

(2016) 07 MAD CK 0107

MADRAS HIGH COURT

Case No: C.R.P. (NPD) Nos. 3255 and 2015 and M.P. No. 1 of 2015 and C.M.P. Nos. 1406 to 1408 of 2016

T. Elamurugan

APPELLANT

Vs

Dr. G. Jayachitra

RESPONDENT

Date of Decision: July 12, 2016

Acts Referred:

- Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Section 10, 2(6), 2(8)

Citation: (2016) 5 CTC 486 : (2016) 2 RCRRent 452 : (2016) 2 RentLR 168

Hon'ble Judges: Mr. M. Duraiswamy, J.

Bench: Single Bench

Advocate: Mrs. R. Varalakshmi, Advocate, for the Petitioner; Mr. T.V. Ramanujam, Senior Counsel for Mr. A. Rajesh Kanna, Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mr. M. Duraiswamy, J.—The above Civil Revision Petition arises against the judgment and decree passed in R.C.A. No.524 of 2014 on the file of VIII Judge, Court of Small Causes, Chennai confirming the order in R.C.O.P. No.1202 of 2012 on the file of XI Judge, Court of Small Causes, Chennai.

2. The petitioner is the tenant and the respondent is the landlady.

3. The landlady filed R.C.O.P. No.1202 of 2012 for eviction on the ground of wilful default.

4. According to the landlady, the monthly rent is Rs.4,500/- and the tenancy is for residential purpose. Further, according to the landlady, the tenant is always irregular in paying the rent and he has not paid the rent from 2005 and he has wantonly committed default in paying the rents. The tenant has committed default from the month of June 2005 till the filing of the Rent Control Original Petition in

April 2012.

5.1 According to the tenant, the Original Petition filed by the landlady is not maintainable and that she has not come before the court with clean hands. The tenant contended that there is no landlord-tenant relationship as per section 2(6) and 2(8) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960. According to the tenant, on 13.05.2005, he has entered into an agreement with the landlady for the sale of the petition property and also paid an advance of Rs.2,00,000/- out of the total sale consideration of Rs.7,50,000/-. Thereafter, on 29.06.2005, the tenant paid a further sum of Rs.50,000/- to the landlady. On 21.09.2007, the tenant sent a letter to the landlady that he is ready to pay the balance sale consideration of Rs.5,00,000/- and expressed his willingness to have the registration on 10.10.2007. At the request of the landlady, the tenant paid a further sum of Rs.1,00,000/- on 13.08.2008. Thereafter, the tenant was postponing the execution of the sale deed by telling some vague reasons. The tenant further contended that by suppressing the execution of the sale agreement and the receipt of the amount as stated above, the landlady has filed the Rent Control Original Petition for eviction.

5.2. The tenant filed the suit in O.S.No.14552 of 2010 on the file of XV Assistant Judge, City Civil Court, Chennai for permanent injunction and the said suit was decreed on 26.07.2011.

5.3 Since the landlady failed to execute the sale deed in spite of several requests made by the tenant, the tenant filed a suit in O.S.No.8238 of 2011 on the file of XVII Assistant Judge, City Civil Court, Chennai for specific performance.

5.4 According to the tenant, the Rent Control Original Petition filed for eviction on the ground of wilful default is not maintainable by the landlady. In these circumstances, the tenant prayed for dismissal of the Rent Control Original Petition for eviction.

6. Before the Rent Controller, the respondent-landlady has not let in oral or documentary evidence. On the side of the petitioner-tenant, R.W.1 was examined and 10 documents Ex.R.1 and Ex.R.10 were marked.

7. The Rent Controller, taking into consideration the averments stated in the petition filed in R.C.O.P.No.1202 of 2012 and the case of the respondent, ordered eviction.

8. Aggrieved over the order of passed by the Rent Controller, the tenant preferred an appeal in R.C.A.No.524 of 2014 on the file of VIII Judge, Court of Small Causes, Chennai and the Appellate Authority also confirmed the order of eviction and dismissed the appeal.

9. Aggrieved over the concurrent findings of the courts below, the tenant has filed the above Civil Revision Petition.

10. Heard Mrs. R. Varalakshmi, learned counsel appearing for the petitioner and Mr. T.V.Ramanujam, learned Senior Counsel, appearing for the respondent.

11. The main contention raised by Mrs. R. Varalakshmi, learned counsel appearing for the petitioner is that the courts below should not have ordered eviction on the ground of wilful default, in the absence of any evidence produced by the respondent-landlady and that non-examination of landlady is fatal to her case. In support of her contention, the learned counsel relied upon a judgment reported in 2000 (9) SCC 339 [R. Kanthimathi and other v. Mrs. Beatrice Xavier], wherein the Hon"ble Supreme Court held as follows:-

"6. Any jural relationship between two persons could be created through agreement and similarly could be changed through agreement subject to the limitations under the law. Earlier when appellants were inducted into tenancy it only means both agreed that their relations is to be that of a landlord and tenant. Later when landlord decides to sell this property to the tenant and tenant agreed by entering into agreement they by their positive act changed their relationship as purchaser and seller. When seller-landlord accepts sum he actually acts under this agreement. This acceptance preceded by agreement of sale changes their relationship. This is how they intended. Once accepting such a change then their relationship of landlord tenant ceases.

7. This Court in Arjunlal Bhatt Mall Gothani v. Girish Chandra Dutta [1973 (2) SCC 197], held as under:

"The appellants were tenants in the premises of the respondent-landlord and three suits, including an eviction suit, were pending against them. By an agreement between the appellants and the respondent, the respondent agreed to sell the whole property to the appellants for a certain sum to be paid to him by equal instalments. Clause 5 of the agreement provided that in case of default of any instalment, the agreement for sale would stand cancelled and if the purchasers failed to pay the defaulted instalments within one month's notice the payments made would stand forfeited and purchasers would make over possession of the property to the vendor.

xxx xxx

Under Clause (5) of the agreement the question of giving notice arises only if the vendor wanted to forfeit the instalments paid by the purchaser. Not even one instalment having been paid the question of forfeiture does arise and no notice was necessary for cancelling agreement. It stood automatically cancelled. It was sought to be argued before us that once the agreement stood cancelled the appellants stood restored to their original position as tenants and the suit could not be filed without giving notice under the Transfer of Property Act. We are of opinion that when the agreement, dated June 7, 1959 was entered into the old relationship of landlord and tenant came to an end. The rights and liabilities of the parties have to

be worked out on the basis of that agreement."

This decision clearly spells out that once there is agreement of sale between a land lord and a tenant, the old relationship as such comes to an end. It goes on to record that even after the cancellation of such agreement of sale the status of tenant is not restored as such. In other words, on the date of execution of the aforesaid agreement of sale their status as that of landlord and tenant changed into a new status as that of a purchaser and a seller.

8. Thus within this legal premises, the submission by learned Counsel for (he respondent of revival of their old relationship of landlord and tenant when she repudiates this agreement by sending back to the tenant Rs. 20,000/- through a cheque, (which according to the appellant was not encashed) cannot be accepted. So we have no hesitation to reject the same. Every conduct of the landlady right from the date of entering into agreement of sale, accepting money towards the sale consideration, delivering possession in lieu of such agreement all clearly indicates and has to be construed in law that she repudiated her old relationship of landlord and tenant. Thus after this parties enter into new cloak of seller and purchaser and their relationship to be governed under the said terms of the agreement. Every right and obligation thereafter would flow from it. Even if parties under the agreement of sale does not perform their obligations remedy may be availed in law as permissible under the law. Hence we have no hesitation to hold that Courts below including High Court committed error in holding that tenant committed wilful default. When appellant is no more tenant how can non-payment be construed as wilful default.

9. Accordingly, we find merit in this appeal and the same is allowed. The judgment of the High Court and that of the Rent Controller and the appellate authority is hereby set aside. However, this is without prejudice to the rights of the parties to pursue their remedy as is available to them under the law. Costs on the parties."

12. The learned counsel appearing for the petitioner further submitted that since there is no jural relationship of landlady-tenant between the respondent and the petitioner, the courts below should have dismissed the Original Petition filed by the respondent-landlady.

13. Countering the submissions made by the learned counsel appearing for the petitioner, Mr. T.V. Ramanujam, learned Senior Counsel, appearing for the respondent-landlady submitted that since the petitioner-tenant had admitted that he committed default in paying the monthly rents, the courts below are perfectly correct in ordering eviction, even in the absence of evidence of the respondent-landlady. Further, the learned Senior Counsel submitted that the non-examination of the respondent-landlady is not fatal to her case. In support of his contentions, the learned Senior counsel relied upon the following judgments:-

(1) 2012 (8) SCC 516 [Ahmed Saheb (dead) by LRs and others v. Sayed Ismail], wherein the Hon"ble Supreme Court held as follows:-

"12. It is needless to emphasise that admission of a party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration. In our considered opinion, that vital aspect in the case (viz) the admission of the respondent in the written statement about the rate of rent and the further admission about its non-payment for the entire period for which the claim was made in the three suits was sufficient to support the suit claim. The High Court failed to note the said factor while deciding the Second Appeal which led to the dismissal of the appeals. Even while eschewing Exhibit-69 from consideration, the High Court should have noted that the relationship of landlord and tenant as between the plaintiffs and the defendants was an established factor and the rate of rent was admitted as Rs. 800/- per year."

(ii) 2007 (2) CTC 326 [S. Gurumurthy v. N. Raman] wherein this court held as follows:

"14. In the case in hand, in the 1st sale agreement dated 12.12.1993, there is a specific clause that the tenant should continue to pay the rent till the execution of the sale deed. In the 2nd sale agreement dated 26.11.2000, there is no such specific plea insisting the tenant to continue to pay the rent. At the same time, there is no specific clause in the 2nd sale agreement dated 26.11.2000 excluding the liability of the tenant to continue to pay the rent. In such circumstances, if the law laid down by the court in Kuppalal's case (cited supra), is applied to the facts of the case, I will have to necessarily hold that the revision petitioner/tenant's liability to continue to pay the rent on and from 26.11.2000 is not put to an end or terminated by the sale agreement dated 26.11.2000.

(iii) 1997(III) CTC 39 [S. Venkatesulu v. V.Chandra and 2 others] wherein this court held as follows:

"7. Apart from this, it may be worth to refer the subsequent conduct of the petitioner also. When once the petitioner is under the threat of eviction on the ground of wilful default, the first and foremost duty cast upon him is to pay the rent or at least ought to have seek the permission of the Court to deposit the rent to show his bona fide. Otherwise, the subsequent conduct in non-depositing or non-paying the rent till date can be taken note of which would establish the deliberate wilful default on the part of the petitioner."

(iv) 2014(1) L.W. 506 [N.L.Narasimhan v. T.I.Viswanathan & another] wherein this court held as follows:

"28. The further conduct of the tenants is also to be taken note of. Under Ex.P3, a letter dated 02.08.1993, the landlord cancelled the agreement of sale and demanded for payment of rent. Again, under Ex.P4, a notice dated 06.09.1995 sent through the advocate, it was mentioned that the agreement stood cancelled the tenants were called to pay the rent. At least, at that point of time, the tenants should have taken some steps to assert their right, but it was not done. Thus, the tenants have been put on notice regarding the cancellation of agreement of sale in writing,

however, they neither sent any reply, nor issued an independent notice intimating that their right as agreement holder continued nor filed a suit for specific performance to assert their right as an agreement holder. Contra, the tenants have tacitly accepted that the amount of Rs.7,00,000/- given as advance sale consideration can be adjusted towards payment of rent. Such a pleading on the part of the tenants to adjust the advance sale consideration towards payment of rent would categorically indicate that the tenants themselves have revived the relationship of landlord and tenancy and therefore, the tenants are guilty of non-payment of rent."

(v) An unreported judgment of this court dated 19.08.2010 made in C.R.P.(NPD).No.2125 of 2010 [T. Thangamani v. Tmt.Mangammal] wherein, this court held as follows:-

"22. The learned counsel for the tenant would submit that the landlady has not chosen to figure herself as a witness and depose.

23. No doubt, on behalf of the landlady, P.W.1-her son-in-law was examined. In fact, RCOP itself was filed by her daughter on the strength of one other Power of Attorney Ex.P1. Ex.P2-the Power of Attorney executed by the landlady in favour of her son-in-law authorising him to depose before the Court would show that he had authority to depose.

24. The core question arises as to whether the deposition of the son-in-law of the landlady could be taken as the one deposed by the landlady herself.

25. It is the trite proposition of law that a witness could depose what is there in his knowledge. Accordingly, P.W.1- Elango from his knowledge deposed.

26. The learned counsel for the tenant would submit that had the landlady been examined then the tenant would have had the opportunity of cross-examining her about the payment of rent etc.

27. Such an argument could not be countenanced by me for the reason that it is not the case of the tenant herself that she directly paid the rent to the landlady and in such a case, non-examination of the landlady, in my considered view, is not fatal to the case."

14. On a careful consideration of the materials available on record, the submissions made by the learned counsel on either side and the judgments relied upon by the learned counsel on either side, it could be seen that there is no dispute that the petitioner became a tenant in respect of the petition premises in the year 2000.

15. According to the respondent-landlady, the monthly rent was Rs.4,500/-. The petitioner-tenant in his counter has stated that he entered into a sale agreement with the respondent-landlady on 13.05.2005 in respect of the petition premises for a total sale consideration of Rs.7,50,000/- and paid a sum of Rs.2,00,000/- on the same

day under Ex.R1 receipt and subsequently, under Exs.R2 and R3 receipts, the petitioner paid further sum of Rs.50,000/- and Rs.1,00,000/-.

16. According to the petitioner-tenant, since the respondent-landlady failed to execute the sale deed in his favour, he filed a suit in O.S. No.8238 of 2011 on the file of XVII Assistant Judge, City Civil Court, Chennai for specific performance. Copy of the plaint in O.S. No.8238 of 2011 was marked as Ex.R9. Suppressing the agreement entered into between the parties and the advance received by her, the respondent-landlady has filed the Original Petition in R.C.O.P. No.1202 of 2012.

17. The respondent-landlady had received a total sum of Rs.2,50,000/- from the petitioner under Exs.R1 to R3 documents. When the respondent-landlady has received a substantial amount from the petitioner-tenant, she could not have suppressed the said fact in the Original Petition. Even the filing of the suit in O.S.No.8238 of 2011 was also suppressed by her. In the typed set of papers, the petitioner had enclosed the affidavit of the petition filed by the respondent-landlady under Order 7, Rule 11 of Civil Procedure Code to reject the plaint in O.S.No.8238 of 2011. The said application was filed in the year 2012. Even this fact was also suppressed by the landlady for the reasons best known to her. When the petitioner-tenant had taken a specific plea in the written statement that the Original Petition in R.C.O.P.No.1202 of 2012 is not maintainable for the reason that there is no jural relationship of landlady-tenant between himself and the respondent-landlady, the respondent must have entered the evidence box and let in oral evidence to substantiate her case.

18. On a perusal of the counter filed by the petitioner-tenant, it is clear that the revision petitioner has not admitted that there was wilful default in paying the monthly rents to the respondent-landlady. When the petitioner-tenant has stated that they entered into a sale agreement and the respondent-landlady has also received a total sum of Rs.2,50,000/- from him, she should have examined herself as a witness before the Rent Controller.

19. It is pertinent to note that on the side of the respondent-landlady none was examined and no document was marked. The eviction cannot be ordered merely based on the averments stated in the petition, unless the tenant admitted the case of the landlady, specifically in his counter. When the initial burden of proof is on the landlady, she should have proved the contents of the petition by adducing oral and documentary evidences. In the judgment reported in 1993(2) MLJ 464 [S.K.M. Mohammed Amanullah v. Ramasangu Pandian] the Division Bench of this court held that in the absence of any valid explanation for the plaintiff's non-examination of himself as a witness, the court is entitled to draw an adverse inference against him. Further, the Division Bench held as follows:

"5. The plaintiff has not entered the witness box to speak in support of his case. The reason for his absence from the witness box is said to be that he was not in India at

that time and he was in Saudi Arabia eking out his livelihood. This explanation cannot be accepted in view of the fact that the plaintiff was admittedly in India at the time of filing the plaint. P.W.2 has stated in his evidence that he saw the plaintiff six months prior to the date of his deposition. His evidence was recorded on 24.8.1982, which means the plaintiff was seen by him in February, 1982. He has also stated that the plaintiff went outside the country about four months prior to that. That means the plaintiff left India in about April, 1982. Assuming that to be true, the plaintiff has admittedly come back to India before the suit was concluded. He was present in India on 10.7.1985 as evident from the power of attorney executed by him in favour of his brother-in-law, who has been examined as P.W.1. A copy of the power of attorney has been filed in this appeal. It is seen from the judgment of the trial court that a copy was filed in the trial court also at the time of trial though it has not been marked as an exhibit. The suit was pending in July, 1985 and was dismissed only on 18.10.1985. In fact D.W.1 was recalled and examined and further cross-examined on 03.10.1985. There is nothing on record to show as to why the plaintiff was unable to examine himself as a witness when the suit was pending before court."

20. In the case on hand, not only the respondent-landlady, but, none was examined on her behalf. In the judgment reported in 1993(2) MLJ 464 [cited above], the brother-in-law of the plaintiff was examined as P.W.1 and P.W.2 was also examined. But, in the case on hand, absolutely there is no oral or documentary evidence on the side of the respondent-landlady. As already stated, the case of the respondent-landlady can be proved only by adducing oral and documentary evidences. Even in the judgments relied upon by the learned Senior Counsel for the respondent, in all cases, either the plaintiff was examined or at least a representative of the plaintiff was examined. Therefore, the cases relied upon by the learned Senior Counsel for the respondent cannot be equated with the case on hand.

21. In these circumstances, on the ground of non-examination of any witness on the side of the landlady, the judgment and decree of the courts below are liable to be set aside. However, in order to give an opportunity to the respondent-landlady, I am of the view that the matter can be remitted back to the Rent Controller for giving an opportunity to the landlady to let in oral evidence.

22. Accordingly, the judgment and decree passed R.C.A. No.524 of 2014 on the file of VIII Judge, Court of Small Causes, Chennai confirming the order in R.C.O.P. No.1202 of 2012 on the file of XI Judge, Court of Small Causes, Chennai are set aside. The matter is remitted back to the Rent Controller for fresh consideration. The XI Judge, Court of Small Causes, Chennai is directed to give an opportunity to the respondent-landlady to adduce oral and documentary evidences. The Rent Controller is also directed to give an opportunity to the petitioner-tenant to cross examine the witnesses. The tenant is also at liberty to let in further oral and documentary evidences before the Rent Controller and the landlady shall have the

right of cross examining those witnesses. Since the Original Petition is of the year 2012, I direct the XI Judge, Court of Small Causes, Chennai to dispose of the matter, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. The parties are directed to appear before the Rent Controller on 25.07.2015.

23. With these observations, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

24. C.R.P. Allowed with Observations - No Costs - M.Ps. Closed.