

(2013) 08 MAD CK 0020

In the Madras High Court

Case No : C.R.P. (NPD) No. 1913 of 2010

Kubrabai (Deceased) and Others

APPELLANT

Vs

Hydraulics and Prime Movers Agencies Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citation : (2014) 1 LW 405 : (2014) 1 MLJ 351

Hon'ble Judges : K. Ravichandrababu, J

Bench : Single Bench

Advocate : V. Prakash, for P. Chandrasekaran, for the Appellant;

Judgement

K. Ravichandrababu, J.—The petitioners are the landlords. They filed R.C.O.P. No. 1533 of 2001 on the file of the Small Causes Court,

Chennai against the respondents herein seeking eviction under sections 10(2)(ii) (a) and 10(3)(a)(iii) of the Tamilnadu Buildings (Lease and Rent

Control) Act 18 of 1960. The learned Rent Controller dismissed the eviction petition. The landlords preferred an appeal before the Rent Control

Appellate Authority in R.C.A. No. 703 of 2003. The Appellate Authority by concurring with the findings rendered by the learned Rent Controller

dismissed the appeal. Thus, the present civil revision petition is filed by the landlords. The case of the landlords/petitioners is as follows:

They are the co-owners of the petition premises at No. 50 (old) and 103 (New), Armenian Street, G.T., Chennai 600 001. They entered into a

lease agreement dated 30.1.1992 with one P. Tamilarasi in respect of a non-residential portion of the above said premises marked as shop No. 9

in the ground floor. The monthly rent payable is Rs. 2,700/- per month. The 12th petitioner is carrying on business along with his father under the

name and style of Shazaib Trading Company at No. 99 (Old), 203 (New), Angappa Naicken Street, Chennai 600 001, which is a rented

premises. The 12th petitioner being the co-owner of the petition premises seeks the same on the ground of owners occupation so as to enable him

to shift his business from the rented premises. Further, when the lease agreement was entered only with the said Tamilarasi, he had sublet the

petition premises to a Company called a National Hardware India without the consent of the landlords. The second respondent is the Proprietor of

the said Firm. Therefore, on both the ground of owners occupation and subletting, the landlords filed the above civil revision petition.

2. The respondents herein as the respondents before the Rent Controller denied the contentions raised by the petitioners. They disputed the

bonafide requirement of the 12th petitioner. It is also disputed by them that there is no subletting and on the other hand, the second respondent is

the husband of the said Tamilarasi who in turn, is the Managing Director of the first respondent Company.

3. The learned Rent Controller as well as the First Appellate Authority rejected the claim of the landlords by holding that there is no sub tenancy

and that the claim of the 12th petitioner on the ground of owners occupation is without bona fide.

4. In this civil revision petition, notice was ordered to the respondents. However, the Court Amin could not effect service of notice on the reason

that the premises was found locked always. It was also noted by the Amin that there was no name board in the said address. Private notice sent

was also returned as "no such person". Therefore, this Court directed substituted service. Consequently, the substituted service was also effected

by paper publication on 18.7.2013. When the matter was taken up for hearing on 19.8.2013, none appeared for the respondents and however,

their names were printed in the cause list.

5. Heard Mr. V. Prakash, learned senior counsel appearing for the petitioners and perused the materials placed before this Court.

6. The petitioners are the landlords. They seek eviction of the respondents on two grounds viz., owners occupation u/s 10(3)(a)(iii) and subletting

u/s 10(2)(ii)(a) of the Tamilnadu Buildings (Lease and Rent Control) Act.

7. In so far as the ground of subletting is concerned, it is the contention of the

landlords that the premises was sublet by the first respondent/tenant to the second respondent. It is their contention that the second respondent is carrying on business in the petition premises under the name and style of National Hardware India. A perusal of the averments made in the eviction petition would show that except saying that the first respondent has sublet the premises to the second respondent without written consent of the petitioners, no other details were given by the petitioners in respect of the relationship between the first and second respondents. On the other hand, it is contended by the respondents that the first respondent is continuously doing business in the petition premises and the second respondent is none other than the husband of the Managing Director of the first respondent and therefore, there is no subletting of the premises in favour of the second respondent. The said contention with regard to the relationship between the parties is not disputed by the landlords. At the time of arguing the matter before the Court below, the landlords submitted that the lease deed was executed in favour of Tamilarasi, who sublet the premises to the first respondent and the first respondent's son is doing business in the petition premises. Even though such argument was advanced before the Court, there was no pleadings to that effect. The Appellate Authority has rightly found that in the absence of any pleadings, no amount of evidence can be looked into.

8. It is an admitted fact that the said Tamilarasi is the Managing Director of the first respondent Company. It is also admitted that the second respondent viz., Subbiah is the husband of the said Tamilarasi. Even though it is contended by the landlords that they let the premises only in favour of Tamilarasi, they have filed the eviction petition by arraying the Company as the first respondent, in which, the said Tamilarasi is acting as a Managing Director. It is specifically admitted by them in their eviction petition that the respondent is their tenant. That means they recognised the Hydraulics and Prime Movers Agencies, Pvt. Limited represented by its Managing Director Ms. P. Tamilarasi as the tenant. Therefore, they cannot be permitted to contend that the premises was let out only to Tamilarasi in her individual capacity, who in turn, sublet the premises to the second respondent.

9. No doubt, the landlords marked Exhibits P-11, P-12, P-15, P-16 to P-18 viz.,

telephone bills and postal covers to show that the second

respondent is doing the business in the petition premises. However, it is not specifically pleaded or proved before the Courts below that the second

respondent alone is in exclusive possession of the petition premises and that the first respondent is not doing the business therein. Therefore, the

Courts below has rightly rejected the petition on the ground of subletting with which this Court finds no ground to interfere.

10. In so far as the other ground viz., the owners occupation is concerned, the lower Appellate Court has found at paragraph No. 14 of its

judgment that the 12th petitioner is carrying on business in the rented building on the date of filing of the application and the petitioners are not

owning any other nonresidential building in the city of Chennai and the requirement of the petitioners is bonafide one. Further, at paragraph No. 15,

the Appellate Authority has pointed out that the petitioners clearly established that the 12th petitioner is carrying on business in the rented premises

and there was no specific denial in the counter statement filed by the tenants to the effect that P.W. 1 viz. the 12th petitioner is not doing any

business. It is also found by the Appellate Court that the petition filed u/s 10(3) (a)(iii) of the Act is maintainable as the 12th petitioner is doing

business at No. 99. Angappa Naicken Street, Chennai in a rented premises. Therefore, the Appellate Authority has found that there is no necessity

for filing an application u/s 10(3)(c) of the Act. However, the Courts below rejected the petition on the ground of owners occupation only on the

reason that the 12th petitioner is also one of the co-owners of the petition premises and when he is in occupation of the nonresidential building as a

co-owner, the same would disentitle him from seeking eviction on the ground of owners occupation. In support of such conclusion, the Appellate

Authority relied on the decision of the Apex Court in Super Forgings and Steels (Sales) Pvt. Ltd. Vs. Thyabally Rasuljee (Dead) through Lrs., .

11. It is also pointed out by the Appellate Authority that the petitioners failed to establish the bona fide on the ground of owners occupation. It is

pointed out that the notice issued to the respondents under Exhibits P-2, P-6 and P-9 did not mention with regard to the claim of the petition

premises for owners occupation. It is also noted by the Appellate Authority that earlier, the landlords have filed R.C.O.P. No. 426 of 1996,

seeking eviction on the ground of additional accommodation by specifically contending that the 12th petitioner is doing business in the first floor of the same petition premises. Thus, considering all these facts, the Courts below have found that the petitioners are not entitled to the relief on the ground of owners occupation.

12. It is to be noted that, admittedly, the petitioners have stated in the eviction petition that they are the joint owners of the undivided land and superstructure of the petition premises and that the 12th petitioner along with his father is doing business in hardwares and tools in another premises, which is rented place. Therefore, it is stated by them that the 12th petitioner wanted to shift his business to the petition premises for which the other co-owners have no objection. Though the petitioners have not specifically stated that the 12th petitioner is not owning any other premises except the petition premises, it is not claimed by the tenants that the 12th petitioner is owning any other premises. On the other hand, it is their contention that the 12th petitioner being the co-owner and occupying a portion in the same premises, is not entitled to maintain the present application. This objection has been accepted by the Courts below by contending that the 12th petitioner being the co-owner of the petition premises, cannot seek eviction on the ground of owners occupation.

13. In my considered view, both the Courts below have concurrently erred in holding that the 12th petitioner is not entitled to seek the petition premises on the ground of owners occupation, merely because he happens to be the co-owner of the same. It appears that a wrong understanding of the decision of the Apex Court in *Super Forgings and Steels (Sales) Private Ltd. v. Thyabally Rasuljee (Dead) through L.Rs. (supra)*, has resulted in passing the above concurrent orders.

14. A perusal of the said judgment of the Apex Court would show that the landlords therein were carrying on the business in a non-residential building of which they were co-owners and therefore, they can be regarded as landlords, who are occupying their own non-residential building and therefore, they were not entitled to retain the benefit of the eviction order made by the Rent Controller against the tenant for carrying on the business by the first respondent therein, on the ground that he did not occupy the non-residential building for the purpose. It is also observed

therein that if a landlord is a co-owner of the non-residential building which he is occupying for the purposes of carrying on his business, then that

would disentitle him to obtain possession of such building from a tenant for his bona fide requirement.

15. At this juncture, it is useful to refer to the relevant provision under the Rent Control Act viz., 10(3)(a)(iii) of the Tamilnadu Buildings (Lease and

Rent Control) Act. A perusal of the said provision of law would show that the requirement contemplated therein is that the landlord or any member

of his family is not to occupy for the purposes of a business which he or any member of his family is carrying on, a non-residential building in the

city, town or village concerned, which is his own. To put it simply, the mandatory requirement is that the person who seeks eviction of the tenant

u/s 10(3)(a)(iii) of the Act should not own a building of his own or any member of his family for the purposes of a business which he is carrying on.

Therefore, what is required is that the landlords herein should not own any other premises of their own other than the petition premises so as to

seek eviction of the respondents from the same. But, in the present case, the eviction was rejected only on the reason that the 12th petitioner is

also one of the co-owner of the petition premises and therefore, the petitioner is in occupation of non-residential building and he is the co-owner of

the same, which dis-entitles him to the benefit of the eviction.

16. First of all, it is not the case of the tenants that the petitioners are owning any other non-residential building of their own. On the other hand, it is

found by the Courts below that the 12th petitioner is doing his business in a rented premises.

17. One more aspect also needs to be considered in this case. The tenants pleaded that the 12th petitioner is occupying the portion of the premises

at the first floor where the petition premises is situated. Hence, it is contended by them that the 12th petitioner being the co-owner and in

occupation of the building of his own, is not entitled to seek eviction u/s 10(3)(a)(iii) of the Act. It is quite interesting to note this contention and it

would appear as if the said contention has some force. But, a careful analysis of the requirements under the law would show that the said

contention cannot be sustained. u/s 10(3)(a)(iii), what is required to be shown is that the landlord should not own any other premises other than the

petition premises. Therefore, in my considered view, it would not preclude the landlord from seeking eviction on the ground of owners occupation

if it is shown and proved that he is not owning any other premises other than the petition premises.

18. No doubt, it is pleaded by the tenants that the 12th petitioner is doing another business at the first floor. However, the fact remains that the

12th petitioner wants to shift his business from the rented premises at No. 99, Angappa Naicken Street to the present petition premises. Therefore,

admittedly, there are two businesses being run by the 12th petitioner, one on the first floor of the petition premises and another at the rented

premises at No. 99, Angappa Naicken Street. Only to shift the business which is being done at the rented premises, the eviction petition is filed. It

is also found by the Appellate Court that those two businesses are different with different names and not one and the same and consequently, the

petition filed u/s 10(3)(a)(iii) is maintainable. In my considered view, the phrase ""a non-residential building in the city"" contemplated u/s 10(3)(a)(iii)

of the Act, is referable to the building other than the petition mentioned premises and therefore, when admittedly the petitioners are not owning any

other non-residential building then the eviction sought on the ground of 10(3)(a)(iii) ought to have been allowed. Accordingly, I find that both the

Authorities have concurrently erred in rejecting the application on the ground of Section 10(3)(a)(iii) and consequently, the revision petitioners are

entitled to succeed on this ground. Thus, the civil revision petition is allowed and the respondents/tenants are directed to vacate and hand over

vacant possession to the petitioners, within a period of three months from the date of receipt of a copy of this order. No costs. The connected

miscellaneous petition is closed.