



C.R.P(MD)No.1702 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.03.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.1702 of 2021

and

C.M.P(MD)No.9128 of 2021

1.Alagappan

2.Vijayalakshmi

... Revision Petitioners / Respondents

Vs

Rajendran @ Venkateswaran

... Respondent / Appellant

Prayer : This Civil Revision Petition is filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act, to set aside the executable and fair order passed in RCA No.61 of 2019 dated 15.12.2020 on the file of the Rent Control Appellate Authority / Principal Subordinate Judge of Madurai, confirming the fair and decreetal order dated 24.04.2019 made in RCOP No.248 of 2014 on the file of the learned Rent Controller / Principal District Munsif, Madurai Town.

For Petitioners : Mr.M.Gurudas

For Respondent : Mr.J.Sanjey Vignesh



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C.R.P(MD)No.1702 of 2021

ORDER

This Civil Revision Petition is filed to set aside the executable and fair order passed in RCA No.61 of 2019 dated 15.12.2020 on the file of the Rent Control Appellate Authority / Principal Subordinate Judge of Madurai, confirming the fair and decreetal order dated 24.04.2019 made in RCOP No.248 of 2014 on the file of the learned Rent Controller / Principal District Munsif, Madurai Town.

2. The brief facts of the case before the Rent Controller is that, the respondents 1 and 2 / revision petitioners are husband and wife. The parties are referred as ordered by the Rent Controller. The respondents became tenant under the petitioner for residential purpose. The agreed rent was Rs.1,000/- per month, based upon the English Calendar Month and a receipt of the rent amount used to be made in a pocket notebook. The original is available with the respondent. It was agreed that the rent was paid on or before 5th of succeeding month. The respondent were not regular in paying the rent. But used to pay the rent in lumpsum.



C.R.P(MD)No.1702 of 2021

3. From October-2013, till the date of petition, rent was not paid.

On that account, the petition is filed seeking eviction of the tenant from the tenanted premises. Apart from that it is stated that the building is a very old and damaged one, which requires immediate demolition and reconstruction. He obtained plan approval for constructing the new building. At one point of time, the respondents agreed to vacate the premises. But later failed. As per the plan approval, the petitioner constructed seven shops out of the 9 shops. The adjacent portion was already demolished as mentioned above, he constructed seven shops. The petitioner has sufficient funds for putting up the construction.

4. The respondents have created a sale agreement dated 10.02.1980, as if it was entered into between Pattammal and Vijayalakshmi. It is nothing but a created document for the purpose of delaying the process.

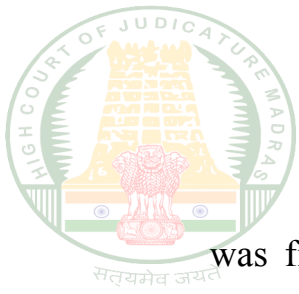
The counter averments are that the relationship between the petitioner and the respondents as landlord and tenant is disputed. The second respondent entered into a sale agreement with the petitioner's



C.R.P(MD)No.1702 of 2021

mother on 10.02.1980. On the date of agreement itself, they were put in possession. Execution of sale deed was delayed by the mother of the petitioner. It appears that the petition was filed at the instigation of the petitioner's mother. Regarding the condition of the building also, it is stated by the respondent that it is not correct. Never the petitioner asked the respondents to vacate the premises for the purpose of putting up new construction. The financial capacity of the petitioner was disputed. Right from the sale agreement, the respondents are in possession and enjoyment. Electricity service connection, house tax were transferred to their names. In spite of repeated request, the mother of the petitioner did not come forward to execute the sale deed. So the respondent filed a petition before the Tamil Nadu Legal Service Authority to make a compromise. It failed.

5. Before the Rent Controller, on the side of the petitioner, one witness was examined and fifteen (15) documents were marked. On the side of the respondents one witness was examined and seven documents were marked. At the conclusion of the enquiry process, the Rent Controller, dismissed the petition. Against which, RCA.No.61 of 2019



C.R.P(MD)No.1702 of 2021

was filed which came to be allowed. Against which, this revision is preferred by the respondents.

6. Heard both sides.

7. The ownership of the property is not under dispute. What is in dispute is the relationship between the parties. The revision petitioners says that in capacity of sale agreement holder, they are in possession and enjoyment; There was no oral agreement for occupation as a tenant ; No rent was agreed to be paid by them.

8. Per contra, it is the contention on the part of the respondent herein that tenancy was oral based upon English Calendar Month and rent was paid by the revision petitioners at the rate of Rs. 1000/- for sometime, later defaulted ; payment of rent used to be entered in a pocket notebook retained by the revision petitioners. But this is denied. Even in the petition itself, the respondent has stated about the sale agreement entered into between the two revision petitioner and mother of the respondent. Before enter into the issue of demolition and reconstruction



C.R.P(MD)No.1702 of 2021

point. This preliminary point must be cleared.

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9. It is the duty of the respondent herein to prove that the revision petitioners are the tenants. Except the oral evidence of the respondent, no other evidence is available. As stated above, they are saying that the payment of rent was entered in a notebook retained by the revision petitioners. No step has been taken by the respondent herein for directing the revision petitioner to produce the alleged pocket notebook. Only the oral evidence of the respondent is available in this regard.

When the revision petitioners raise a point of sale agreement, it is their duty to prove the same. The original sale agreement is produced by the revision petitioner herein which is marked as Ex.R1, wherein we see that the second revision petitioner and the mother of the respondent entered into the agreement of sale, wherein, the respondent was shown as a minor. The date of agreement is 10.02.1980, wherein it is specifically stated that the total sale consideration was fixed at Rs.4000/-. On the date of the agreement, Rs.2,000/- was received in advance. Balance Rs. 2,000/- was agreed to be paid in the next month namely Tamil Masi-26.



C.R.P(MD)No.1702 of 2021

In the event of failure on the part of the revision petitioners, either to pay the balance amount or to get the sale deed executed, then they have to lose the advance amount. At that time, it was a vacant site, measuring about 2 cents. It is also stated that the agreement was written in duplicate and each parties are having a copy.

Now we will go to the evidence of P.W.1. He would say that Ex.R1 does not contain his mother's signature so also the signature of his father. But the documents produced by the revision petitioners in the form of house tax receipt, EB service connection etc, clearly shows that the revision petitioners are not tenants.

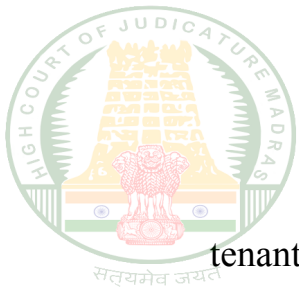
10. As mentioned above in Ex.R1, the property, agreed to be sold was shown as vacant site. But when the construction was made is not known. Probably the revision petitioners would have made the construction subsequent to the sale agreement that is why they have mortgaged the property to several persons and later redeemed. Only on that basis Rent Controller dismissed the petition. Now the appellate authority differed from that and recorded a finding that Ex.R1 does not



C.R.P(MD)No.1702 of 2021

relate to the petition mentioned property. But it is not the case of the respondent as mentioned above. The respondent has admitted that the revision petitioners are having sale agreement in respect of the petition mentioned property, but would say that it is a created document. No doubt that there is difference in the extent mentioned in Ex.A1 and in the petition. It is admitted by both sides that adjacent to the present property, the shops of respondent are present today. Even at the time of Ex.R1, it is seen that the adjacent properties are only vacant sites. Four boundaries mentioned in Ex.R1, does indicate that on the south and west, the respondent mother's property were situated as vacant site. So probably only subsequent Ex.R1, as mentioned above superstructure would have been put up by the parties. So the extent mentioned in Ex.R1 does not assume importance in view of the above said situation.

11. The appellate Court also failed to note that even if Ex.R1 is not related to the petition mentioned property, still the petition under the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, will not lie. Because, absolutely there is no evidence on record to show that the revision petitioners came into the possession of the property as



C.R.P(MD)No.1702 of 2021

tenant. When the primary point is not established by the respondent herein, no presumption, under law, will arise that the person in occupation will be only tenant.

12. If at all, on the basis of the title, the respondent herein ought to have initiated proper civil proceedings for recovery of the possessions. without resorting to such legal remedy, by a shortcut method, this petition is filed to evict the revision petitioners. This will amount to clear abuse of law and Court. Such an attempt on the part of the litigant should not be permitted.

13. The respondent would rely upon the following judgments for the purpose of argument that Ex.R1 is not a document of title and no claim can be made by the revision petitioners on that basis. *Civil.Appeal.No.2549 of 2025* in the case of *Ramesh Mishrimal Jain Vs Avinash Vishwanath Patne & another.*

14. This judgment will not help him. Because, as mentioned above in Ex.R1, there is an indication that the revision petitioner were in



C.R.P(MD)No.1702 of 2021

possession of the property as a tenant already. As mentioned above, no presumption under law is available to say that present occupation will always be a tenant.

15. The respondent herein would rely upon the judgment of the Hon'ble Supreme Court in the case of *Ramesh Mishrimal Jail Vs Avinash Vishwanath Patne and another* made in *Civil Appeal No.2549 of 2025* and also would rely upon the judgment of the Hon'ble Supreme Court in the case of *Shri Mukund Bhavan Trust and another Vs Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and another* made in *Civil Appeal No.14807 of 2024*, preferably on the point that the suit for specific performance itself is barred by limitation now. But I am not entering into the point now. It can be taken into consideration only in a properly instituted civil suit for recovery of possession. So this is not a forum to decide whether any relief is available to the revision petitioner on the basis of Ex.R1, since it is beyond the scope of these proceedings. So in view of the above said discussion, the order of the appellate Court made in RCA No.61 of 2019 dated 15.12.2020 on the file of the Rent Control Appellate Authority / Principal Subordinate



C.R.P(MD)No.1702 of 2021

Judge of Madurai, reversing the fair and decreetal order dated 24.04.2019 made in RCOP No.248 of 2014 on the file of the learned Rent Controller / Principal District Munsif, Madurai Town, requires to be interfered and accordingly, interfered.

16. Accordingly, this Civil Revision Petition stands allowed. The order of dismissal passed by the Rent Controller is restored. But this will not affect the right of the respondent herein to initiate appropriate civil proceedings as indicated above. No costs. Consequently, connected miscellaneous petition stands closed.

18.03.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

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To

- 1.Rent Control Appellate Authority / Principal Subordinate Judge,
Madurai.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

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C.R.P(MD)No.1702 of 2021

G.ILANGO VAN, J.

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ORDER
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