

(1987) 03 MAD CK 0040

In the Madras High Court

Case No : C.R.P. 4572 of 1982 and 3174 of 1983

Durgai Ammal

APPELLANT

Vs

R.T. Mani

RESPONDENT

Date of Decision : 04-03-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 21, Order 41 Rule 22, 115

Citation : (1987) 03 MAD CK 0040

Hon'ble Judges : Sathiadev, J;Bellie, J

Bench : Division Bench

Advocate : A.L. Somayajee for Mr. M. Jayaraman, for the Appellant; K. Chandramouli, for the Respondent

Final Decision : Allowed

Judgement

Sathiadev, J.—Both these revision petitions have been preferred by the tenant of door No. 1/1, new No. 5 Thiru. Vi. Ka. Road, Madras. Respondent-landlord filed H.R.C. 3006 of 1978 under S. 10(2) (i) and (vii) of Act 18 of 1960 to evict the tenant on the two grounds, that she had committed willful default in payment of monthly rent of Rs. 350 for the period from 1-5-1978 to 30-9-1978 amounting to Rs. 2,100 and that she had denied the title of landlord and such denial was not bona fide. This was refuted by the tenant by stating that the rent payable was only Rs. 15 per month and that she had been paying the rent to one Radhakrishnan, and later to his legal heir and that she had never denied title as claimed, nor accepted it, but she has been kept in the dark about the claims now made and that she has deposited a sum of Rs. 120 in court towards rent for 8 months from May 1978 to December 1978 without prejudice to her rights, etc.

2. The Rent Controller held that available evidence does not prove the relationship of landlord and tenant, and there was no proof that the monthly rent was Rs. 350, and when tenant had asked for copy of the will to be produced and other necessary documents to know about the nature of the claim made by the landlord; that was not because of denial of title without any bona fides and

hence, dismissed the petition. Landlord preferred H.R.A. 559 of 1980 to the appellate authority, who held that the tenant had committed willful default in payment of rent and had also willfully denied title without any bona fides and therefore ordered eviction. As against the said decision, C.R.P. 986 of 1981 was preferred to this Court and by order dated 8-5-1981 this court by upholding the title of landlord and that there existed a relationship of landlord and tenant as between the parties remanded the matter to the appellate authority, so as to enable the parties to let in necessary evidence for finding out the quantum of rent payable, and whether willful default in payment of rent and willful denial of title had occasioned, as claimed or not. The appellate authority was directed to keep the appeal on its file and make further enquiry by itself or through the rent controller, and thereafter decide the appeal. Appellate authority by order dated 20-9-1982, held that the monthly rent is only Rs. 15 and that tenant had committed willful default in payment of rent and there had been a willful denial of title and hence ordered eviction. C.R.P. 4572 of 1982 is preferred as against this order.

3. The same landlord preferred H.R.C. 3487 of 1981 under S. 10(2) (i) and 3(a) (i) of Act 18 of 1960, claiming that tenant had committed willful default in payment of rent for the period from 1-12-1980 to 30-6-1981, assuming that the rate of rent is Rs. 15 and that the petition is filed without prejudice to his claim that the monthly rent is Rs. 350; and as he is residing in a rented premises, he bona fide requires the premises for his own occupation, and therefore, the tenant is liable to be evicted. The Rent Controller dismissed the petition holding, that unless H.R.A.559 of 1980 is disposed of, the present petition is not maintainable and therefore, landlord cannot also urge before the disposal of H.R.A. for eviction of tenant on the ground of owner's occupation. R.C.A. 1492 of 1982, was preferred against this order to the appellate authority, who allowed the appeal in so far as it related to the ground of willful default and held that plea for owner's occupation had to fail because of pendency of certain civil proceedings relating to the title of the landlord. C.R.P. 3174 of 1983 is preferred as against this order.

4. When these two revision petitions came up before Mohan, J., on behalf of the landlord, a plea was put forth that he would be entitled to sustain the order of eviction on any one of the grounds which formed the foundation of the petition preferred by landlord, even though against the adverse findings on such relief's claims he had not filed revision petitions. Landlord relied upon K. Venkataramani Vs. S. Aravamuthan and Others, , in support of this contention that he can urge one of the findings which is against him, is palpably wrong. But the learned Judge felt that, if such a permission is granted it would lead to widening the revisional jurisdiction conferred under S. 25 of Act 18 of 1960 and will obliterate the distinction existing between revisional and appellate jurisdictions, and therefore, as he is unable to agree with the view of the learned Judge expressed in the above decision had sought for reference of the matter to a larger Bench.

5. Mr. Somayaji, learned counsel for the tenant, submits that under S. 25 of the

Act, the power which is exercisable by the High Court being a re-visional power, and as the provisions of the CPC are not made applicable for proceedings covered by the Act, and the remedy being available only to aggrieved person who had availed of it by filing a revision petition, and the landlord having not preferred a revision petition and as the revision petition filed in this Court being confined only to the diverse finding rendered against the tenant, O. 41 R. 21 C.P.C., cannot be applied, when even, in cases where C.P.C., applies, it could be done only when the power is exercised by an appellate court and not by a re-visional court, and in the absence of any specific provision made to that effect under the Act, except that landlord can argue on points which are raised by the tenant in these revision petitions; he is not entitled to ask this Court to render findings on points which tenant had not raised in the petitions.

6. In support of these pleas, he would first refer to *Dattonpant Gopalvarao Devakate Vs. Vithalrao Maruthirao Janagaval*, , in which while dealing with the scope of S. 50 of the Mysore Rent Control Act, 1961, it was held that the power conferred on the High Court under S. 50 is not as narrow as the re-visional power under S. 115 C.P.C., but at the same time it is not wide enough to make the High Court a second court of first appeal. The High Court affirmed the view of the appellate Court which allowed the appeal, and on going through the orders passed by the three courts, it was felt by the Supreme Court that two views are possible on the materials of the records of the case and held that findings of fact recorded by the appellate court were not bound to be such by the High Court as to justify the exercise of its re-visional power under S. 80 of the Act. It is under such circumstances, it was held that, though the power u/s was wider than S. 115 C.P.C., it was not wide enough to make the High Court as second court of first appeal.

7. *Venkataramana v. Ramaswami* A.I.R 1952 Mad 504 (D.B.), holds that no memorandum of cross objections will lie in a revision petition.

8. In *Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar*, ., in dealing with the scope of S. 25 of Tamil Nadu Act 18 of 1960, by relying upon the decision in *Dattonpant Gopalvarao Devakate Vs. Vithalrao Maruthirao Janagaval*, , it was held that the power conferred there under may not be as narrow as the re-visional power under S. 115 C.P.C, but not wide enough to make the High Court as a second court of first appeal.

9. He would then submit that, under the Act, the relief under S. 10 (2)(i) results in the eviction of the tenant, and under S. 10 (2) (vii), it would result in directing tenant to put the landlord in possession of the building; and when court fee payable is different dependent upon the grounds taken for eviction; in the absence of any revision petition filed by the landlord, he cannot be allowed to canvass any other ground or point not taken by the tenant in his petition.

10. In *S.J.S. Fernandes Vs. V. Ranganayakulu Chetty, Rayala Corporation (Madras) v. Syed Bawker and Co.* Madras 70 L.W. 345 = 1957 1 M.L.J. 241 and

in *Seetlralakshmi v. Rajammal* 77 L.W. 611 = 1965 1 M.L.J. 287, it has been held that provisions of C.P.C. are not applicable to proceedings under the Act. It is only in dealing with execution of orders passed under the Act, the Controller while passing an order, has been conferred with all the powers of a civil court and therefore, it is only in the said proceedings, the provisions of C.P.C. would apply, as held in *K.P.S. Thangaswamy Chettiyar Vs. A. Bapoo Sahib, N. Ramanujam Naidu Vs. C. Panchanatha Mudaliar and Another*, , and *Mohammed Hussain Vs. A.K.M. Pitchai*,

11. S. 18-A states that "the Controller shall have powers to appoint a Commissioner in any proceedings pending before him, and for this purpose, he shall have all the powers of a civil Court under C.P.C. 1908 (Central Act 5 of 1908). No other provision under the Act invokes the applicability of C.P.C. to any of the proceedings under the Act.

12. In *K. Venkataramani Vs. S. Aravamuthan and Others*, and at page 18 of Notes of Recent Cases, learned Judge took the view that though the entire procedure applicable to Civil Courts cannot be applied, yet rules of justice, equity and good conscience could be invoked to relieve difficulties and avoid situations of this nature, which prevents a party to prefer a revision against an adverse finding, though he succeeds in the petition. Learned Judge had not relied on O. 41, R. 22 C.P.C, but had proceeded on the basis that the respondent in such a revision petition would be a person "aggrieved" in so far as the findings rendered as against him in the order, which is subject to revision, and therefore, held that, on the grounds taken in the original petition, he can be heard, as to how far the order of eviction is sustainable or not. Learned Judge had relied upon the decision in *Seetaram and Others Vs. Smt. Ramabai and Another*, , in which it has been held as follows-

In our opinion, without having to decide whether O. 41, R. 21 C.P.C. applies or not to rent central proceedings and appeals arising there from, we are quite satisfied that on general principles, a party who has an order in its favour is entitled to show that the order is justified on some ground which was decided against it by the court below.

13. In *Sri Rajalakshmi Dyeing Works v. Ramaswami*, the Supreme Court having held that the power exercisable under S. 25 is wider than the power found in S. 115 C.P.C. the constraints found therein cannot be taken into account. S. 25(1) reads as follows-

The High Court may, on the application of any person aggrieved by an order of the appellate authority call for and examine the record of the appellate authority, to satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and, if in any case, it appears to the High Court that any decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly.

The provisions of C.P.C. are not applicable to proceedings under the Act. O. 41,

R. 22 C.P.C. is available only when the appellate jurisdiction is exercised and not when re-visional powers are exercised under the Code. The landlord is not seeking to file any memorandum of cross-objections, being fully aware of the decision rendered in Venkataramana v. Ramaswami 64 L.W. 438- AIR 1952 Mad. 504 (D.B.), though it was a case which arose under the Provincial Insolvency Act.

14. In Ranganayakiammal v. Krishnan 81 L.W. 577., in dealing with the scope of S. 25, it was held that it cannot be so restricted only to matters relating to jurisdiction as provided under S. 115 C.P.C. it was held that "apart from stating this obvious, it is very difficult to say that where exactly the jurisdiction of the re-visional court under S. 25 is limited or restricted except to state that it lies somewhere between the re-visional jurisdiction of the High Court under S. 115 C.P.C. and the normal appellate power of an appellate authority.

15. In Rajalakshmi Dyeing Works v. Rangasami AIR 1930 S.C. 1253., it is held as follows-

"Appeal" and "revision" are expressions of common usage in Indian statutes and the distinction between " appellate jurisdiction" and "re-visional jurisdiction" is well known though not well defined. Ordinarily, appellate jurisdiction involves a rehearing, as it were, on law as well as fact and is invoked by an aggrieved person. Such jurisdiction may, however, be limited in some way as, for instance has been done in the case of second appeals under the C.P. Code and under some Rent Acts in some States. Ordinarily, again, re-visional jurisdiction is analogous to a power of superintendence and may sometimes be exercised even without its being invoked by a party. The extent of re-visional jurisdiction is defined by the statute conferring such jurisdiction. The conferment of re-visional jurisdiction is generally for the purpose of keeping tribunals subordinate to the revising tribunal within the bounds of their authority to make them act according to law, according to the procedure established by law and according to well delink principles of justice. Re-visional jurisdiction as ordinarily understood with reference to our statutes is always included in appellate jurisdiction but not vice versa. They are general observations. The question of the extent of appellate or re-visional jurisdiction has to be construed in each case with reference to the language employed by the statute.

16. Again in Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, it was held as follows-

The right of appeal is one of entering a superior Court and invoking its aid and interposition to redress the error of the court below. Two things which are required to constitute appellate jurisdiction are the existence of the relation of superior and inferior court and the power on the part of the former to revise decisions of the latter. When the aid of the High Court is invoked on the re-visional side it is done because it is a superior court and it can interfere for the purpose of rectifying the error of the court below. S. 115 C.P.C. circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of

the general appellate jurisdiction of the High Court as a superior Court. It is only one of the modes of exercising power conferred by the statute basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider, and larger sense.

17. Under S. 25, only a person who is "aggrieved" by an order of the appellate authority can invoke the re-visional powers conceived of therein and which is conferred on the High Court. The "suo motif" power as found in S. 115 C.P.C, is not available. Hence, landlord having secured an order of eviction on any one of the many grounds taken, was satisfied with the outcome of the proceedings initiated by him; and by executing that order, he could secure the relief he had wanted, on acceptance of any of the many grounds on which he had asked for relief. If the tenant had not preferred the revision, there was no need for him to prefer a revision on being aggrieved of adverse findings rendered on grounds which had been rejected by the appellate authority. Therefore, he was not aggrieved by the order of eviction, and hence, he could not have preferred a revision petition under S. 25, against adverse findings rendered on grounds which would be relevant to secure an order of eviction.

18. In *Corporation of Madras Vs. P.R. Ramachandriah and Others*, , it was held that it is now well settled by high authority that a party not aggrieved by any decree was not competent to appeal against the decree, on the ground that an issue was found against him. Therefore, when an appellate authority refuses to grant the relief of eviction on the ground of owner's occupation, but granted relief on the ground of willful default; landlord not being aggrieved by the order of eviction, could not have preferred revision petition under S. 25 of the Act, but by filing the revision, the tenant now tries to jeopardise the benefits derived by the landlord, and which order had been placed before the High Court to satisfy the tests as to the regularity of such proceedings or the correctness, illegality or propriety of any decision, or order passed therein. On the revision petition being entertained, the High Court calls for and examines the records of the appellate authority. In calling for the records, the entirety of the proceedings is summoned, which contains oral and documentary evidence recorded with reference to the various grounds taken in the petition, and based on which points have been framed for consideration, and the constituted authorities have applied their mind and rendered their findings thereon. S. 25 says that the High Court may call for and examine the records of the appellate authority. Thus, it is conferred with the powers as High Court to look into the contents of the records, which would include the pleas raised, evidence adduced and decision arrived at, on each one of the grounds taken in ordering eviction of the tenant. In doing so, the High Court is enjoined to consider, whether order of eviction passed is permissible on the basis of any of the other grounds taken in the petition, which formed the foundation for the reliefs prayed for therein. Landlord having been permitted to initiate proceedings for eviction in a single petition, on more than one ground conceived of under the Act, and when they have been dealt with together and disposed of by a single order, and on landlord establishing any one

of the grounds, and in which event the ultimate order would lead to the tenant being directed to deliver possession of the property; and under S. 25, when the High Court has to satisfy the tests about the correctness, legality or propriety of the order or decision, which is an order of eviction, and which could be obtained by proving any one of the many grounds as taken in the petition already filed; it cannot be held that the High Court would be exercising an appellate power by permitting the landlord to sustain the order on grounds already taken in the petition and which had been held against him, though ultimately he succeeded in the petition on one or some of the grounds taken by him. In the nature of powers conceived of under S. 25, on a revision petition provisioned by one of the parties to the proceedings, the entire proceeding is at large before the High Court; which could go into not only about the regularity of such proceedings, but on other aspects spelt out in S. 25. In satisfying itself on these aspects, it had been conferred with re-visional powers, wider than that of S. 115, C.P.C. and when one of the parties to the proceedings tries to jeopardise the order, the High Court gets the jurisdiction to look into the entirety of records.

19. As to how far the High Court in such a contingency at the instance of respondent could consider the contents of the records of the appellate authority, it would be necessary to refer to S. 23(3), which reads as follows:

The appellate authority shall call for the records of the case from the Controller and after giving the parties an opportunity of being heard, and, if necessary, after making such further inquiry, as he thinks fit either personally or through the Controller, shall decide the appeal.

What the appellate authority could do, by analysing the oral and documentary evidence already on record or making further inquiry as on his own when the appeal is pending on his file; are quite different from what the High Court could do under S. 25, when the respondent before it wants to justify the order of eviction by relying upon the grounds which have been held as against him by the appellate authority. With the materials already gathered, and only to the extent to which the petitioner could invoke the re-visional jurisdiction as conceived of under S. 25; the respondent could be permitted redo in sustaining the order of eviction in respect of disallowed grounds. In justifying the order of eviction on excluded grounds, he cannot ask the High Court to reappraise the evidence as could be done before the appellate authority, of course, in disposing of the matter, as held in *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, and *Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar*, High Court would consider the points taken by the respondent in sustaining the order of eviction, to the extent permissible thereunder.

20. Hence, the power so exercisable would not lead to the obliteration of the distinction existing between the re-visional and appellate jurisdiction, as apprehended by Mohan, J. The distinction would continue to be maintained bearing in mind the decision of the Supreme Court above referred to. This right available to the respondent, in the revision petition is certainly not based on O.

41 R. 22 C.P.C. being invoked, but on the nature and extent of powers conferred on the High Court under S. 25, which is enjoined to satisfy itself on the correctness of the order or decision, which means that, whether order of eviction is sustainable on any one of the grounds taken by him in the petition as filed, provided he established his rights as known to law. That was why the Division Bench of Madhya Pradesh High Court in Seetaram and Others Vs. Smt. Ramabai and Another, , held that, a party who has an order in his favour is entitled to show that the order is justifiable on some other ground (in this case on a statutorily conceived ground, which was decided against it by the court below)

21. Hence, the reference made is answered by holding that, on a proper interpretation of the scope of powers exercisable under S. 25, it is well open to the respondent to satisfy the High Court about the correctness, legality, etc., of the order, once that appellate order is brought before it by an aggrieved party, and in examining the records of the appellate authority, it could do it only within the ambit of powers that could be exercisable by it under S. 25 Subsequent to the above Order, these petitions coming on for hearing, the Court made following

ORDER

Bellie, J.

22. Of these two civil revision petitions C.R.P. 4572 of 1932 arises out of rent control proceedings in H.R.C. 3006 of 1978 and H.R.A. 559 of 1980 and C.R.P. 3174 of 1983 arises out of rent control proceedings in H.R.C. 3487 of 1981 and R.C.A. 1492 of 1982. Both the proceedings relate to one tenancy of the building No.5 Thiru Vi. Ka. Road, Madras-14. Both the H.R.C, petitions have been filed by one R.T. Mani against one Durgai Ammal. The two C.R.Ps, were heard together. In these circumstances a common judgment can be rendered in both these matters.

23. The petitioner R.T. Mani filed H.R.C. 3006 of 1978 alleging that one T. Balakrishna Mudaliar was the owner of the premises No. 5 Thiru Vi. Ka. Road, Madras-14. He died on 4-3-1974, leaving a Will. The will was probated on 21-7-1976. Under the will one Thiruvengada Mudaliar was a legatee with absolute right over the petition premises. The said Thiruvengada Mudaliar died on 4-3-1978 leaving his widow Padma-lochana as his only heir. The petitioner purchased the, premises from Padmalochana on 20-4-1978. The respondent Durgai Ammal was a tenant under the said Balakrishna Mudaliar and later under Thiruvengada Mudaliar. By virtue of his purchase from Padmalochana the petitioner became the owner of the said premises. The respondent became tenant under him. The petitioner caused a notice through his advocate on 13-7-1978 to the respondent but it was returned, and thereafter, a copy of the letter was sent under Certificate of Posting on 31-7-1978. To that the respondent through her lawyer sent a reply on 11-8-1978. The petitioner sent another notice on 28-9-1978 directing the respondent to pay rent to him from 1-5-1978 at the rate of Rs. 350 per month and the letter was received by the respondent on

29-9-1978. But the respondent did not heed to that. Therefore the respondent has denied title of the petitioner and she has also willfully failed to pay rent for the period from 1-5-1978 to 30-9-1978, i.e., for six calendar months amounting to Rs. 2100 at the rate of Rs. 350 per month. Therefore the respondent is liable to be evicted.

24. In a counter statement the respondent denied that she was a tenant under Thiruvengada Mudaliar Balakrishna Mudaliar. It is contended that after the death of Balakrishna Mudaliar, the respondent became a tenant under Radhakrishna Mudaliar, a brother of Balakrishna Mudaliar on a monthly rent of Rs. 15 and she was paying the rent to Radhakrishna Mudaliar and later to his legal heir. On receipt of the notice from the petitioner the respondent wanted to verify the relevant records to satisfy herself about the title claimed by the petitioner in view of the facts stated above, but instead of giving the respondent a chance to verify the records, the petitioner has chosen to come to the court. There is no willful default on the part of the respondent in paying the rent. Further, she has been served with a notice from one Suit. Paripoornammal claiming rights. The petitioner's claim of Rs. 350 as monthly rent is baseless and the rent payable for the premises is only Rs. 15. The respondent never denied the petitioner's title nor accepted it. The respondent has paid a sum of Rs. 120 in the court towards the rent for 8 months from May 1978 to December 1978 without prejudice to her rights. Therefore the petition is liable to be dismissed.

25. The learned Rent Controller rejected both the grounds of the petitioner, namely, that the respondent mala fide denied the petitioner's title and that she committed willful default in payment of rent and therefore the petition was dismissed. As against that the petitioner preferred an appeal H.R.A. 559 of 1980 and the appeal was allowed on both the grounds i.e., on the ground that the respondent mala fide denied the petitioner's title and also has committed willful default. As against this order of the appellate authority the respondent preferred C.R.P. 986 of 1981, to this Court and the learned single Judge of this court who heard the civil revision petition set aside the order of the appellate authority and remanded the matter directing further enquiry as directed in his order and to dispose of the matter afresh. Thereupon the appellate authority after enquiry as directed found that the rent payable by the respondent is Rs. 15 and not Rs. 350 as alleged by the petitioner and once again held that the respondent has mala fide denied the petitioner's title and she has committed willful default in payment of rent and therefore she was liable to be evicted. As against this, again the respondent filed the present C.R.P. 4572 of 1982.

26. In the meanwhile the petitioner filed H.R.C. 3487 of 1981 alleging that during the currency of the said H.R.C. proceedings No. 3006 of 1978, the respondent committed willful default in payment of rent even at the admitted rate of Rs. 15 for seven months from 1-12-1980 to 30-6-1981 and that the petitioner is not in occupation of any premises of his own in the city and he is now in the occupation of a rented premises and the petitioner bona fide requires

the petition premises for his own occupation and therefore the respondent is liable to be evicted. The respondent filed a counter statement denying that she committed any default in payment of rent as alleged and the petitioner's claim of the premises for his own occupation is mala fide,

27. The Rent Controller rejected both the grounds taken by the petitioner and therefore dismissed the petition. In the appeal filed by the petitioner the appellate authority in H.R.A. 1492 of 1982, accepted the petitioner's case of willful default, but rejected his case of bona fide requirement for his own use, and consequently he ordered eviction of the respondent on the ground of willful default.

28. As against this order of the appellate authority the respondent has tiled C.R.P. 3174 of 1983.

29. It is thus both the revisions were filed in this court. They were heard by Mohan, J. It appears that the landlord (respondent in C.R.P.) claimed that he can argue that the rejection by the appellate authority of his ground of bona fide requirement of the premises for his own occupation is wrong and he can seek eviction on that ground also. Mohan, being himself unable to agree with this argument but finding that there is a judgment of another single Judge with whom the argument has found favour, wanted the matter to be posted before a Bench, and accordingly the matter came up before us. By an order dated 27-1-1987 we held that the landlord can argue so, but not beyond the ambit of power given in S. 25. We then proceeded to deal with the revision petition ourselves.

30. Now we will take up C.R.P. 4572 of 1982. The petitioner T.R. Mani's claim (petitioner in HRC 3006 of 1978 as well as in the revision) that he is the owner of the premises is not now seriously disputed. According to him, Balakrishna Mudaliar was the original owner. He died on 4-3-1974, leaving a will which was probated on 21-7-1976 in O. P. 23 of 1976 and as per that will Thiruvengada Mudaliar became the owner and Thiruvencada Mudaliar died on 4-3-1978 leaving his widow Padmalochana as the only heir and from her the petitioner purchased the premises on 20-4-1978 and thus he became the absolute owner. That Balakrishna Mudaliar was the original owner of the premises and that the respondent Durgai Animal (respondent in H.R.C, and in this revision) has been a tenant under Balakrishna Mudaliar and subsequently under Thiruvengada Mudaliar is not in dispute. It is also not disputed that he left a will under which Thiruvengada Mudaliar became the owner and after his death T.R. Mani petitioner purchased the premises from the deceased Thiruvengada Mudaliar's wife, Padmalochana. However, it is the case of the respondent Durgai Ammal that after the death of Balakrishna Mudaliar she became a tenant under the brother of Balakrishna Mudaliar namely Radhakrishna Mudaliar on a monthly rent of Rs. 15. Durgai Ammal does not admit that she was a tenant under Balakrishna Mudaliar. It is the further case of the respondent that she came to know about the purchase by the petitioner only from the notice sent by him through his lawyer.

In the counter statement the respondent has further stated that she wanted to verify the records to satisfy herself as to the petitioner's title, and she never denied the petitioner's title. The petitioner has now filed photostat copy of the probated will Ex.B-8, executed by Balakrishna Mudaliar under which Thiruvengada Mudaliar was the legatee and the photostat copy of the sale deed Ex.P-7 executed by Padmalochana in favour of the petitioner. The respondent has not said anything as to the genuineness and reliability of these documents. There is none in the proceedings making rival claim to the title of the premises and the respondent has not made out any such case. Therefore, it is free from any doubt that the petitioner is the owner of the premises. Both according to the petitioner as well as the respondent the respondent is a tenant in the premises. As the owner the petitioner is entitled to receive the rent and as the tenant the respondent is liable to pay rent. In this position as per S. 2(6) which defines "landlord" the petitioner is the landlord in respect of the premises in question and therefore the respondent-tenant shall pay rent to him. Thus clearly there is landlord and tenant relationship between the petitioner and the respondent.

31. Now as regards the petitioner's claim that the respondent mala fide denied his title, it is even according to the petitioner the respondent has been a tenant in the premises from the time of Balakrishna Mudaliar. But according to the respondent she was there as a licensee under Balakrishna Mudaliar. This appears to be the fact as it is borne out by Ex.R-3, copy of the plaint in O.S. 1665 of 1968 filed in H.R.C. 3487 of 1981 and Ex R-5, certified copy of the execution petition filed in H.R.C. 3487 of 1971. (The said and the execution petition have been filed by Balakrishna Mudaliar against the respondent herein) Ex. B5 discloses that when Balakrishna died during the pendency of the execution petition Radhakrishnan has been impleaded as a legal representative. Therefore when the respondent says that she became a tenant under Radhakrishnan it appears quite probable. The petitioner has not let in evidence to show that the respondent was a tenant under Balakrishnan or anybody else other than Radhakrishnan. According to the respondent, as seen above, she was paying the monthly rent at Rs. 15. While so the first time in his notice Ex.P-1 in H.R.C. 3006 of 1978 dated 13-7-1978, the petitioner called upon the respondent to attorn the tenancy to him and pay rent at Rs. 350 per month. He has not stated that the respondent was paying Tent at Rs. 350 to any of the predecessors of the petitioner. To this notice Ex.P-1, the respondent sent Ex.P-4 in H.R.C. 3006 of 1978, reply requesting the petitioner to send a copy of the will, probate proceedings and counterfoil of rented receipts issued by the predecessors. In the circumstances, stated above, it does not appear to be anything wrong in the said reply notice of the respondent. Again in the next notice Ex.P-5 in H.R.C. 3006 of 1978, dated 28-9-1978 the petitioner has stated that the respondent has committed willful default in payment of rent an not paying the rent at the rate of Rs. 350 per month from 1st May 1978 to 31st October 1978 and that the tenancy is terminated from 31st October 1978 and in reply to this the respondent has sent Ex.P-6 dated 19-10-1978, once again requesting the

petitioner to satisfy her as to his claim of title and also stating that the rent she was paying was only Rs. 15, As a next step straightaway the petitioner has filed the eviction petition. Considering the conspectus of these facts we are unable to agree that the respondent mala fide denied the title of the petitioner. Therefore the plea taken by the petitioner that the respondent mala fide denied his title has to fail.

32. Now the question is whether the respondent is liable to be evicted for nonpayment of rent. As stated above, according to the petitioner, the rent was Rs. 350 per month. The respondent has denied that at any time she paid Rs. 350 as rent and as a tenant under Radhakrishnan she was paying Rs. 15 per month. Apart from the interested oral testimony of the petitioner P.W. 1, there is absolutely nothing to show that the rent was Rs. 350 per month. The petitioner has not examined any of his predecessors to speak to the quantum of rent. Not a scrap of paper had been filed by him in this regard. In this position it is rather impossible to believe this the rent was Rs. 350 per month as alleged by the petitioners. It is the definite case of the respondent that she was paying only Rs. 15 to Radhakrishnan. In fact it appears from Ex R-3 in H.R.C. 3006 of 1978, money order coupon that the respondent sent a sum of Rs. 90 as six months rent. That has been refused by Radhakrishnan. This will give at least some credence to the respondent's case that the rent was Rs. 15. In this position of the evidence the case of the respondent is more probable than that of the petitioner. The appellate authority has also held that the agreed rent is Rs. 15. Hence we have to proceed with the matter on the basis that the rent payable by the respondent was Rs. 15 per month.

33. According to the petitioner, the respondent did not pay any rent to him. But without any basis whatsoever, informing that he has purchased the premises, he demanded rent at Rs. 350 per month. The respondent has requested in her reply letter the petitioner to enable her by sending copies of document to be satisfied that the petitioner is the present owner of the premises, but in disregard of her request the petitioner has straightaway filed the petition for eviction. Thus on a mere information that the petitioner purchased the premises he expected the respondent to pay the rent to him that too without any basis at the rate of Rs. 350 per month, which the rent payable according to the respondent is Rs. 15 per month. In these circumstances non-payment of rent to the petitioner cannot be taken to be willful. In *S. Sundaram Pillai and Others Vs. R. Pattabiraman and Others*, it has been laid down that-

A consensus of the meaning of the word "willful default" appears to indicate that default in order to be willful must be intentional, deliberate, calculate and conscious with full knowledge of legal sequences flowing there from."

It is then argued that even at the agreed rate of Rs. 15 per month, not only the respondent has not sent the rent to the petitioner but also she has not deposited it as she is enabled under S. 9 and therefore she must be deemed to have committed willful default in payment of rent. In support of this plea reliance is

placed on the decision in G.K. Jose and Others Vs. Ramathal, . In that case the rent sent by the tenant was refused by the landlord but nevertheless it was found by Ramanujam, J. that the tenant committed willful default for the reason that she has not deposited the arrears of rent in a bank or before the Rent Controller, and therefore the default should be taken as willful. On the basis of this judgment it is argued in this case that when there is a bona fide doubt or dispute as to the person who is entitled to receive the rent the tenant has the right to deposit the rent before the Rent Controller but she did not do so and hence it follows that she committed willful default. But with great respect we are unable to agree with the learned Judge. S. 8 provides that in case the landlord refuses to receive rent tendered by the tenant the tenant can call upon the landlord to name a bank where she can deposit it and if he fails to do so the tenant can send it by money order and if even that money order is not received, the tenant can deposit the rent before the Rent Controller. But it is nowhere stated that if the tenant does not do so it will amount to willful default. When a landlord refuses to receive the rent sent by the tenant it is his fault. He cannot subsequently say that the tenant has not exercised his right given under S. 8, and, therefore, he must be taken to have committed willful default. Similarly, if the tenant has not deposited the rent before the Rent Controller in case of bona fide doubt as to the person who is entitled to receive the rent and the person concerned does not help to remove the doubt of the tenant, the tenant cannot be said to have committed willful default in payment of rent. Therefore we find that the finding of the Appellate Authority that the tenant committed willful default in payment of rent is wrong and hence that finding has to be set aside.

34. Now coming to C.R.P. 3174 of 1983, here too there is a ground of the petitioner that the tenant committed willful default. According to the petitioner during the pendency of the proceedings in H.R.C. 3006 of 1978 the respondent has paid towards rent due Rs. 180, Rs. 75, Rs. 75 and Rs. 145 totalling to Rs. 475, and there is still a balance of Rs. 105 and this non-payment of rent is willful. The respondent would contend that he has paid rent in full and there was no arrears. But even if there was arrears of rent of Rs. 105, as contended by the petitioner he cannot with that as a ground institute a fresh H.R.C. proceeding. In this respect S. II is relevant which deals with payment or deposit of rent during the pendency of eviction proceedings. As per this Section as provided in sub-S. (1) no tenant against whom an application for eviction has been made shall be entitled to contest the application or to prefer any appeal against any order made by the Controller on the application unless he has paid or pays to the landlord, or deposits with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building upto the date of payment or deposit, and continues to pay or to deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Controller or the appellate authority as the case may be. The section in sub-S. (3) further provides that where there is any dispute as to the amount of rent to be paid or deposited under sub-S. (1) the Controller or the

appellate authority, as the case may be, as aforesaid, shall on application made to him either by the tenant or by the landlord, and after making such enquiry as he deems necessary, determine summarily the rent to be so paid or deposited. The Section then provides in sub-S. (4) that if any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

35. Therefore if during the rent control proceedings, the tenant does not pay rent, the landlord can file an application in that respect before the Controller and the Controller on his satisfaction will terminate the proceedings and direct the tenant to put the landlord in possession of the premises. Thus in the Act a special machinery has been provided to deal with non-payment of rent by the tenant during pendency of the rent control proceedings. The landlord in disregard of or by-passing this provision cannot institute a fresh proceeding on the ground of non-payment of rent. This apart, even as per the petition itself during the proceedings the tenant was paying rents in lump sum some time even once in 12 months and the landlord has received them. Therefore nonpayment of 7 months rent cannot be said to be willful. It is not the landlord's case that this rent was not paid in spite of demands. Therefore, the present petition i.e., H.R.C. 3487 of 1981, as regards the ground of nonpayment of rent cannot be sustained. Hence, the findings of the appellate authority that the tenant has committed willful default and on this ground he is liable to be evicted has to be set aside.

36. What remains is the ground for owner's occupation which the landlord has lost in the courts below, but permitted to argue in the revisions. First of all this ground has not been taken in the earlier petition in H.R.C. 3006 of 1978. It is not the petitioner's case, that a necessity for owner's occupation has arisen subsequent to the filing of the petition in H.R.C. 3006 of 1978. In fact, even in the notice issued by the petitioner even before the petition in H.R.C. 3006 of 1978, it has been stated that the petitioner requires the premises for his own occupation but that ground has not been taken in H.R.C. 3006 of 1978. This would only show that when H.R.C. 3006 of 1978 was filed there was no necessity for owner's occupation. May be the petitioner while issuing the notice thought that he can state in that notice all conceivable grounds to threaten the tenant, but subsequently realising that there is no bona fide requirement for his own occupation that ground has not been taken in the petition. This itself is a strong circumstance to show that the ground taken for own occupation in the second petition is mala fide. It appears finding that he may not succeed on the grounds taken in the first petition he has taken this ground in the second petition. We doubt very much that when the ground for owner's occupation could be availed of by the petitioner in the first petition, he failing to take that ground can plead that ground in a second petition. This point has not been argued before us and therefore we leave this point open. Now in the petition it is just stated that the petitioner is living in a rented premises and the petition premises is required for

own use and occupation of the members of his family since it is situate adjacent to his business premises. This is rather vague. It is not at all stated that the premises the petitioner is in occupation is not sufficient for his family or is inconvenient or he wants to shift his residence to the petition premises. In his evidence the petitioner P.W. 1 has stated that in the rented premises is in occupation and he has let out a portion to one Kuppuswami and that Kuppuswami has vacated that portion and since then it is two years. This portion has not been occupied by him. If really he wants additional accommodation he could have definitely occupied the portion vacated by Kuppuswami. But he has not done so. The petition premises is of an area of 214 sq. ft. Therefore we are not at all satisfied that the petitioner's claim is bona fide. Further, both the courts below have concurrently found that the petitioner's claim for owner's occupation is mala fide. In the result, therefore, both the civil revision petitions are allowed with costs.