has not seen the light of the day. Hence, the Order of the appellate authority has to be interfered and the Order of the rent Controller has to be restored.

14. Accordingly, this Civil Revision Petition is allowed and Order of the Rent Control Appellate authority in RCA.No.6 of 2016 dated 19.06.2024 is set aside and the Order of the rent Control Tribunal in RCOP.No.1 of 2014 dated 24.10.2016 restored. No costs.

29.01.2025

Index : Yes / No
Internet: Yes
Speaking/non speaking order
vrc

To,

1. The Rent Control Appellate Tribunal cum
Sub Court, Nagapattinam.
2. The Rent Controller,
District Munsif cum Judicial Magistrate,
Vedharanyam.



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