

(2005) 06 MAD CK 0055

In the Madras High Court

Case No : C.R.P. (NPD) No. 1544 of 2002

O.M.A. Thyagaraja Mudaliar (died) and Others

APPELLANT

Vs

Tamilselvi (deceased), S. Kirubakaran, Monica (Both the
minors rep. by father and natural guardian Sivakumar) and
Mrs. Bagyalakshmi (deceased)

RESPONDENT

Date of Decision : 30-06-2005

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 8(5)

Citation : (2005) 3 MLJ 427

Hon'ble Judges : AR. Ramalingam, J

Bench : Single Bench

Advocate : M. Duraiswamy, for the Appellant; V. Nicholas, for the Respondent

Final Decision : Dismissed

Judgement

AR. Ramalingam, J.—This civil revision petition has been filed by one Thyagaraja Mudaliar being the tenant of the premises in question

against the landlady viz., Tamilselvi against the order passed by the Rent Control Appellate Authority cum Principal Sub Judge, Chengalpattu in

R.C.A. No. 4 of 1997 in and by which the dismissal order passed by the Rent Controller cum District Munsif, Chengalpattu in R.C.O.P. No. 1 of

1993 has been set aside and R.C.A. No. 4 of 1997 has been allowed.

2. The brief facts leading to this revision petition can be narrated as hereunder.

The premises bearing door No. 109, Mettu Street (Gandhi Road), Chengalpattu Town was originally belonging to one Anusuya. The revision

petitioner Thyagaraja Mudaliar is a tenant in the said premises on a monthly rent of Rs. 75/= for the past many years. While so, the said Anusuya

sold the said premises in favour of the landlady Tamilselvi through a registered

sale deed in the year 1992. Thereafter, the landlady Tamilselvi issued notice in December 1992 for payment of rent and attornment of tenancy. But, the revision petitioner Thyagaraja Mudaliar, without attorning the tenancy with Tamilselvi, had chosen to set up a plea as if he had entered into an oral agreement of sale of the premises with the previous owner Anusuya and she did not inform about the sale in favour of Tamilselvi and consequently, Thyagaraja Mudaliar sent rents due for the months of August and September 1992 by money orders and they were refused by Anusuya and that further the said Thyagaraja Mudaliar filed separate R.C.O.P. No. 13 of 1992 on the file of the District Munsif, Chengalpattu u/s 8(5) of the Tamilnadu Buildings (Lease and Rent Control) Act praying for permission to deposit the rents into court.

3. However, after enquiry, the Rent Controller cum District Munsif came to the conclusion that the grounds made in R.C.O.P. No. 1 of 1993 filed by the landlady for eviction of Thyagaraja Mudaliar viz., wilful default in payment of rents, wilful denial of title and requirement of own use and occupation were not proved and further after having come to know that the landlady Tamilselvi purchased the premises from the previous owner Anusuya, the tenant Thyagaraja Mudaliar has no right to deposit the rent into court and consequently, dismissed both the petitions viz., R.C.O.P. Nos.1 of 1993 and 13 of 1992.

4. Aggrieved against such dismissal order, the landlady Tamilselvi preferred R.C.A. No. 4 of 1997 and the tenant Thyagaraja Mudaliar preferred R.C.A. No. 5 of 1997 before the Principal Sub Judge cum Rent Control Appellate Authority, Chengalpattu.

5. After hearing and considering the contentions of either side, the appellate authority cum Principal Sub Judge came to the conclusion that the grounds of wilful default, wilful denial of title and requirement for own use and occupation are bona fide and proved and that there is no justification for the tenant Thyagaraja Mudaliar to seek permission to deposit the rent into court and consequently, allowed R.C.A. No. 4 of 1997 and dismissed R.C.A. No. 5 of 1997.

6. Aggrieved against the order of the appellate authority passed in R.C.A. No. 4 of 1997, this revision petition has been filed by the tenant Thyagaraja Mudaliar by saying that the order passed by the appellate authority

cum Principal Sub Judge, Chengalpattu is not sustainable and he ought to have dismissed the R.C.A.

7. After taking me through the material records available in the light of the judgments rendered by the Rent Controller as well as the appellate authority, learned counsel appearing for the revision petitioner contended that the oral and documentary evidence has not been properly appreciated and that the dismissal order passed by the Rent Controller does not suffer from any infirmity and therefore, the order passed by the appellate authority is not proper and thereby the same is liable to be set aside. On the other hand, learned counsel appearing for the landlady also contended that the order passed by the appellate authority is perfectly proper and justified and brought to my notice about the material portions of the oral and documentary evidence available for the landlady as well as the tenant.

8. The fact remains that the revision petitioner Thyagaraja Mudaliar has no kind of right or interest upon the premises except the status of a tenant liable to pay rent to the owner. However, the fact remains that his plea of oral agreement of sale with the previous owner Anusuya cannot confer any absolute or independent right upon the premises unless and until such agreement ripens into a decree of specific performance by a competent court. On the other hand, it is an admitted fact that the landlady Tamilselvi has purchased the premises through a registered sale deed from the previous owner Anusuya in the year 1992 itself. Even afterwards, the revision petitioner has not chosen to pay rents to the purchaser Tamilselvi. It is pertinent to point out that he has chosen to file a petition u/s 8(5) to deposit the rent even though he came to know about the purchase made by the landlady Tamilselvi. He has also not chosen to issue any notice to the purchaser Tamilselvi demanding her to receive rents from him. Instead of doing so, he has chosen to send money orders for two months' rent to the previous owner Anusuya and even after rightful refusal to receive the money order by Anusuya, he was not prepared to pay the rents to the purchaser Tamilselvi. Further, it is to be pointed out that the tenant Thyagaraja Mudaliar has not chosen to open the account in a bank either in the name of the previous owner Anusuya or in the name of the subsequent purchaser Tamilselvi and it appears that he has opened the account

in his own name. So, the conduct of the tenant Thyagaraja

Mudaliar is clearly exposed that he is not prepared to pay rents either to the previous owner or to the subsequent purchaser and real owner

Tamilselvi. In such circumstances only, the appellate authority has come to the conclusion that the revision petitioner being tenant of the premises

can be nothing but wilful defaulter in payment of rents.

9. It is the specific stand and plea of the landlady Tamilselvi as well as the previous owner Anusuya in R.C.O.P. No. 13 of 1992 filed by the tenant

Thyagaraja Mudaliar that the previous owner Anusuya never entered into any oral agreement of sale with the said Thyagaraja Mudaliar and she

never received any advance amount from him. When that being so, it is too much on the part of the tenant Thyagaraja Mudaliar to go to the extent

of denying the title of the purchaser viz., Tamilselvi as if it was not made known to him by Anusuya and only in December 1992, the purchaser

Tamilselvi issued notice about the purchase, etc. When that being so, the appellate authority, in my view, has rightly held that the denial of title on

the part of the revision petitioner is wilful denial.

10. coming to the other ground viz., requirement for own use and occupation, the appellate authority has elaborately discussed and particularly that

the revision petitioner/tenant himself has admitted in his evidence that he is not aware as to whether the landlady Tamilselvi is owning and occupying

any other premises for the purpose of her own use and occupation within the Town of Chengalpattu that too when the landlady Tamilselvi has

given categorical evidence to the effect that she does not own any other property within the Town of Chengalpattu except the premises under

question and that therefore, the plea of the revision petitioner/tenant before the Rent Controller and appellate authority as if the requirement for

own use and occupation of the landlady as a mala fide one is nothing but a false and untenable one and for the sake of mere contest. That is why

the appellate authority has finally concluded that all the three grounds are established and the landlady is entitled to get eviction order on those

grounds and consequently, allowed the R.C.A by reversing the order of the Rent Controller.

11. Taking note of all the above observed aspects, I am of the view that this revision petition has no merits for interference and there is no illegality

or perversity or unreasonableness in the order of the appellate authority cum Principal sub Judge, Chengalpattu. Accordingly, the revision petition is dismissed. No costs. Time for vacating the premises is one month.