

(2013) 09 MAD CK 0357

In the Madras High Court

Case No : C.R.P. (NPD) No. 744 of 2012 and M.P. No's. 1 and 2 of 2012

J. John Jaba Singh rep. by its Power Agent

APPELLANT

Vs

Mrs. K. Indira, Mr. K.S. Ramakrishna Rao and Mrs. S. Shyamala

RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Citation : (2013) 5 LW 604

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : R. Gandhi, for Mr. S. Jayaprakash, for the Appellant; S. Balaji, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The tenant is the revision petitioner and the landlords are the respondents herein. The landlords filed R.C.O.P. No. 2149 of 2006, before the learned Rent Controller, seeking eviction of the tenant on the ground of owners' occupation.

2. The learned Rent Controller, allowed the said Petition and granted two months' time for eviction. Challenging the same, the tenant filed R.C.A. No. 637 of 2007, before the learned Rent Control Appellate Authority, who also confirmed the findings of the learned Rent Controller, holding that the requirement of the petition premises by the landlords is bona fide and the landlords are not in occupation of any other residential building of their own and dismissed the Appeal. Aggrieved by the same, the present Civil Revision Petition is filed by the revision petitioner/tenant.

3. Mr. R. Gandhi, the learned Senior Counsel for the revision petitioner/tenant contended that even according to the Petition, the landlords have taken up a premises, in Flat "B" Ground Floor, Venkata Villa, 75, Ormes Road, Kilpauk, Chennai, on rent and thereafter, requested the revision petitioner to vacate and

handover vacant possession of the petition premises, as they are residing in rented premises in the aforesaid address, and therefore, the petition premises is required for their own occupation and hence, they filed the Petition for eviction.

4. The learned Senior Counsel for the revision petitioner further contended that the rent sent to the respondents/landlords to the address at No. 75, Ormes Road, Kilpauk, Chennai, as stated in the Petition was returned with an endorsement "no such person is living in that address" and complaint was also given to the Police stating that the whereabouts of the respondents/landlords are not known to the revision petitioner and according to the revision petitioner, the respondents/landlords must be in possession of a building of their own, and, unless the respondents/landlords come forward and prove that they are residing in the rented premises, they are not entitled to the relief of possession of the petition premises and this aspect was not properly appreciated by the Courts below.

5. I am unable to accept the contentions of the learned Senior Counsel for the revision petitioner/tenant.

6. In the Petition, it was alleged by the respondents/landlords that the petition premises was let out to the tenant on a monthly rent of Rs. 10,000/- and Rs. 750/- towards other amenities and they are residing in a rented flat in the aforesaid address. They also sent a legal notice, on 20.10.2006, requesting the revision petitioner/tenant to vacate the premises, to which, a reply notice, dated 31.10.2006, was sent by the revision petitioner, stating that the landlords are having house of their own and that was also denied in the Petition.

7. In the counter affidavit, the revision petitioner/tenant has not stated that the landlords are having a house of their own. It is only stated that there is no bona fide in the Petition. The first petitioner also does not want to evict the tenant and the Petition was filed with an ulterior motive on the ground of owners' occupation, without any bona fide.

8. During evidence, the landlords admitted that they have shifted the residence from No. 75, Ormes Road, Kilpauk, Chennai, to Mogappair. They also denied the suggestion that the house, where, they are residing at Mogappair is their own house.

9. It is also seen from the judgment of the learned Rent Controller that the respondent did not enter the box to prove that the landlords are having house of their own, wherein, they are residing. Except to put suggestion in the cross-examination that the landlords are residing in their own house, which was also denied by the landlords, no attempt was made by the revision petitioner/tenant to prove that the landlords are residing in their own house, and therefore, there is no bona fide. All these aspects were properly and rightly considered by the learned Rent Control Appellate Authority.

10. Further, as per Section 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and

Rent Control) Act, in case of a residential building, which the landlord requires for his own occupation, or, for occupation of any member of his family, he, or, any member of his family shall not be occupying any residential building that is owned in the city/town/village, and he may apply to the controller for an order asking the tenant to put the landlord in possession of the building.

11. Therefore, if the landlord perceptibly pleads in the Petition that except, the petition premises, which was let out to the tenant, he is not in possession of any other building of his own, he is entitled to the order of eviction, if he is able to prove his bona fides. If the tenant pleads that the landlord is having house on his own, where, he is residing, it is for the tenant to prove the same through documentary evidence.

12. In this case, the tenant has not entered the witness box, nor, he marked any document in support of his case. The landlords examined themselves as P.W. 1 and P.W. 2 and marked the legal notice, reply notice and the rent agreement, as exhibits. It is also admitted that the tenant has taken the petition premises on lease and the landlords were residing in No. 75, Ormes Road, Kilpauk, Chennai, which is a rented building, and thereafter, shifted their residence to Mogappair, which is also a rented building. Therefore, the revision petitioner/tenant failed to prove that the respondents/landlords are having building of their own in the City of Chennai, and without proving the same, it cannot be contended by the revision petitioner/tenant that the respondents/landlords are not entitled to seek eviction, when the claim of the landlords is not bona fide.

13. The main contention of the learned Senior Counsel for the revision petitioner is that the whereabouts of the landlords were not known and the rent sent by the tenant to the landlords" address was returned.

14. In this case, eviction was sought for, not on the ground of willful default, but, on the ground of owners" occupation and therefore, the non-receipt of rent by the landlords will not have any impact and considering the fact that the landlords are residing in a rented building and the tenant failed to prove that the landlords are having building of their own, both the Courts below have rightly ordered eviction. Hence, I do not find any illegality or perversity in the judgment and order passed by the Courts below. In the result, the Civil Revision Petition, being devoid of merits, is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.