

(2009) 12 MAD CK 0199

Madras High Court

Case No: C.R.P. (NPD) No. 2293 of 2009 and M.P. No. 1 of 2009

Elumalai

APPELLANT

Vs

Kotteeswaran @ Kotti Naicker

RESPONDENT

Date of Decision: Dec. 4, 2009

Acts Referred:

- Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Section 10, 10(1), 10(2), 14(1), 25
- Transfer of Property Act, 1882 - Section 109, 53A

Citation: (2010) 2 LW 104

Hon'ble Judges: S. Palanivelu, J

Bench: Single Bench

Advocate: C.R. Rukmani and K.A. Suresh, for the Appellant; J.R.K. Bhavanantham, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Palanivelu, J.

This petition has been filed u/s 25 of the Tamil Nadu Buildings (Lease & Rent control) Act 1960 as amended Act XXIII of 1973 and Act 1 of 1980 against the order and decretal order of the Principal Judge, Chen-galpattu, dated 18.04.2009, made in R.C.A. No. 22 of 2008 in confirming the lower Court fair order and decretal order dated 29.08.2008 made in R.C.O.P. No. 4 of 2005 on the file of the District Munsif Court, Chengalpattu.

2. The allegations contained in the eviction petition filed by the Respondent u/s 10(2)(i) & 14(1)(b) of the Tamil Nadu Buildings (Lease&Rent control), Act 1960 are as follows:

2.(i) The Petitioner is the owner of the scheduled property. He purchased the same by means of a sale deed, dated 30.11.1998, from T. Raja Mudaliar and his sons. The Respondent was tenant under the previous owners. The tenancy was oral. According to English Calendar month, the rent payable is Rs. 350/- per month. The Respondent was not regular and prompt in tendering the monthly rent even to the erstwhile landlord T. Raja. He is a chronic defaulter. He filed a suit for permanent injunction in O.S. No. 168 of 1995 on the file of the District Munsif Court, Chengalpattu for permanent injunction against the said T. Raja and others.

2.(ii) The Petitioner called upon the Respondent to attorn tenancy and pay the rent to him including the arrears of rent. The Respondent filed O.S. No. 187 of 2003 on the file of the Principal Sub-Court, Chengalpattu against the said T. Raja and others for specific performance of an alleged agreement of sale in his favour dated 15.05.1991. The said sale agreement is miserably time barred.

2.(iii) Even during the ownership of T. Raja, the petition mentioned shop was certified to be unsafe requiring immediate demolition by the Municipality, Chengalpattu. Since the Respondent did not vacate, he could not demolish the building. After the purchase, the Municipality issued similar Certificate to this Petitioner to demolish the building, as it was very old and in dilapidated condition requiring immediate demolition and reconstruction. The other two tenants are willing to co-operate and are not resisting eviction.

2.(iv) The petition for eviction is on the ground of demolition and reconstruction. The Petitioner possesses sufficient funds for reconstruction and he undertakes that the work of demolition of any material portion of building shall be sufficiently commenced by him not later than by one month and shall be completed before the expiry of three months from the date of recovery. The Respondent intentionally refused to attorn the tenancy and did not pay rent in spite of repeated requests and demands. The Respondent is guilty of wilful default. The request for eviction has also to be passed on this ground. Hence, the Respondent may be directed to vacate the scheduled premises.

3. In the counter filed by the tenant, the following are averred: 3.1. The allegations in the eviction petition that the Petitioner purchase the property, that this Respondent is not regular in payment of rent, that the purchase was known to him, that he was called upon to attorn the tenancy and to pay arrears, that the sale agreement was time barred, that the building is old and in a highly dilapidated condition, which requires demolition and reconstruction and that this Respondent is guilty of wilful default are all false and untrue. There is no landlord and tenant relationship between the Petitioner and the Respondent.

3.2. This Respondent was neither tenant under the said Raja nor this Petitioner. This Respondent is not paying any rent and hence, there is no question of default much less wilful default. The building is strong which need not be demolished and

reconstructed immediately. Minor repairs alone will do. This Respondent is not aware of the alleged Certificate issued by the Municipality, Chengalpattu, which is not binding on him. The present petition is a counter blast to the suit filed by this Respondent filed in O.S. No. 187 of 2003 for specific performance of contract. There is no merits in the petition and the same is liable to be dismissed.

4. The learned Rent Controller, Chengalpattu after scrutiny of documentary and oral evidence and materials on record as well as other materials found that the requirement of the landlord for demolition and reconstruction is bona fide and this Petitioner is a wilful defaulter and passed eviction order granting two months time to vacate the premises in question.

5. This Petitioner/tenant carried the matter in appeal in R.C.A. No. 22 of 2008 on the file of the Principal Sub-court, Chengalpattu and the appellate authority confirming the order of eviction passed by the Rent Controller, dismissed the appeal allowing two months time for delivery. Challenging the above said order, this Petitioner is before this Court.

6. By means of a sale deed dated 30.11.1998, the Respondent purchased the demised premises from T. Raja and others along with other annexed premises.

7. It is the bottom line contention of this Petitioner that he is neither a tenant of T. Raja nor a tenant under this Respondent. He also says that he filed a suit for permanent injunction in O.S. No. 168 of 1995 against T. Raja and others on the file of the District Munsif Court, Chengalpattu for permanent injunction restraining them from in anyway interfering with his peaceful possession till he is evicted under due process of law. This plaint copy has been marked as Ex.P.3. In the said suit, he has consciously admitted that he is the tenant in the schedule building under T. Raja and that he is running a wholesale vegetable business for the past ten years. It is further pleaded therein that he entered into an agreement on 15.05.1991 with T. Raja for purchasing the suit property and other two shops for a sum of Rs. 3,50,000/- and that he has paid Rs. 1,40,000/- towards sale consideration.

8. It is worth-mentioning that neither in the sale agreement nor in the plaint Ex.P.3, it is stated that he was inducted into the property to hold possession as part performance of the contract and that he need not pay rent to the owners after the sale agreement.

9. While the matter stood thus, O.S. No. 187 of 2003, the suit for specific performance of contract filed by this Petitioner was dismissed by the Sub-Court and an appeal was filed in A.S. No. 41 of 2007 before the District Court, Chengalpattu, in which he obtained an interim injunction to the effect that this Respondent should not disturb his possession. But, the Rent Controller has stated in his order that no stay was obtained as to the operation of judgment and decree made in O.S. No. 187 of 2003. The appellate authority has observed in his order that Ex. R.4 discloses that in the appeal ad-interim injunction was granted on 24.04.2007 and subsequently,

the said order was not extended and hence, there is no impediment to grant the relief prayed for by the landlord.

10. As far as O.S. No. 168 of 1995 is concerned, the suit was decreed and there was no appeal. In the said suit, on the strength of the pleadings of this Petitioner, he has been decided as a statutory tenant in the demised premises and the said findings of the Civil Court remain unchallenged by him. Further, it is his own admission in the suit that he is the tenant. But, presently he disputes that he could not be construed to be a tenant under this Respondent for the reason that he had not attained the tenancy to him and that no relationship of landlord and tenant is existing between them.

11. Insofar as O.S. No. 187 of 2003 is concerned, the suit was dismissed under observation that the claim was barred by limitation and it is further finding that the present Petitioner is in possession not in the capacity of an agreement holder, but in the capacity of tenant. In the suit in O.S. 168 of 1995, this Petitioner took the plea that he was the tenant. In O.S. No. 187 of 2003, he says that he is in possession in the property as an agreement holder, he cannot appropriate and reprobate.

With regard to denial of title:

12. Even though it is not specifically pleaded in the counter that this Petitioner denies the title of the landlord, namely, this Respondent, his conduct in the proceedings would indicate that he disputes the title of the landlord, since it is his contention that there is no relationship of landlord and tenant between them.

13. Ms. C.R. Rukmani, learned Counsel for the Petitioner would garner support from a decision of the Supreme Court in CDJ 1991 SC 340 , ([M/s. East India Corporation Ltd. Vs. Shree Meenakshi Mills Ltd.](#),) wherein it is held that the condition precedent to the exercise of jurisdiction by a Civil Court is that the tenant should have denied the title of the landlord or claimed right of permanent tenancy and Controller should, on such denial or claim by the tenant, reach a decision whether such denial or claim is bona fide. Upon such decision, the Controller must record a finding to that effect. In that event, the landlord is entitled to sue for eviction of the tenant in a Civil Court.

14. As per the Supreme Court, the sine qua non for the exercise of jurisdiction by the Civil Court is, the finding of the Rent Controller that the denial of title of the landlord by the tenant is a bona fide one. If the Rent Controller records a finding that such denial of title is not bona fide, then he can proceed under the provisions of the Rent Control Act, since he is the competent authority to order eviction.

15. The learned Counsel for the Petitioner also places reliance upon a decision of this Court in [P. Rukmani Vs. R. Narayani and Others](#), , [P. Rukmani Vs. R. Narayani and Others](#), wherein this Court has held that significantly, the jurisdiction of the Civil Court can be invoked only where the Controller comes to a decision and records a

finding that the denial of title claimed by the tenant is bona fide and if the Controller were to come to the opposite conclusion, no question of invoking the jurisdiction of the Civil Court would arise.

16. In a decision reported in *John V. John v. Goolamally Estates* 1989 TNLJ 311, Justice Mohan, O.C.J., (as His Lordship then was) has held that if a tenant entered into an agreement of sale from the landlord, then that agreement puts an end the jurial relationship of tenant and landlord and under those circumstances, the question of payment of rent does not arise and even if a person who are qua the tenant enters into an agreement for purchase of the property and continues to be in possession thereafter, Section 53-A of the Transfer of Property Act would apply. But in the earlier and in the subsequent decisions of this Court, the said view was not accepted.

17. In [S. Duraisami Nadar Vs. Nagammal](#), (by Ramanujam, J.), in a similar situation, it was held as follows:

In this case there was no evidence that the parties agreed that the relationship of landlady and tenant should cease and the tenant's possession should be traced only to the agreement of sale. By merely entering into an agreement of sale the tenant did not acquire any right in the property.

If possession is traceable to the agreement of sale, then such possession can be sustained on the basis of the principle of part-performance u/s 53-A, Transfer of Property Act. Even assuming that the Petitioner is entitled to the benefit of Section 53-A, his liability to pay rent does not cease unless the agreement of sale puts an end to that liability in specific terms. The liability to pay rent, therefore, continued. The default in payment of the rents in the present case was wilful and the requirement of the building by the landlady for the purpose of the business of her son was bona fide. The order of eviction had therefore to be sustained.

18. In a decision reported in [Jessie Thavamani Vs. Liakath Basha](#), it is held that oral agreement of sale does not terminate relationship of landlord and tenant and mere agreement of sale would not exonerate tenant from obligation to pay rent unless there is specific and expressed term providing termination of relationship of landlord and tenant and absolving the tenant from future liability to pay rent. The operative portion of the judgment goes thus:

... With great respect, I am unable to share the view of Mohan, J. and prefer to follow the views expressed by Ramanujam, J. in [S. Duraisami Nadar Vs. Nagammal](#). In the instant case, as already seen, there is no evidence to show that the parties agreed that the relationship of landlord and tenant should cease and the tenant's possession should be traced only to the agreement of sale. The view taken by Mohan, J. that the status of the landlord and tenant had been altered to that of a vendor and the purchaser on entering into an agreement and that therefore, the question of payment of rent would not arise, much less wilful default in the payment

of rent, is, in my respectful opinion, an extreme view. If there is any waiver of the rent pursuant to the agreement of purchase it should be specifically and expressly stated in the agreement itself. By merely entering into an agreement of sale, the tenant does not acquire any right in the property.

19. This Court respectfully follows the decision in Jessie Thavamani's case (cited supra) and holds that the agreement for sale, even if it is true and valid between the tenant and the erstwhile landlord, will never terminate the relationship of landlord and tenant between them and such a relationship continues between both the parties even after the sale.

20. The learned Counsel for the Petitioner also cites a decision of this Court reported in Abdul Khadar v. Rajammal 1998 (1) MLJ 331, wherein it is held as follows:

But one of the essential conditions for the exercise of the jurisdiction of the civil Court to order such eviction in this case had not been satisfied viz., a decision by the Controller whether the denial of the claim of title is bona fide and recording of a finding to that effect. It is one of the principal conditions upon which the rights of the landlord to move the Civil Court is granted to him and failing the fulfilment of such condition, the landlord cannot straightaway rush to the civil Court and seek a decree for eviction on any one of the grounds mentioned in Section 10. The first Respondent in this case, unfortunately, has not adopted this procedure and consequently, it was not open to him to seek a decree for recovery of possession on any one of the grounds mentioned in Section 10(1).

21. The learned Counsel also says that the Rent Controller nor the appellate authority had framed the issue as to whether denial of title of landlord by tenant is bona fide. To which, the discussion parts of the orders could go to show that the denial is not bona fide, since they have decided that whatever it may be, the rights of erstwhile owners would be derived by the Respondent. It is her further contention that the authorities below should have given a finding that landlord is entitled only for the damages and that he could file for a suit for ejectment only after outcome of the suit filed by the tenant.

22. In this regard, it is observed that the landlord need not wait for outcome of the appeal in A.S. No. 41 of 2007. If this Petitioner succeeds, then he can execute the decree as per its terms. It is also contended that the relationship of landlord and tenant between the parties is no longer existing, since vendors of this Respondent entered into an agreement for sale with this Petitioner. The grounds of revision would clearly indicate that the title of this Respondent is denied.

23. In yet another decision of this Court reported in [Arunachalam @ Annamalai Vs. Subbulakshmi Ammal, Kamakshi Ammal and Vaithianathan @ Arjunan](#), it is held that the jurisdiction of the Civil Court in respect of eviction of tenants is barred except to the extent and subject to the conditions prescribed u/s 10 of the Act and that the condition precedent to the exercise of the jurisdiction by the Civil Court is

that the tenant should have denied the title of the landlord or claimed right of permanent tenancy and the Controller should decide whether the denial or claim is bona fide and the Controller must record a finding to that effect and even the landlord is entitled to sue for eviction of the tenant in a Civil Court.

24. In [M. Venkatachalam, Dhanam, Ganesh and Kumar Vs. N. Palanisamy Thevar](#), , this Court held that tenant cannot question the title of the landlord having unsuccessfully canvassed the same before the Civil Court and the High Court in revision will also not interfere with concurrent findings of Court below, when the orders passed on valid evidence and correct application of law.

25. In it is observed by this Court that when a Civil Court has recognised the status of Respondent as a statutory tenant, merely on the statement in eviction petition (i.e. without prejudice to the rights that the Respondent is not a statutory tenant) it cannot be concluded that there was no relationship of landlord and tenant between the parties and averments made in the eviction petition cannot negate findings of Civil Court and judgment thereon.

26. In the light of the illuminating decisions on this subject aforementioned, it has to be held that when there is denial of title of landlord by the tenant, if it is not bona fide, then the Rent Controller has got every right to pass order of eviction. In case, if the Rent Controller records finding that the denial of title is bona fide one, then it may direct the parties to seek remedy before the Civil Court and the landlord has to approach the Civil Court for eviction. In this case, denial of title by Petitioner is not bona fide. The Petitioner is precluded from contending that he is not a tenant, but a person in possession in pursuance of a part performance of contract in sale, in view of his own admission in the suit in O.S. No. 168 of 1995 and the judgment rendered thereon by the Civil Court concluding that he is the tenant in the demised premises. As to attornment of tenancy:

27. It is the next limb of contention of the learned Counsel for the Petitioner that since the Petitioner did not attorn tenancy in favour of the Respondent, there will be no relationship of landlord and tenant between both parties and so the eviction petition is not maintainable. Such contention is not sustainable in view of settled proposition of judicial pronouncements by the Supreme Court. The Supreme Court, on this point, dealt with in [Mohar Singh \(Dead\) by Lrs. Vs. Devi Charan and Others](#), , which is as follows:

A landlord cannot split the unity and integrity of the tenancy and recover possession of a part of the demised premises from the tenant. But Section 109, T.P. Act, provides a statutory exception to this rule and enables an assignee of a part of the reversion to exercise all the rights of the landlord in respect of the portion respecting which the reversion is so assigned subject, of course, to the other covenant running with the land. This is the true effect of the words shall possess all the rights... of the lessor as to the property or part transferred.... occurring in

Section 109, T.P. Act. There is no need for a consensual attornment. The attornment is brought about by operation of law. The limitation on the right of the landlord against splitting up of the integrity of the tenancy, inhering in the inhibitions of his own contract, does not visit the assignee of the part of the reversion. There is no need for the consent of the tenant for the severance of the reversion and the assignment of the part so severed. AIR 1920 Mad 838 (FB) Approved [Badri Narain Jha and Others Vs. Rameshwar Dayal Singh and Others,](#), Distinguished.

28. In the following decisions of this Court and other High Courts, the said principle has been followed:

(i) [Natarajan Vs. Manimegalai and K. Balasubramaniam,](#)

(ii) [Smt. Kalawati Tripathi and Others Vs. Smt. Damayanti Devi and Another .](#)

(iii) [Yelamati Veera Venkata Jaganadha Gupta and Another Vs. Veju Venkateswara Rao and Others,](#)

29. From the above, it emerges that when a landlord transfers his right to another person, the purchaser automatically denies the rights in tenancy as regards the property and it is immaterial that the tenant should attorn tenancy in favour of the subsequent purchaser. No where in the statute it is specifically mentioned that the tenant shall attorn the tenancy in favour of the subsequent purchaser of the tenanted premises so as to enable him to proceed under the provisions of such statute. The transferee acquires all the rights possessed by the transferor in the property inclusive of the right to proceed against the tenant as per law. Hence, it cannot be urged that in the absence of attornment of tenancy, the Respondent has no right to get on with eviction proceedings. Even in the absence of allotment of tenancy in favour this Respondent, he can get along with eviction proceedings.

As to wilful default:

30. It is conceded fact that the Petitioner did not pay any rent to the Respondent after the sale. Even he had defaulted in payment of rent to the original landlord. He has not taken any steps to deposit the rent into the Court. If his intention was bona fide after impleading of necessary parties. Even if the tenant comes forward to deposit the rent subsequent to the denial title of landlord, it would not show his bona fide.

30.1. This position has been highlighted by the Supreme Court in AIR 1999 (6)SCC 396, Sankaran Pillai (Dead) by Lrs. v. V.P. Venuguduswami and Ors. AIR 1999 (6) SCC 396, wherein it is held that the tenant denied the relationship of landlord and tenant before the Rent Controller and subsequent deposit by tenant of all the arrears of rent before the Appellate Authority being requirement of law, for hearing the appeal on merits cannot be treated as a bona fide deposit. The necessary corollary thereof would be that even if such subsequent deposit was made, wilful default has to be inferred. Even in this case, after the denial of title of the landlord, this Petitioner had

never moved his little finger to deposit the rent to the Court.

30.2. By means of money order as evident from Exs.P.16 to 22, the receipts therefor, the Petitioner had sent the rent to the erstwhile owner. But there is no pleading nor evidence on his side to show that he continued to pay the rent to the Respondent or took steps calling for the concerned person for specifying a Bank for deposit of rent or initiating necessary legal proceedings before the Court to deposit the rent. In the absence of these, it has to be necessarily held that he wilfully made defaults to pay the rent to the landlord. There has been no whisper from his side to show that he is not a defaulter.

30.3. By means of Ex.P.26, this Petitioner issued a notice to the Respondent and the erstwhile owner. Ex.P.27, dated 11.11.2002, is the reply notice given by the Respondent to the Petitioner informing about the purchase of the property and the default committed by the Petitioner in paying rent. Even afterwards, this Petitioner failed to pay the rent. R.C.O.P. has been filed in the year 2005 and anterior to filing of R.C.O.P, there had been huge arrears payable to the Respondent as rental arrears. Hence, it is held that the petition is a wilful defaulter.

As regards demolition and reconstruction:

31. It is pleaded in the petition that building is more than 100 years old and is in a dilapidated condition requiring immediate demolition and reconstruction. It is denied by the Petitioner. It is indicated in the sale deed, dated 30.11.1998, in favour of this Respondent, that the age of the demised premises as 20 years. Before the Rent Controller, Ex.P.28 photographs have been produced to show that the building is in a dilapidated and highly in a damaged condition. The position of the building as shown in the photographs is being supported by the letters sent by the Commissioner, Chengalpattu Municipality to the previous owner T. Raja as well as to this Respondent. Ex.P.12 is the copy of the demolition notice issued by the Commissioner of the said Municipality dated 18.12.1997 requiring him to demolish and remove the damaged building (demised premises) within seven days and the fact of such demolition had to be intimated to the Municipality. Ex.P.2 is a subsequent identical notice issued by the said municipality on 16.12.2002 addressed to this Respondent requiring him to flatten the building and the debris shall be cleared within seven days.

32. In both the notices, it has been categorically stated that the building is in a dilapidated condition which is likely to fall down causing danger to the public. The Respondent has offered necessary undertaking as required by the statute as to the demolition and reconstruction in his petition and he has also mentioned that he has got sufficient financial sources for the said purpose. These factors have not been repudiated by the tenant.

33. It is settled position that the condition of the building is not material for the landlord to entertain an intention to demolish the same. All that is necessary to

discern the intention of the landlord, whether it is bona fide or not. The Supreme Court in 2004 (3) LW 754, P.S. Pareed Kaka and Ors. v. Shafee Ahmed Saheb 2004 (3) LW 754 has observed that even if the building is in a good condition and if it is not suitable for the requirement of the landlord, he can always demolish a good building and put up a new building to suit his requirements and that it is not necessary for the landlord to prove that the condition of the building is such that it requires immediate demolition particularly when the premises is required by the landlord. I have followed the said decision in the judgment reported in 2009 (3) TLNJ 545, Venkadachalam v. Michel 2009 (3) TLNJ 545.

34. On a conspectus of the materials available on record and following the decisions of the Supreme Court, it is held that the intention of the landlord to demolish and reconstruct the building is bona fide and on this ground also, the Respondent is entitled for an order of eviction.

35. Both the fora below have recorded concurrent findings as to the existence of landlord and tenant relationship, wilful default and bona fide requirement of the landlord for demolition and reconstruction in favour of the Respondent.

36. The learned Counsel for the Respondent would submit that unless strong grounds are made out, concurrent findings need not be disturbed by this Court in its revisional jurisdiction u/s 25 of the Act. It is the decision of the Supreme Court which is followed by this Court in the decision whose operative portion goes thus with the extraction of the ruling of the Supreme Court: 2007 (2) CTC 787, Suresh Kumar Kothari v. Dr. T. Ramachandran and Anr. 2007 (2) CTC 787

26. u/s 25 of the Act, it is not permissible for the High Court, in exercise of its revisionary jurisdiction to act as Appellate Court to re-appraise or re-assess the evidence afresh as an Appellate Court and come to a different findings contrary to the finding recorded by the Court below. In K.M. Abdul Razzack v. Damodharan 2001 (1) MLJ SC 37: 2000 (4) SC 575, in Para 5, it was held as follows:

5... It is not permissible for the High Court, in exercise of its revisionary jurisdiction to act as an Appellate Court to reappraise or reassess the evidence afresh as an Appellate Court and come to a different finding contrary to the finding recorded by the Court below. We, therefore, hold that the High Court while allowing the revision transgressed its jurisdiction conferred upon it u/s 25 of the Act....

37. An overhaul of all these circumstances in this case paves way to reach a conclusion that the denial of title of the landlord by the tenant is not bona fide, that there exists landlord and tenant relationship between the parties, that the Petitioner has committed wilful default and that the Respondent requires the building bona fide for demolition and reconstruction.

38. All the grounds raised in the eviction petition have been established, entitling the Respondent to get a decree for eviction. There is no reason to interfere with the

concurrent findings recorded by the authorities below which deserve to be confirmed and they are accordingly confirmed. The civil revision petition has to fail and suffer dismissal.

In fine, the civil revision petition is dismissed with costs. Consequently, connected M.P. is closed. No costs. Time for delivery three months.