
(2014) 06 MAD CK 0144
In the Madras High Court
Case No : C.R.P. (NPD) No. 234 of 2012

Shankar

APPELLANT

Vs

Swaminathan

RESPONDENT

Date of Decision : 04-06-2014

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 25, 8, 9, 9(1), 9(3)

Citation : (2014) 4 LW 151 : (2014) 5 MLJ 5

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The tenant in respect of the petition premises filed a petition before the Rent Controller (Principal District Munsif), Mayiladuthurai as RCOP No. 10/2007 u/s 9(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 praying for an order permitting the tenant to deposit the rent from the month of March 2006 to the credit of the Rent Control Petition and allow him to continue to deposit the future rent. The said petition came to be filed based on the contention that, though the petitioner was making payment of rent for the petition premises to the predecessors of the first respondent and then to the first respondent recognising them to be the landlords, the second respondent Aiyaru Pillai had issued a notice to the tenant informing him that the rent should be paid to him and not to the first respondent, since, according to him, the property was the Trust property and the second respondent being the senior most member of the family was entitled to manage Trust and that due to the issuance of the said notice, the tenant did entertain a bonafide doubt as to who, between the respondents 1 and 2, was entitled to receive the rent for the petition premises.

2. The tenant was supported by Aiyaru Pillai, the second respondent in the RCOP proceedings before the Rent Controller, who filed a counter statement contending that the building was a Guru Poojai Madam and the site belong to A.V.C. Trust; that the ground rent was being paid right from the life time of the grand father of

the respondents; that the senior member of the family he alone was entitled to manage the properties and the Guru Poojai Madam in accordance with the terms of a document that came into existence during the life time of their forefathers; that the second respondent, due to ill health, asked the first respondent and his brother to manage the Guru Poojai Madam; that the said persons, during the period of their management, let out portions of the madam as residential portions to tenants and collected and appropriated the rent for their personal purposes; that due to mismanagement of the madam, the second respondent came forward to take over the management of the trust and issued a notice to the petitioner demanding that the rent should be paid to him alone and that the petition should be dismissed directing the petitioner herein/tenant to pay the rent to the second respondent Aiyaru Pillai.

3. The first respondent filed a counter statement contending that the revision petitioner, having taken the petition premises for rent for residential purpose, became a tenant under the father of the first respondent in respect of the same; that after the death of Gopal Iyer, the father of the revision petitioner, the revision petitioner and his mother Saradhammal (wife of Gopal Iyer) continued to reside there as tenants; that the said Saradhammal is no more and the revision petitioner has become the tenant of the petition premises; that even during the life time of Saradhammal rent was not regularly paid; that when the first respondent took steps for proceeding against the revision petitioner for the non-payment of rent, the revision petitioner Sankar has chosen to file the petition in collusion with the second respondent Aiyaru Pillai, with a view to trouble and harass the first respondent. It was contended further in the counter statement of the first respondent that even during the lifetime of Saradhammal a notice issued by the second respondent Aiyaru Pillai and Saradammal herself issued a reply notice contending that she became a tenant under Sabapathy Pillai, the father of the first respondent and that after the death of Sabapathy Pillai, she was paying the rent to the first respondent and his brother Kandasamy. It was the further contention raised by the first respondent that the petition property was not a Trust property and that pursuant to the default in payment of rent from March 2006, the first respondent issued a notice demanding payment of arrears of rent and directing the revision petitioner and one Agoram Iyer, who was only a relative of the revision petitioner and hence was residing in the petition premises with the revision petitioner. It was contended further that it was held in an earlier Rent Control proceeding (RCOP No. 6/2006) that the petition property was not a Trust property; that despite the same, revision petitioner chose to file the frivolous petition as he had been used as a stooge in the hands of the second respondent Aiyaru Pillai and that hence the petition seeking permission to deposit the rent should be dismissed.

4. In the enquiry before the Rent Controller (Principal District Munsif), Mayiladuthurai, the tenant (revision petitioner) figured as PW 1 (sole witness) and produced the notice issued by the first respondent, copy of the reply notice issued by him to the first respondent and the postal acknowledgment card as

Exs. P1 to P3 on his side. The first respondent figured as the sole witness (RW 1) and no document was produced on his side. No witness was examined by the second respondent and no document was marked on his side.

5. At the conclusion of enquiry, the learned Principal District Munsif (Rent Controller), Mayiladuthurai, passed an order permitting the revision petitioner/tenant to deposit the rent from March 2006 to the credit of the RCOP and to continue to deposit the future rents, based on the observation that there was a dispute between the respondents 1 and 2 as to who was entitled to collect the rent and that in order to safeguard the interest of the revision petitioner/tenant and to avoid his incurring liability of being evicted on the ground of willful default, he was justified in seeking an order permitting him to deposit the rent into court.

6. On appeal to the Rent Control Appellate Authority in R.C.A. No. 5/2008 on the file of the Principal Sub Judge, Mayiladuthurai, the learned Appellate Authority, allowed the appeal, reversed the finding of the Rent Controller, set aside the order of the Rent Controller and dismissed the petition filed by the tenant, namely RCOP No. 10/2007. The said decree of the appellate authority dated 21.02.2011 made in R.C.A. No. 5/2008 is challenged before this court u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

7. The arguments advanced by Mr. S. Sounthar, learned counsel for the revision petitioner, by Mr. A. Muthukumar, learned counsel for the first respondent and by Mr. N. Srinivasan, learned counsel for the second respondent were heard. The materials available on record were also perused.

8. Admittedly, the revision petitioner Sankar is a tenant in respect of the petition premises. His status as a tenant is a fact not in controversy, but is an admitted one. He approached the court of the Rent Controller for an order permitting him to deposit the rent into the court on the premise that there was a dispute between the respondents 1 and 2, as to who was entitled to receive the rent. Section 9 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 reads as follows:

9. (1) Where the address of the landlord or his authorized agent is not known to the tenant, he may deposit the rent lawfully payable to the landlord in respect of the certain building, before the Controller in such manner as may be prescribed, and continue to deposit any rent which may subsequently become due in respect of the building, before the Controller and in the same manner until the address of the landlord or his authorized agent becomes known to the tenant.

(2) The amount deposited under sub-section (3) or under sub-section (5) of section 8, or under sub-section (1) of this section may, subject to such conditions as may be prescribed, be withdrawn by the person held by the Controller to be entitled to the amount on application made by such person to the Controller in that behalf.

(3) Where any bona fide doubt or dispute arises as to the person who is entitled to receive the rent for any building, the tenant may deposit such rent before such authority and in such manner as may be prescribed and shall report to the Controller the circumstances under which such deposit was made by him, and may continue to deposit any rent which may subsequently become due in respect of the building before the same authority and in the same manner until the doubt is removed or the dispute is settled by the decision of a competent Court or by a settlement between the parties or until the Controller makes an order under clause (b) of sub-section (4) as the case may be.

(4) (a) The Controller to whom a report is made under sub-section (3) shall, if satisfied that a bonafide doubt or dispute exists in the matter, direct that, pending removal of the doubt or settlement of the dispute as aforesaid, the deposit be held by the authority concerned.

(b) If the Controller is not so satisfied, he shall forthwith order payment of the amount deposited to the landlord.

(5) Where the Controller passes an order under clause (a) of sub-section (4), any amount deposited under sub-section (3) may be withdrawn only by the person who is declared by a competent Court to be entitled thereto, or in case the doubt or dispute is removed by a settlement between the parties, only by the person who is held by the Controller to be entitled to the amount or amounts in accordance with such settlement.

9. As per sub section (1), the tenant shall be permitted to deposit the rent lawfully payable to the landlord in respect of the building before the Rent Controller, if the address of the landlord or his authorised agent is not known to the tenant until the address of the landlord or his authorised agent becomes known to the tenant. In the case on hand, as rightly contended by the learned counsel for the first respondent, the revision petitioner filed a petition under a wrong provision, namely Section 9(1) of the Act, which shall be attracted only in case where the landlord is known, but his address or the address of his authorised agent is not known to the tenant. As rightly contended by the learned counsel for the first respondent, the revision petitioner/tenant could have invoked only the provision u/s 9(3), in which case, he should have proved that a bonafide dispute had arisen, as to the person who was entitled to receive the rent for the building.

10. The learned counsel for the revision petitioner would submit that the mistake in quoting the provision of law shall not be a bar for the court to grant the relief under the appropriate provision of law and that hence though RCOP came to be filed referring to Section 9(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as the provision under which the relief was sought for, it could be treated as one filed u/s 9(3) of the above said Act. Of course the said contention of the learned counsel for the revision petitioner cannot be brushed aside as untenable. Merely because a wrong provision has been quoted, the

party who is otherwise entitled to the relief, cannot be denied the relief and such relief can be granted making reference to the appropriate provision of law. The controversy is not very much on the provision of law under which the relief was sought for. On the other hand, it is the contention of the learned counsel for the respondents that even u/s 9(3) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the tenant shall be entitled to get an order permitting him to deposit the rent to the credit of the RCOP only by proving that there is a bonafide dispute, as to who is entitled to collect the rent.

11. In this case, we have to consider whether the revision petitioner/tenant has proved that there was a bonafide dispute as to the person entitled to receive the rent for the petition premises. It is an admitted fact that Gopal Iyer, the father of the revision petitioner, became the tenant under Sabapathy Pillai, the father of the first respondent and he was paying the rent to Sabapathy Pillai during his life time and after the death of Gopal Iyer, the revision petitioner and his mother Saradhammal continued to occupy the petition premises as tenants and the rent was paid to the Sabapathy Pillai. It is also an admitted fact that during the life time of Sabapathy Pillai rent was paid to him; that after the death of Sabapathy Pillai, Saradhammal continued as tenant and was paying the rent and that after the death of Saradhammal, the revision petitioner continues as tenant in respect of the petition premises.

12. It is also an admitted fact that Gopal Iyer became a tenant under Sabapathy Pillai 40 years back and he was paying the rent to Sabapathy Pillai. It is also an admitted fact that after the death of Gopal Iyer, his wife Saradhammal was paying the rent to Sabapathy Pillai; that after the death of Sabapathy Pillai, the rent was paid to the first respondent. It was also admitted by PW 1, the sole witness examined on the side of the tenant, that at no point of time, he paid rent to Aiyaru Pillai and that for more than 40 years Aiyaru Pillai did not demand payment of rent to him. Under the said circumstances, the first respondent issued a notice dated 31.01.2007 to the revision petitioner/tenant, in which the above said facts, including the fact that the petition premises became the joint property of the first respondent and his brother Kandasamy Pillai after the death of Sabapathy Pillai and that as per the partition effected between them, the petition premises came to the first respondent, were clearly informed to the revision petitioner/tenant.

13. It was stated in clear terms that Gopal Iyer was paying the rent to the father of the first respondent and that after the death of Gopal Iyer, his wife Saradhammal continued as a tenant, but failed to pay the rent regularly. It was further alleged that, whenever a demand for regular payment of rent was made, she was promising to vacate and hand over the premises. It was also averred in the notice that when Saradammal died on 30.01.2007, the revision petitioner/tenant informed the first respondent that he would pay the arrears of rent for 11 months amounting to Rs. 5,500/- at the rate of Rs. 500/- per month after the funeral would be over. As the arrears of rent was not paid and one Agoram Iyer,

who according to the first respondent, did not have any right to reside there, made an attempt to contend that both of them were entitled to reside there, the said notice came to be issued, demanding payment of the arrears of rent and directing the said persons to vacate and hand over vacant possession of the petition premises.

14. For the said notice, the revision petitioner chose to issue a reply on 12.02.2007, which was received by the advocate, who issued Ex. P1-Notice and the same is evidenced by Ex. P3-Acknowledgement. The office copy of the reply notice has been marked as Ex. P2. In the said reply notice alone, it was contended that one Aiyaru Pillai (second respondent) issued a notice to the revision petitioner/tenant directing him not to pay rent to any person other than Aiyaru Pillai and that in view of the dispute regarding the title, the revision petitioner/tenant was taking steps to deposit the rent into court. It is pertinent to note that though the reply notice and the petition filed by the tenant before the Rent Controller refer to the notice issued by Aiyaru Pillai, namely the second respondent herein, the said notice has not been produced to be marked as a piece of evidence either on the side of the revision petitioner/tenant or by the second respondent Aiyaru Pillai.

15. The revision petitioner/tenant admitted in clear terms that his father became a tenant under Sabapathy Pillai, the father of the first respondent herein. It is also his further admission that after the death of Sabapathy Pillai, the rent was paid to the first respondent. During the cross examination, he has made clear admission that the rent was initially paid to Sabapathy Pillai and after his death, it was paid to the brother of the first respondent herein for some time and thereafter the rent was paid to the first respondent herein. It is not the case of the revision petitioner that there is a dispute between the first respondent and his brother Kandasamy Pillai, as to who between them is entitled to receive the rent. On the other hand, the contention of the first respondent herein that he got the petition premises allotted to his share in the partition effected between himself and Kandasamy Pillai has not been disputed. The revision petitioner/tenant, ought to have paid the rent to the first respondent only by virtue of the said partition arrangement between himself and his brother.

16. In this regard, the evidence of RW 1 is clear without any ambiguity. Though the revision petitioner/tenant would contend that there was a bonafide dispute between the first respondent herein and Aiyaru Pillai as to who among them was entitled to collect the rent, the revision petitioner, who figured as PW 1, was not able to prove how Aiyaru Pillai was bonafide in making a claim that the rent should be paid to him. Though the revision petitioner/first respondent would have supported the contention of the second respondent Aiyaru Pillai that the petition premises is a Guru Poojai Madam, not even a scrap of paper has been produced to prove the same. He has also admitted in clear terms that it was Sabapathy Pillai, under whom, the father of the revision petitioner became a tenant and that for more than forty years Aiyaru Pillai had not made any demand

for payment of rent to him. It has also been admitted by PW 1 that Agoram Iyer was his relative (junior paternal uncle) and that he was residing there only as a relative of the revision petitioner. It was also admitted by PW 1 that though the initial rent was Rs. 35/-, the present rent is Rs. 500/-, as revealed in Ex. P1- Notice and the counter statement of the first respondent.

17. He has also admitted that even Sabapathy Pillai, the father of the first respondent herein filed a RCOP for evicting him from the petition premises and he did not raise any plea that Sabapathy Pillai did not have any right in the petition premises to demand payment of rent. On the other hand, he has clearly admitted that the said proceedings ended in a compromise. It is also not his clear stand that he failed to pay the rent because of the dispute raised by Aiyaru Pillai, the second respondent herein. On the other hand, he has stated in his cross examination that since no basic amenities had been provided in the petition premises, he did not pay rent. In addition, he made a clear admission that there is no document to show that the petition premises belongs to Aiyaru Pillai.

18. A consideration of the evidence of PW 1 will make it clear that he had chosen to file the petition in collusion with the second respondent Aiyaru Pillai without there being any prima facie evidence to show that there was a bonafide dispute regarding the title to the property. The first respondent made a clear assertion in his testimony as RW 1 that Aiyaru Pillai was not their pangali and he was only a distant relative, namely son of his aunt. It is also his clear assertion that he filed a suit O.S. No. 53/2005 on the file of the Sub Court, Mayiladuthurai against his brother Kandasamy Pillai for partition and they effected a compromise in the said partition suit. Though a suggestion was made to the effect that a suit in O.S. No. 154/2008 had been filed by the second respondent against the first respondent and his brother, the first respondent/RW 1 pleaded absence of knowledge. The same cannot be taken as an admission. As such, either the document relating to the suit should have been produced or the second respondent Aiyaru Pillai ought to have deposed as a witness to prove that such a case was filed and pending. The production of the copy of the plaint and other documents relating to the said case could have enabled the Rent Controller to come to a conclusion whether the dispute was a bonafide one or that it was only a collusive suit for the purpose of enabling the revision petitioner/tenant to escape from the consequences of his act of committing default in payment of rent. Unfortunately, no such evidence has been adduced. In the absence of such evidence, the learned Rent Controller ought not to have referred to the pendency of the suit in O.S. No. 154/2008 which has not been proved by evidence, to hold that there was a dispute regarding title.

19. The learned Rent Control Appellate Authority has held that the Rent Controller committed an error in making a reference to a document, which was not produced before the court of the Rent Controller, to arrive at a conclusion that there was a bonafide dispute regarding title to the petition premises. Even if there is any such dispute, the Rent controller has to render a clear finding as to

whether the dispute is a bonafide one or not. There is absence of sufficient evidence to prove that there was such a bonafide dispute between the first respondent, who is admittedly the landlord and the second respondent regarding title to the petition premises. The learned Rent Control Appellate Authority, on a proper re-appreciation of evidence and on proper application of the principles of law, came to a correct conclusion that the revision petitioner/tenant had not proved the existence of a bonafide dispute between the first respondent and the second respondent; that hence he was estopped from disputing the right of the first respondent as landlord to receive the rent and that the prayer for permission to deposit the rent deserved to be rejected. This court finds no defect or infirmity in the decree of the Rent Control Appellate Authority warranting interference with the same in exercise of its power of revision u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

20. For all the reasons stated above, this court holds that there is no merit in the revision petition and the same deserves to be dismissed confirming the judgment and decree of the Rent Control Appellate Authority dated 21.02.2011 made in R.C.A. No. 5/2008 reversing the order of the Rent Controller and dismissing the RCOP No. 10/2007 filed by the Revision petitioner/tenant. In view of the above said finding, this court also deems it appropriate to direct the revision petitioner to pay the cost of the first respondent.

In the result, the revision fails and the same is dismissed with the cost of the first respondent.