

(2012) 09 MAD CK 0006

In the Madras High Court

Case No : C.R.P. (NPD) No. 5166 of 2011 and M.P. No. 1 of 2011

Sulochana

APPELLANT

Vs

R. Pangajam, Brinda and R. prabhu Shankar

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 25

Transfer of Property Act, 1882 — Section 10, 10(1), 10(2)(vii), 109, 14

Citation : (2012) 6 CTC 557 : (2013) 2 MLJ 108 : (2013) 1 RCR(Rent) 201

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

Bench : Single Bench

Advocate : J. Raja Kalifullah, for the Appellant; R. Bharath Kumar, for the Respondent

Judgement

R.S. Ramanathan, J.—Tenant is the Revision Petitioner. The Landlords/ Respondents filed Petition for eviction on the ground of willful

default in payment of rent, for owner's occupation and for demolition and reconstruction. The learned Rent Controller ordered eviction on the

ground of willful default and dismissed the Petition on the ground of owner's occupation and demolition and reconstruction. The learned Rent

Control Appellate Authority confirmed the order of eviction on the ground of willful default and also ordered eviction on the ground of denial of

title. Aggrieved by the same, this Revision is filed.

2. Mr. Raja Kalifulla, learned Counsel appearing for the Revision Petitioner submitted that the learned Rent Control Appellate Authority erred in

ordering eviction on the ground of denial of title when eviction was not sought for on that ground and no evidence was let in to that effect during the

trial and in the absence of any pleading, the learned Rent Control Appellate

Authority ought not to have framed issue to that effect and ordered eviction and therefore, the order of eviction on the ground of willful denial of title is bad and is also against the judgment of the Honourable Supreme Court in J.J. Lal Pvt. Ltd. and Others Vs. M.R. Murali and Another, He further submitted that the authorities below, without properly appreciating the case of the Respondents and also the defence taken by the Revision Petitioner, erred in holding that the Revision Petitioner committed willful default in payment of rent. He further submitted that the authorities below, having found that the Revision Petitioner did not commit willful default as alleged in the Petition and the Landlords/Respondents herein failed to prove that rents were paid to them and also after having held that the rent is only " 100/- per month and not "200/-, ought not to have ordered eviction on the ground of willful default.

3. On the other hand, the learned Counsel for the Respondent-Mr. Bharath Kumar submitted that the conduct of the tenant from the filing of the Petition and even earlier to that was to the effect that the Respondents are not the Landlords and they are not entitled to collect rent, even after notice was issued by the Landlords calling upon the Revision Petitioner to pay the rent and considering all these aspects, the Courts below have rightly ordered eviction on the ground of willful default. He further submitted that the Revision Petitioner, having admitted that she is the tenant of the premises, cannot deny the title of the Landlords even after receipt of notice from the Landlords and the conduct of the Tenant in filing Application u/s 9(3) of the Act by impleading the Respondents herein as Landlords would also prove that the Revision Petitioner was aware that the Respondents are the Landlords and she willfully denied the title of the Landlords and did not pay the rent even during the pendency of the proceedings and when the denial was willful, even though no pleading was taken in the Petition filed by the Landlords during the pendency of the proceedings, that can be a ground for eviction and the conduct of the tenant in not paying the rent even during the pendency of the proceedings would also make the default willful and relied upon the judgment in Mettupalayam Municipality Vs. R.M. Shanmugam, ; Ammal Pillai and Others Vs. Varadarajulu Complex, and R. Surendirakumar Vs. C. Balaji Singh and Others, in support of his contention. He further submitted that the

contention of the Revision Petitioner/Tenant that there was no relationship of Landlord and Tenant between the parties and she was a Tenant under

the previous owner and she has not attorned tenancy in favour of the Respondents herein cannot also be accepted having regard to the judgment in

Natarajan Vs. Manimegalai and K. Balasubramaniam,

4. The learned Counsel for the Revision Petitioner submitted that though the Respondents herein issued a notice calling upon the Revision Petitioner

to pay the rent, the Respondents herein have not stated anything in that notice about their title and admittedly, there was a dispute regarding the

property and one Rukmani Ammal, was collecting rent and thereafter, one Ravi, on her behalf was collecting rent and in the absence of any

information given by the Respondents about their title to the suit property, the Revision Petitioner is justified in saying that there is no relationship of

Landlord and tenant between the parties and she has not attorned the tenancy in favour of the Respondents herein and therefore, the plea taken by

the Revision Petitioner cannot be construed as willful denial of title and as soon as the Revision Petitioner came to know the title of the

Respondents, she started depositing the rent before the Rent Controller by filing R.C.O.P. No. 44 of 1999 and therefore, the arrears of rent

cannot be said to be due to willful default.

5. As stated supra, the learned Rent Controller ordered eviction only on the ground of willful default, even though in the counter, the Revision

Petitioner has specifically stated that one Rukmani Ammal was collecting rent and after her, her son-in-law Devaraj and thereafter on Ravi was

collecting rent and there is no relationship of Landlord and Tenant between the parties. Despite the same, no issue was framed by the learned Rent

Controller regarding the denial of title and therefore, evidence was also not let in on that aspect and only before the learned Rent Control Appellate

Authority, an issue was framed by the Appellate Authority regarding the denial of title as to whether it is willful or not and a finding was given

against the tenant holding that the denial is willful and considering the judgment reported in J.J. Lal Pvt. Ltd. and Others Vs. M.R. Murali and

Another, the finding of the Lower Appellate Court ordering eviction that the tenant has willfully denied the title of the Landlord cannot be upheld.

6. In the above judgment, it has been held as follows:

19. For several reasons, we are of the opinion that a decree on the ground of denial of Landlord's title by tenant and such denial being not bona fide could not have been a ground for directing eviction of tenants in the present case. Firstly, the Application for eviction filed by the Landlords do not plead such a cause of action, setting out material facts and as providing a ground for relief of eviction. The plea taken by the Defendant-Tenants in their additional Counter does not by itself amount to denial of title so as to render them vulnerable to eviction by attracting applicability of Section 10(2)(vii) of the Act. The basic question was whether the Landlords themselves treated the plea taken by the tenants in their additional Counter as denial of their title and if that be so, the Landlords should have amended their Application for eviction incorporating the averment that the said additional Counter amounted to denial of title of the Landlords and such denial was not bona fide. Thereupon the tenants would have had an opportunity of explaining the facts and circumstances in which the additional Counter, alongwith the pleas raised therein, came to be filed and if that amounted to denial of Landlords' title then how did they propose to justify such denial as bona fide. Such pleas could have been the subject-matter of trial and evidence adduced by the parties followed by expression of opinion by the Controller as to whether a ground for eviction was made out or not. Before the Controller none of the parties were alive to the fact that alleged denial of title by tenants could possibly be clicked by the Landlords as a ground for eviction. The Appellate Authority for the first time formulated a point at issue touching this ground during the course of its decision and yet held in favour of the tenants holding that such denial was bona fide. If at all the Appellate Authority was inclined to frame an issue then it ought to have been tried on the lines laid down in Order 41, Rule 25 of the Code of Civil Procedure. The High Court, as already stated, shifted the emphasis and treated the denial of title by tenants as primary ground for eviction and proceeded to decide the same. Thus what was not in issue before the Trial Court at all became the core issue on which the High Court has founded its decision. This is not only violative of the established procedure for Civil trials but also violative of Principles of Justice and Fair Play. The tenants have been certainly prejudiced in their defence and, therefore, availability of that ground for eviction of the tenants in the present proceedings cannot be sustained.

20. Secondly, what has been done by the Appellate Authority and the High Court does not also fit in the scheme of the Act insofar as this ground is concerned. An Application for eviction of tenant has to be filed before the Controller for a direction in that behalf. Eviction may be sought by the Landlord on the singular ground of the tenant having denied the title of the Landlord or coupled with other grounds. In such an Application, it is the Controller who will decide whether such denial or claim was bona fide or not. If the finding of the Controller is that the denial or claim by tenant was not bona fide, the Controller shall make an order directing the Tenant to put the Landlord in possession of the building. However, if the Controller does not find the denial or claim to be not bona fide he shall deny the Landlord's claim for eviction by making an order rejecting the Application. Such finding and rejection of Landlord's Application would not debar the Landlord from approaching the Civil Court for establishing his title. By having regard to Second Proviso to sub-section (1) of Section 10 of the Act, the bar on the jurisdiction of Civil Court stands lifted and the Landlord becomes entitled to sue for eviction of the tenant in a Civil Court enabling such Civil Court to pass a decree for eviction on any of the grounds on which the Controller could have directed eviction under Sections 10, 14 or 16, notwithstanding the opinion formed by the Civil Court whether the denial of title by the tenant had entailed forfeiture of the lease and notwithstanding the finding of the Civil Court that the claim of permanent tenancy was unfounded. This is how any conflict of jurisdiction between the Civil Court and the Controller can be avoided by construing Section 10(2)(vii) and Section 10(1), Second Proviso homogenously and as part of one scheme. The legislative intent appears to be that denial of title can be decided by the Controller for the limited purpose of finding out whether a ground of eviction is made out but the questions of title should be left to be determined by the Civil Court. Once a question of title has arisen between a Landlord and a tenant and such dispute is bona fide, the doors of Civil Court are let open to the Landlord and therein adjudication, on grounds of eviction otherwise within the domain of the Controller, is also permitted so as to avoid multiplicity of Suits and proceedings. All the disputes between the Landlord and Tenant would be settled in one forum and the need for prosecuting two separate proceedings before two fora would be eliminated.

7. Further, as rightly submitted by the learned Counsel Mr. Raja Kalifulla, in the notice dated 20.10.1997 issued by the Respondents, they have

not stated as to how they derived title to the subject property and it is also admitted by the Landlords that there was a Partition Suit between them

and the predecessor-in-title Rukmani Ammal and in that Partition Suit, the Petition mentioned property was allotted to them and without mentioning

about the title, they only demanded rent as if the Tenant was paying rent to them and in that circumstances, the denial of title by the Tenant cannot

be termed to be willful. Hence, the order of eviction on the ground of denial of title cannot be upheld and the findings in that regard are set aside.

8. The next question is whether the Tenant/Revision Petitioner has committed willful default in payment of rent. As stated supra, the learned Rent

Controller held that the rent is only Rs. 100/- and not Rs. 200/- per month as claimed by the Landlords and the Tenant has not paid the rent to the

Landlord till December 1994, and passed the order of eviction on the ground of willful default and that cannot be set aside. It is the specific case of

the Tenant/Revision Petitioner that the rent till August 1997 was paid to Mr. Ravi and he admitted that the Partition Suit between Rukmani Ammal

and Venkatasamy and after receipt of the notice dated 20.10.1997 from the Respondents, she has not made any attempt to ascertain about the

genuineness of the claim made by the Respondents.

9. Further, it is not her case that she was paying the rent continuously to Mr. Ravi even after receipt of notice. As stated supra, from September

1997, she has not paid the rent either to the erstwhile Landlord viz., Mr. Ravi or to the Respondents herein and she was keeping the rent with

herself and filed R.C.O.P. No. 44 of 1999 only in the month of February 1999, after the Respondents filed Petition for eviction in R.C.O.P. No.

11 of 1998. Further, even during the pendency of the Eviction Petition filed by the Landlord and even during the pendency of the Application filed

by the tenant to deposit the rent, she was not regular in depositing the rent in Court and she was depositing the rent only in lumpsum and that was

considered by both the Courts below and it was held that the default is willful and on that ground, eviction was ordered. As a matter of fact, the

Lower Appellate Court elaborately discussed the conduct of the Revision Petitioner in committing default in payment of rent to arrive at a

conclusion that the default is nothing but willful and the Tenant was not regular in depositing the rent before the Court below.

10. In the judgment reported in *Mettupalayam Municipality Vs. R.M. Shanmugam*, , this Court has held that the default committed by the tenant

even after issuance of notice is deemed to be willful default. In the judgment in *T. Pramod Wilson and 3 others Vs. Dr. Hari Ramesh*, , it has been

held that the deposit of arrears of rent pursuant to the order passed by the Rent Controller will not erase the willful default committed by the

Tenant. In the judgment reported in *Natarajan Vs. Manimegalai and K. Balasubramaniam*, it has been held that there is no need to attorn the

tenancy and when the Landlords are the owners of the building and the tenant admitted the tenancy, even though there is no attornment, the Tenant

will have to pay rent and failure on the part of the Tenant to pay the rent will amount to willful default. In that judgment, the learned Judge relied

upon the judgment in *Mohar Singh (Dead) by Lrs. Vs. Devi Charan and Others*, , wherein the Hon"ble Supreme Court has held that as per the

provisions of Section 109 of the Transfer of Property Act, the assignee of a part of the reversion is entitled to exercise all the rights of the Landlord

in respect of the portion of which, reversion was so assigned and there is no need for a consensual attornment and the attornment is brought about

by operation of law. Therefore, the contention of the learned Counsel for the Revision Petitioner that there was no attornment of tenancy and

therefore, there is no Landlord and tenant relationship cannot be accepted. The Lower Appellate Court referred to the factum of deposit by the

Revision Petitioner during the Rent Control proceedings and held that the Tenant was not regular in depositing the rent and she was paying the rent

in lumpsum and even though it is alleged that there is a Civil dispute between the person, who was collecting the rent and the Respondents herein,

she has not made any attempt to pay the rent to the Respondents even after receipt of notice and was not regular in depositing the rent would only

prove that the default is willful and rightly ordered eviction.

In the result, the order of eviction on the ground of willful default is confirmed and the Revision is dismissed. No costs. The connected

Miscellaneous Petition is also dismissed.