

(2007) 06 MAD CK 0204

In the Madras High Court

Case No : C.R.P. (NPD) No's. 3248 to 3250, 3285 and 3286 of 2000

Chinnaiyapillai, Kullapottu and Mangan

APPELLANT

Vs

Selvaganeshraja
Parvathy and Arjunan Vs
Selvaganeshraja

RESPONDENT

Date of Decision : 06-06-2007

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 11(1), 2, 25

Citation : (2007) 06 MAD CK 0204

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : P.K. Bhavanantham, for the Appellant; P.K. Sivasubramanian, for the Respondent

Final Decision : Allowed

Judgement

S. Rajeswaran, J.—All these Revision Petitions were filed by the tenants against the common judgment made by the rent control appellate authority on 4.4.2000 in RCA Nos. 842 of 1996, 844 to 847 of 1996. The respondent herein as landlord filed RCOP Nos. 2961 to 2969 of 1991 and RCOP Nos. 2971 and 2977 of 1991 against various persons on the ground of wilful default and also for the purpose of demolition and reconstruction.

2. All the respondents in RCOP Nos. 2966 to 2969, RCOP Nos. 2971 to 2973 of 1991 did not contest the rent control proceedings and they were dismissed by the rent controller. Insofar as the other RCOPs., were concerned the rent controller found that there was no landlord-tenant relationship between the respondent herein and the tenants in the RCOPs., and therefore dismissed the rent control proceedings. Aggrieved by the dismissal of the rent control proceedings against some of the persons, the respondent herein filed RCA Nos. 842, 844 to 848 of 1996. The appellate authority by order dated 4.4.2000 allowed all the appeals and ordered eviction on both the grounds wilful default and demolition and reconstruction and aggrieved by the same the tenants in RCA

Nos. 842/1996 and 844 to 847 of 1996 have filed the above five Civil Revision Petitions.

3. Heard the learned Counsel for the tenants and the learned Counsel for the landlord. I have also perused the documents filed and the judgment referred to by them.

4. The case of the landlord in each of the RCOP is that all the tenants were paying a rent of Rs. 30/- per month to his predecessor-in-title Thiru A. Natarajan who was receiving the rent from them from the year 1987. The tenants failed to pay the rent to the said A. Natarajan resulting in negotiations and on the basis of those negotiations all the tenants agreed to remove the roof put up by them and to vacate the premises after receiving payments. The landlord purchased the property from the said A. Natarajan on 12.12.1988. After purchasing the property the landlord tried to vacate the tenants, but they neither vacated premises nor paid the rent from 17.2.88 to 31.3.91 amounting to a sum of Rs. 1275/-. He further pleaded that the premises is in a damaged condition and therefore it has to be demolished and reconstructed. The tenants resisted the RCOPs., by contending that neither the landlord is entitled to collect the rent from them nor he is entitled to maintain the RCOPs., as there is no landlord-tenant relationship among them. The rent controller on the basis of the evidence let in before him observed that the notice sent by the landlord on 6.4.1991 was not sent to individual tenants and the previous landlord Natarajan did not inform the tenants about the sale of the property to the present landlord. The rent controller further found that even though the property was purchased by the present landlord on 12.2.98, he did not inform the tenants immediately about his purchase from the previous landlord. The rent controller has also considered the fact that the Survey Number of the property and Survey Number found in the sale deed are not one and the same. In the absence of any proof of the landlord-tenant relationship, the rent controller dismissed the RCOPs., against the persons who contested the matter.

5. The appellate authority by re-appreciating the evidence found that the claim of landlord-tenant relationship by the persons are not bona fide and they have not proved that they put up the superstructure in which they are residing. He further found fault with the revision petitioners for not examining the said A.Natarajan to prove their case. The appellate authority also held that the persons could not be considered as trespassers and therefore there is a landlord-tenant relationship and on that basis the appellate authority allowed the appeals and ordered eviction.

6. The only question that arises for consideration is that whether it has been proved by the respondent/landlord that there existed a landlord-tenant relationship to maintain the rent control proceedings.

7. The very foundation of an eviction petition under a rent control statute is the existence of landlord-tenant relationship and when such relationship is found not

to be established, any further enquiry into the title of the parties is beyond the scope of the court exercising the jurisdiction under a rent control statute.

8. The Supreme Court in the decision reported in *Rajendra Tiwary Vs. Basudeo Prasad and Another*, held as follows:

7. It is evident that while dealing with the suit of the plaintiffs for eviction of the defendant from the suit premises under Clauses (c) and (d) of Sub-section (1) of Section 11 of the Act, courts including the High Court were exercising jurisdiction under the Act which is a special enactment. The sine qua non for granting the relief in the suit, under the Act, is that between the plaintiffs and the defendant the relationship of "landlord and tenant" should exist. The scope of the enquiry before the courts was limited to the question: as to whether the grounds for eviction of the defendant have been made out under the Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms "landlord" and "tenant" in Clauses (f) and (h), respectively, of Section 2 of the Act.

8. Inasmuch as both the trial court as well as the first appellate court found that the relationship of "landlord and tenant" did not exist between the plaintiffs and the defendant, further enquiry into the title of the parties, having regard to the nature of the suit and jurisdiction the court, was unwarranted.

16. In this case the reason for denial of the relief to the plaintiffs by the trial court and the appellate court is that the very foundation of the suit, namely, the plaintiffs are the landlords and the defendant is the tenant, has been concurrently found to be not established. In any event inquiry into the title of the plaintiffs is beyond the scope of the court exercising jurisdiction under the Act. That being the position the impugned order of the High Court remanding the case to the first appellate court for recording finding on the question of title of the parties, is unwarranted and unsustainable. Further, as pointed out above, in such a case the provisions of Order VII Rule 7 are not attracted. For these reasons the aforementioned cases are of no assistance to the plaintiff. In this view of the matter we cannot but hold that the High Court erred in remanding the case to the first appellate court for determination of the title of the parties to the suit premises and for granting the decree under Order VII Rule 7.

17. However, we make it clear that this judgment does not preclude the plaintiffs from filing a suit for declaration of title and for recovery of the possession of the suit premises against the defendant. If such a suit is filed within three months from today we direct that the same shall be tried along with suit filed by the defendant, Title Suit No. 232 of 1983, in the court of Sub-Judge, Siwan (Ext.11) for specific performance of the contract against the said Kedar Nath Sinha and the plaintiffs.

9. In the present case the rent controller found that the landlord failed to establish the existence of landlord-tenant relationship, but the same was reversed by the appellate authority on re-evaluating and re-appreciating the very

same evidence. Normally this Court will not re-appreciate the evidence u/s 25 of the Tamil Nadu Buildings (lease & Rent Control) Act, 1960 but at the same time, if the appellate authority failed to consider the relevant document or has failed to arrive at proper findings on the basis of the evidence and the materials available or if the findings are so perverse and unreasonable, this Court can certainly interfere with the findings of the appellate authority.

10. In the eviction petition filed by the landlord it was specifically stated that all the tenants who were in possession of their portions negotiated for settlement with the then owner and vacated their respective portions and thereafter the tiled roofing was removed. After vacating them only the land and building was conveyed to the landlord by a sale deed dated 17.2.88. It is the further case of the landlord that after knowing that the previous owner sold the property to the present owner, all the persons who vacated the respective portions, reoccupied the respective portions and covered the ceiling with thatched and temporary roofing. This is what reiterated in the notice dated 6.4.1991 marked as Ex.(P1), which was sent to 90 tenants. Ex.P8 is the sale deed executed on 17.2.1988 by the above said S.G. Natarajan in favour of the respondent herein. In this sale deed it was specifically stated that the vendor has vacated the tenants in occupation and partly demolished the superstructure and the vendor is in exclusive possession and enjoyment of the property. From the above it is very clear that only after vacating the entire tenants/occupants, the property was conveyed to respondent/landlord by the previous owner. Therefore it cannot be said that the previous tenants would be continued to be the tenants of the respondent herein. There is absolutely no evidence let in by the respondent to prove that all the persons who vacated the respective portions, reoccupied the very same portion and put up the roofing. In fact it is the respondent herein who should have examined the vendor Natarajan to prove his case and the appellate authority has wrongly shifted the onus on the revision petitioners by finding fault with them for not examining the vendor Natarajan on their side. Even assuming that all the persons came back and reoccupied their respective portions and put up roofings, still it cannot be said that they are the tenants of the respondent herein so as to maintain the rent control proceedings against them. Therefore in the light of the evidence let in by the parties, the only inescapable conclusion that could be arrived at is that the respondent herein has failed to establish convincingly that he is the landlord and the revision petitioners are his tenants. If that being so, the appellate authority has failed to consider the averments contained in the RCOP, Ex.P1 notice dated 6.4.91 and Ex.P8 sale deed dated 17.2.1988. Further the findings of the appellate authority is that after preoccupying their respective portions, the occupants continued to be the tenants of the respondent are perverse and this Court cannot shut its eyes to such finding and I am of the considered view that it is a fit case to exercise the powers u/s 25 of the Act to set aside the order of the appellate authority and to restore the order of the rent controller.

11. In the result, all the Civil Revision Petitions are allowed and the order of the

appellate authority is set aside by restoring the order of the rent controller. No costs.

12. However, I make it very clear that it does not preclude the respondent herein from filing an appropriate suit before the appropriate forum or to take any other legal proceedings in accordance with law.