

(2007) 07 MAD CK 0174

In the Madras High Court

Case No : C.R.P.NPD. No. 1001 of 2007 and M.P. No. 1 of 2007

Malai Murasu Owned and managed by Chennai Publications APPELLANT

Vs

Apex Agencies, P. Gnanamba and Daily Thanthi Owned and RESPONDENT
Managed by Thanthi Trust

Date of Decision : 13-07-2007

Acts Referred:

Citation : (2007) 5 MLJ 10

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : T.R.Rajagopal, SC for K. Mohanamurali, Adv, for the Appellant; A.S. Chandrasekaran, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—A challenge is made to the judgment of the learned VIII Judge, Court of Small Causes, Chennai, the Rent Control

Appellate Authority, made in RCA No. 103 of 2006, whereby the order of eviction made in RCOP No. 1467 of 1995 on the ground of willful

default and subletting was affirmed.

2. The court heard the learned Counsel on either side. The respondents 1 and 2/ the landlords made a petition for eviction on the ground that the

first respondent therein was the tenant in respect of the petition mentioned premises from 1979 paying a monthly rental of Rs. 1150/- excluding

electricity and other charges, for non residential purpose; that the first respondent has sublet the premises under the occupation to the second

respondent; that the second respondent was running a printing press and also have their administrative office at the petition premises; that the first

respondent have parted with the possession to the second respondent and the

said subletting has been taken place without the consent of the landlord and thus, on that ground eviction was to be granted and apart from that, an application for fixing fair rent has also been filed and there was monthly rental arrears from October, 1994 to March, 1995 at the rate of Rs. 1,150/- per month and thus, on both the grounds of willful default and subletting, they were to be evicted.

3. The first respondent filed counter, stating that the first respondent was not the tenant then under the petitioner; that they have surrendered the possession of the portion to the petitioners; that the respondent was the tenant for nearly four decades and right from the beginning of the tenancy, the premises was sublet to the second respondent with the consent and knowledge of the owner of the premises and apart from that, the tenancy agreement came to an end on 30.09.1994 by way of reply notice issued by the respondent; that the respondent had authorised the petitioners to take vacant possession of the portion in their occupation on 31.10.1994 and thus, from 1.11.1994, there was no relationship of landlord and tenant and under these circumstances, there was no question of any payment of rental by the first respondent or it could be termed as willful default and hence, the petition was to be dismissed.

4. The second respondent filed counter, stated that from 1961 onwards, the newspaper "Daily Thanthi" shifted its office and press to Rundals Road and "Malai Murasu" came to be published from the premises in question; that it is not correct to state the first respondent was the chief tenant and the second respondent was the sub tenant; that originally, the lease was taken by the Founder, who had two sons and there were two units, one "Daily Thanthi" run by one son and the other "Malai Murasu" run by the other son and under these circumstances, no question of sub tenancy would arise; that in the reply notice, the first respondent has clearly admitted the status of the second respondent as the tenant and under these circumstances, no question of sub tenancy or eviction would arise; that in the instant case, non payment of rental arrears came to the knowledge of the second respondent at the end of December, 1994 and thereafter, separate account was opened and the rental has been given credit to; that the first respondent was paying the balance and thus, there was no question of willful default and under these circumstances, the

petition was to be dismissed.

5. The Rent Controller, on enquiry, found that both the grounds are proved and has passed an order of eviction. Aggrieved over the same, only the

second respondent took it on appeal in RCA No. 103 of 2006 and on enquiry, the appellate authority took the view that the order of the Rent

Controller was to be sustained and accordingly, it was sustained and hence, this revision has arisen before this Court.

6. Advancing his arguments on behalf of the appellant, the learned Senior Counsel raised three contentions. The petition itself is not maintainable,

since it was not initiated against the juristic person; that they were described as Daily Thanthi and Malai Murasu originally; that subsequently, an

amendment application was taken only at the appellate stage; that so long as it is not initiated against the juristic person, the petition was liable to be

dismissed; that so far as the ground of subletting was concerned, it could not be a ground at all; that the property was leased out in the year 1961

by the previous owner to Si.Pa.Adithanar, who had two sons, namely Ramachandra Adityan and Sivanthi Adityan; that from the commencement,

there were two units, namely Malai Murasu and Daily Thanthi; that Malai Murasu came to the hands of Ramachandra Adityan and the other one

Daily Thanthi came to the hands of Sivanthi Adityan; that it is true that Daily Thanthi went to the other premises of its own, but Malai Murasu has

been carrying on its affairs in the said premises from the very commencement to the knowledge of the landlord and under these circumstances, it

would be futile to contend that originally, Daily Thanthi was the lessee and there was sublease in favour of the second respondent by the first

respondent and it cannot be accepted.

7. Added further the learned Senior Counsel that in the instant case, it has been categorically stated even in the counter filed by both the

respondents that the second respondent has got the status of the tenant; that in the instant case, there was no separate payment of rental that has

been made by the second respondent; that originally, the monthly rental was Rs. 1150/-; that it is true, Rs. 750/- per month was paid by the

second respondent to the first respondent and thus, totally Rs. 1150/- per month has been paid; that from the very beginning, there was only one

tenant, who had two sons and they had two units and under these

circumstances, it cannot be said to be sub tenancy also and hence, the authorities below have not taken into consideration all these aspects and that there was no proper evidence to show that there was sub tenancy, which remained not proved; that so far as the willful default was concerned, there was no willful default; that payments have been made regularly; that when it came to the knowledge of the second respondent that the payments were not regularly paid by the first respondent, payments have been made by the second respondent also and under these circumstances, there is no question of willful default also and hence, for all the reasons, the order of the authorities below have got to be set aside. In support of his contentions, the learned Senior Counsel has relied on the decisions of the Supreme Court reported in Mahendra Saree Emporium Vs. G.V. Srinivasa Murthy, and 1998 (1) LW 690 (Bharat Sales Ltd. v. Life Insurance Corporation of India).

8. The learned Counsel for the respondent would submit that the orders of the authorities below have got to be sustained. It is not in controversy that the property was purchased in the year 1979 by the present landlord, who was the petitioner before the Rent Controller. There was monthly rental of Rs. 1150/-, which was being paid by the first respondent, since the first respondent has been the tenant all along. After coming to know about the fact that the first respondent has sublet the property to the second respondent, a notice was issued, which resulted in reply by the first respondent. The first respondent has categorically admitted that a portion of the property has been leased out to the second respondent and it is in their possession and so far as the portion, which was in the occupation of the first respondent is concerned, the lease came to an end on 30.09.1994 and the landlord shall take the vacant possession on 31.10.1994, but when the landlord went over to take possession, they could not take possession, because nobody was available and no delivery could be taken place. The second respondent examined R.W.1. From the evidence of R.W.1 examined by the second respondent, it would be quite clear that the amount of Rs. 750/- per month was paid by the second respondent to the first respondent and the first respondent, by adding his rental also, in turn used to make the payment to the landlord. Thus, it would be quite clear that the payments have been made by the subtenant to the

main tenant and the main tenant was to make the payment. In the instant case, the main tenant comes forward to state that he sublet the property to the other tenant, but payments were made only by the first respondent by getting rental from the subtenant. Thus, it would be quite clear that it was a case of subtenancy.

9. Added further the learned Counsel that there was rental balance from October, 1994 to March, 1995 at the time of filing of RCOP. At this juncture, it is pertinent to point out that when the matter is pending for nearly 8 or 9 years, not even a penny was paid by the second respondent towards rental, though he called himself as the tenant in respect of the property. So far as the juristic person is concerned, it is true, originally, against Daily Thanthi and Malai Murasu, the petition was filed and only at the appellate stage, the petitioner came to know that under whom the management was and thereafter, the application for amendment was filed and the same was allowed and thus, the order has become final and it is also rectified and no revision was filed therefrom. So far as the first respondent was concerned, he has not preferred any civil revision petition. At this juncture, all the contentions now put forth by the second respondent in the civil revision petition cannot be maintained for the simple reason that he was only the subtenant and the main tenant has not challenged the same and hence, the order has got to be sustained.

10. The court has paid its anxious consideration on the submissions made. After doing so and after looking into the materials available, the court is of the considered opinion that the order of eviction has got to be sustained. It is a specific case of the landlord/respondent that the property was leased out from the year 1979 to the first respondent for the monthly rental of Rs. 1150/-. It is not in controversy that from the time when the landlord purchased the property from 1979, the first respondent has been making the monthly rental of Rs. 1150/-. It is not the case of the second respondent, at any point of time, that he was making any payment of rental. Though there was landlord tenant relationship between the petitioner in the RCOP and the first respondent, at no point of time, there was landlord tenant relationship between the petitioner in the RCOP and the second respondent. It is not only clear from the averment, but also from the evidence on the side of the second respondent that every month Rs. 750/- was

paid by way of cheque by the second respondent to the first respondent and the first respondent, in turn, used to make the payment of rental, by

adding his rental also. When a notice was issued by the landlord to the first respondent, the first respondent has categorically admitted that from the

year 1994 onwards, the property was sublet by the first respondent to the second respondent.

11. The only contention put forth before the authorities below and equally here also is that originally, the tenancy commenced from the year 1961

and it was Si.Pa.Adithanar, who took the property on lease; that he was the father of Ramachandra Adityan and Sivanthi Adityan and there were

two units and the two sons took the two units and that now, it cannot be said that they are the subtenants for one unit. This contention has got to be

negatived for the simple reason that so far as the present landlord was concerned, from the year 1979, the relationship of landlord and tenant has

arisen between the parties. It is a categorical case of the landlord that the tenancy was with the first respondent and they have been making

payment of rental for all along the period. As stated above, it would be quite clear that the relationship of landlord and tenant was between the

petitioner in the RCOP, the owner of the property and the first respondent. The second respondent was not in the picture till he got into the

property. The first respondent has categorically stated in the course of the counter that the second respondent has been put in possession in a

portion of the property and thus, it would be quite clear that he was inducted into the possession subsequently. Further, in the instant case, the first

respondent came with a plea that there was notice issued, by which the tenancy agreement came to an end on 30.09.1994 and the petitioner was

also authorised to take possession of the portion in their occupation on 31.10.1994 and thus, from 1.11.1994, the relationship of the landlord and

tenant came to an end. This plea though attractive at the first look, will not satisfy the legal requirement. Once there was notice given by the

landlord to the tenant and the tenant by reply notice has stated that the tenancy came to an end in a particular period and he has also authorised to

take the vacant possession of the property, it is to be noted that there was no delivery of possession of the property at all. Thus, the relationship of

the landlord and tenant came to an end on 1.11.1994 cannot also legally accepted and the tenancy continued between the landlord and the first

respondent. Pending same, the second respondent has been inducted into the possession and the payment of rental at the rate of Rs. 750/- was paid by the second respondent to the first respondent and the first respondent, in turn, has made the payment of rental. There was arrears of rental as could be found in the application. Thus, the contention put forth by the first respondent that he need not make any payment of rental, since he was out of possession cannot be accepted in law. There was neither termination of tenancy nor handing over of possession and under these circumstances, there was default, much less willful default. Hence, both the authorities below have pointed out that the first respondent was the tenant and he was liable to be evicted.

12. Under these circumstances, so long as the second respondent was the subtenant, all the contentions now put forth need not take into consideration at all. He was only the subtenant as could be seen above. Further, in the instant case, so far as the second respondent was concerned, though he was described as Malai Murasu before the Rent Controller, there was an application before the appellate forum and the same has been allowed and the amendment was also carried on, but it was not challenged. Under these circumstances, the description was found to be correct. So far as the first respondent was concerned, the first respondent himself has not challenged either the order of eviction by the Rent Controller, or when it was confirmed by the appellate forum. Hence, the contentions put forth by the revision petitioner, who is found to be the subtenant, cannot stand even for a moment in law.

13. The crowning circumstance that was brought to the notice of the court was that from the time of filing of RCOP, though the second respondent called himself as the subtenant in respect of the property, he has not even paid a penny or deposit the rental from the commencement of proceedings till this time. Thus, it would be quite clear that all vexatious defence have been taken and that too by calling himself as tenant without making any payment of rental whatsoever to the landlord. Under these circumstances, the court is of the considered opinion that there is no hesitation whatsoever in affirming the orders of both the authorities below. Accordingly, this civil revision petition fails and the same is dismissed.

No costs. Consequently, connected MP is also dismissed.

14. At this juncture, the learned Counsel for the revision petitioner would submit that reasonable time may be granted to find out suitable

accommodation and to take over the machineries and shift the machineries thereon to carry on business. Heard the learned Counsel for the

respondent also. Considering the facts and circumstances of the case, three months time is granted to the petitioner herein for the said purpose.

The petitioner is also directed to file an undertaking affidavit to that effect within a period of two weeks herefrom.