

**(2014) 12 MAD CK 0317**

**Madras High Court (Madurai Bench)**

**Case No:** C.R.P. (MD) (NPD). No. 1192 of 2012

C. Subbu Thangam

APPELLANT

Vs

C. Thangachan

RESPONDENT

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**Date of Decision:** Dec. 12, 2014

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

**Bench:** Single Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

M. Duraiswamy, J.

Challenging the fair and decretal order passed in R.C.A. No.3 of 2010, on the file of the Rent Control Appellate Authority, Principal Subordinate Court, Dindigul, reversing the fair and decretal order passed in R.C.O.P. No.4 of 2009, on the file of the Rent Controller, Principal District Munsif Court, Dindigul, the landlady has filed the above Civil Revision Petition.

2. During the pendency of the Civil Revision Petition, the landlady had died and her legal representatives were brought on record as the petitioners 2 to 5. The landlady filed R.C.O.P. No.4 of 2009 for eviction on the ground of own use and occupation. According to the landlady, the tenant agreed to pay the monthly rent of Rs.900/- and also paid advance amount of Rs.20,000/- for running a tea shop. Further according to the landlady her son had completed his education and is unemployed and therefore for starting a provision shop in the demised property, the landlady has filed the R.C.O.P. The tenant contended that the landlady did not require the premises for her own use and occupation and that she is having several properties in the same area. In these circumstances, the tenant prayed for dismissal of the R.C.O.P.

3. Before the trial Court on the side of the landlady two witnesses were examined and four documents viz., Exs.P.1 to P.4 were marked and on the side of the tenant, R.W.1 was examined. However no document was marked. The Rent Controller after

taking into consideration the oral and documentary evidences of both sides, ordered eviction. Against which the tenant preferred an appeal in R.C.A. No.3 of 2010, on the file of the Principal Subordinate Court, Dindigul. The Rent Control Appellate Authority revered the order of eviction and allowed the appeal. Against which, the legal representatives of the landlady have filed the above Civil Revision Petition.

4. Heard Mr.R.Nandakumar, learned Counsel appearing for the petitioners and Mr.J.Lawrance, learned Counsel appearing for the respondent.

5. On a careful consideration of the materials available on record and the submissions made by the learned Counsel on either side, it could be seen that the petition property was leased out to the tenant on a monthly rent of Rs.900/- for running a tea shop and the tenant also paid an advance amount of Rs.20,000/- at the time of entering into the possession of the property. The tenant came into possession of the property in the year 1991. P.W.1 in her evidence has stated that in order to start provision business in the demised premises for his son, she required her property for her own use and occupation. The petitioner also produced the licence for running a provision shop marked as Ex.P.1. In her evidence she has stated that except the demised property, she has no other property for starting the business for her son.

6. Though the tenant contended that the landlady is having several properties in the same locality and that the petition property may not be required for starting the provision business for her son, the tenant has not established the said contention that the landlady is having several properties in the same locality. On the contrary, the evidence of P.W.1 was very categorical and specific that she is having only the property which was leased to the tenant and apart from that, she is not having any other property. Taking into consideration all these aspects the Rent Controller had ordered eviction. On appeal, the Rent Control Appellate Authority, came to the conclusion that the licence produced by the landlady is subsequent to the filing of the R.C.O.P, therefore, it cannot be taken into consideration. That apart the Rent Control Appellate Authority also found that the landlady has not examined her son to prove that the property is required for starting a business for him.

7. It is a settled position that it is suffice to examine the landlady as the witness to prove the case of own use and occupation. it is not necessary that her son should be examined to prove the case of the landlady. On this ground the Rent Control Appellate Authority should not have set aside the order of eviction granted by the Rent Controller. In these circumstances, I am of the considered view that the fair and decretal order passed by the Rent Control Appellate Authority in R.C.A. No.3 of 2010 are liable to be set aside. Accordingly the same are set aside. The fair and decretal order passed in R.C.O.P. No.4 of 2009 on the file of the Principal District Munsif Court, Rent Controller, Dindigul are restored.

8. Accordingly, the Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

9. The learned Counsel appearing for the respondent / tenant submitted that the respondent/tenant may be granted one year time for evicting the premises and the learned Counsel for the petitioner/landlord has no objection for granting one year time.

10. Having regard to the submissions made by the learned Counsel appearing on either side, I grant one year time to the respondent/tenant to evict and hand over the vacant possession to the legal representatives of the landlady without driving them to initiate execution proceedings, on condition that the respondent/tenant shall file an affidavit of undertaking to that effect on or before 18.12.2014 before the Registry, failing which the time granted by this Court shall stand cancelled.