

F.C.Vijayakumar Vs. V.Pradeep

F.C.Vijayakumar Vs. V.Pradeep

SooperKanoon Citation : sooperkanoon.com/1168169

Court : Chennai

Decided On : Mar-26-2014

Judge : S.Rajeswaran

Appellant : F.C.Vijayakumar

Respondent : V.Pradeep

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated : 26.03.2014 Coram The Honourable Mr.Justice S.RAJESWARAN C.R.P.(NPD)Nos.2688 to 2691 of 2012 and M.P.Nos.1 to 1 of 2012 F.C.Vijayakumar ..Petitioner in C.R.P.Nos.2688 & 2689/2012 Arun Woodcrafts, Rep.

By Bijay Singh Dugar, E32, Anna Nagar East, Chennai 102..Petitioner in C.R.P.No.2690/2012 S.Balasubramanian Proprietor, Balan Pharmacy, 21, Sambasivam St.

T.Nagar, Chennai 17..Petitioner in C.R.P.No.2691/2012 versus V.Pradeep ..Respondent in all C.R.Ps C.R.P.No.2688 of 2012: Civil Revision Petition has been filed against the judgment and decree dated 14.06.2012 made in R.C.A.No.262/2011 on the file of the VIII Small Causes Court, Madras (Appellate Authority) confirming the fair and the decreetal order dated 24.02.2011 in R.C.O.P.No.2234 /2005 before the XIII Small Causes Court (Rent Controller) Madras.

C.R.P.No.2689 of 2012: Civil Revision Petition has been filed against the judgment and decree dated 14.06.2012 made in R.C.A.No.263/2011 on the file of the VIII Small Causes Court, Madras (Appellate Authority) confirming the fair and the decreetal order dated 24.02.2011 in R.C.O.P.No.2477 /2005 before the XIII Small Causes Court (Rent Controller) Madras.

C.R.P.No.2690 of 2012: Civil Revision Petition has been filed against the judgment and decree dated 14.06.2012 made in R.C.A.No.265/2011 on the file of the VIII Small Causes Court, Madras (Appellate Authority) confirming the fair and the decreetal order dated 24.02.2011 in R.C.O.P.No.2172 /2005 before the XIII Small Causes Court (Rent Controller) Madras.

C.R.P.No.2691 of 2012: Civil Revision Petition has been filed against the judgment and decree dated 14.06.2012 made in R.C.A.No.266/2011 on the file of the VIII Small Causes Court, Madras (Appellate Authority) confirming the fair and the decreetal order dated 24.02.2011 in R.C.O.P.No.2173 /2005 before the XIII Small Causes Court (Rent Controller) Madras.

For Petitioner in all C.R.Ps : Mrs.Hema Sampath Senior Counsel for M/s.R.Meenal
For Respondent in all C.R.Ps : Mr.M.L.Ramesh COMMON

ORDER

The above petitions are arising out of the common order passed by the VIII Small Causes Court Judge (Appellate Authority) in R.C.A.Nos.262, 263, 264, 265 and 266 of 2011 and therefore, a common order is being passed to dispose off all these petitions.

2.The tenants before the Rent Controller are the revision petitioners before this Court and they are aggrieved by the order of the Rent Control Appellate Authority upholding the orders of the Rent Controller and thereby dismissing all the appeals.

3.R.C.O.P.No.2172/2005 has been filed by one V.Pradeep against M/s.Arun Woodcrafts under Section 14(1)(b) of the Tamil Nadu Buildings (Lease & Rent Control) Act.

It is the case of the petitioner in R.C.O.P.No.2172/2005 that the Shop Nos.8 & 9 in premises bearing Old No.35, New No.79, Thirumalai Pillai Road, T.Nagar, Chennai-17 have been allotted to the petitioner in a family arrangement between the family members and the petitioner.

The tenant is running a Furniture business on a monthly rent of Rs.5,362/- and the said rent has been fixed by the XI Small Causes Court, Chennai in R.C.O.P.No.510/2001 dated 29.11.2002.

It is the further case of the petitioner in R.C.O.P.No.2172/2005 that Shop Nos.1 to 9 in the premises bearing Old NO.35, New No.79, Thirumalai Pillai Road, T.Nagar, Chennai-17 is 35 years old and behind the shops vast vacant lands measuring about 3.20 grounds is owned by the petitioner.

The petitioner intends to demolish the entire construction consisting of Shop Nos.1 to 9 and intends to construct a massive construction along with the backside portion which is now lying vacant.

He has already approached the Chennai Corporation for the demolition of the existing construction and after the permission is granted, he intends to put up constructions not only in the place where Shop Nos.1 to 9 are existing but also on the back side portion which is now lying vacant.

He also undertakes to commence the process of demolition within three months from the date of possession.

He has also appraised this fact to this respondent in R.C.O.P.No.2172/2005 and also to the other tenants who are running business in the said premises.

As the respondent has not come forward to vacate, he has filed R.C.O.P.No.2172/2005 to vacate the petition schedule premises which is comprising of Shop Nos.8 & 9 bearing Old No.35, New No.79, Thirumalai Pillai Road, T.Nagar, Chennai-17.

4.The very same V.Pradeep, the petitioner in R.C.O.P.No.2172/2005 filed R.C.O.P.No.2173/2005 against the tenant, S.Balasubramanian, who is occupying

Shop No.6 in the same premises.

In this petition also, he has stated that Shop No.6 has been allotted to him in a family arrangement between himself and the family members. The respondent is a tenant, running a Pharmacy on a monthly rent of Rs.3,000/-.

This petition has also been filed under Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act.

However, it is stated in this petition that he has already filed R.C.O.P.No.2245/2002 against the respondent under Section 10(2)(i) of the Act on the ground that he has defaulted in payment of the monthly rent and the XIII Small Causes Court, Chennai allowed the petition on 28.08.2011.

The appeal filed by the tenant is pending.

5.R.C.O.P.No.2234/2005 has also been filed by the very same petitioner V.Pradeep against F.C.Vijayakumar under Section 14(1)(b) of the Act.

In this petition, it is stated that the respondent is occupying Shop No.7 of the same premises and the respondent is running a Video Internet Processing and Audio Cassettes business on a monthly rent of Rs.2,200/-.

6.R.C.O.P.No.2477/2005 has been filed by the very same V.Pradeep against the very same F.C.Vijayakumar under Section 14(1)(B) and 10(2)(iii) of the Tamil Nadu Act.

In this petition, it is stated that the respondent is in occupation of Shop No.4 as a tenant and he is running a Compute Training and Computer Related Product Services and Internet Processing Centre business on a monthly rent of Rs.2,500/-.

In this petition, the tenant has been accused of completing the civil work without the petitioner's permission, by demolishing the construction and made alterations in flooring which are materials to impair materially the value of the building and the utility of the shop premises.

Hence eviction is sought on both the grounds.

7.R.C.O.P.No.2172/2005 has been resisted by the tenant M/s.Arun Woodcrafts by filing a counter.

According to the respondent/tenant, with an ulterior motive only, the eviction petition has been filed.

It is contended that the above petition is not maintainable in view of the fact that the petitioner is also not the exclusive owner of the petition schedule premises and there are five other co-owneRs.As all the other co-owners have not been added as parties, the RCo.is not maintainable.

It is further contended that the other co-owners have no money for demolition and re-construction.

It is also their case that the other co-owners have not given their consent for filing this petition for eviction.

Similarly, the other co-owners have not approached the Chennai Corporation and the CMd.for necessary demolition and reconstruction plan.

It is further stated that the other portions were already vacated after filing of this RCo.on the ground of demolition and reconstruction, but the petitioner has not applied for necessary plan approval for demolition and reconstruction.

Therefore, there is no bonafide on the part of the petitioner.

Hence, he prayed for the dismissal of the eviction petition.

8.Similar counters have been filed in R.C.O.P.Nos.2173/2005, 2234/2005 and 2477/2005.

9.On 24.02.2011, the XIII Small Causes Judge (Rent Controller) has allowed all these petitions, holding that all the petitioners are entitled for eviction on the ground of demolition and reconstruction and the respondent in R.C.O.P.No.2477/2005 is liable to be evicted on the ground of act of waste also.

10. Aggrieved by the common order passed by the Rent Controller on 24.02.2011, R.C.A.Nos.262, 263, 264, 265 and 266 of 2011 have been filed and the learned Rent Control Appellate Authority (VII Court of Small Causes) by a common order dated 14.06.2012 dismissed all the above appeals after agreeing with the common order passed by the Rent Controller.

Aggrieved by the orders of eviction passed by both the Rent Controller and the Rent Control Appellate Authority, the above revision petitions have been filed before this Court under Section 25 of the Tamil Nadu Act.

11. Heard Mrs. Hema Sampath, the learned senior counsel appearing for the revision petitioners and the learned counsel for the respondent.

I have also gone through the relevant documents including the common orders passed by both the Courts below.

12. Before the Rent Controller, a joint trial was conducted and evidence was recorded in R.C.O.P.No.2173/2005.

On the side of the petitioner/landlord, the petitioner was examined as PW1 and Exhibits P1 to P6 were marked.

On the side of the respondents/tenants, RW1 to RW4 were examined and Exhibits R1 to R33 were marked.

While considering the objection that the petitioner alone is not the owner of the petition property and there are other co-owners, the learned Rent Controller has gone through Exhibits P3, P4 and P6 and found that the other co-owners have released their right in favour of the petitioner.

After finding that admittedly none of the co-owners have raised any objection for the petitioner to file these petitions and after going through various judgments, it is held by the learned Rent Controller that the presence of all the co-owners is not necessary and one co-owner can maintain applications for eviction against the tenants.

13.While considering the second objection with regard to not taking up the demolition activity with regard to the vacated portion, the learned Rent Controller after going through the deposition of RW1 to RW4 found that the other portions could not be demolished separately without affecting the part of the building and found no substance in those appeals.

While dealing with the contention that the petitioner has not taken any steps in furtherance of his intention to demolition and reconstruct the petition building, the learned Rent Controller has referred to Ex.P1 which is the requisition letter for approval of sanction plan and Ex.P2 which is the plan.

The learned Rent Controller was aware that if a landlord intends to demolish and re-construct the tenanted premises, he need not establish that the building is in a dangerous condition.

With regard to the means of the petitioner to demolish and reconstruct the building, the learned Rent Controller after referring to EX.P5 which is Valuation Report, according to which, the value of the property is more than Rs.1 Crore, held that it is sufficient to prove the means of the petitioner and therefore, the petitioner's means stand proved.

In view of the above, eviction has been ordered by the learned Rent Controller under Section 14(1)(b) of the Act.

While considering the ground of act of waste in R.C.O.P.No.2477/2005, the learned Rent Controller after going through the deposition of RW4, held that the evidence of RW4 proves that he has made alterations without the consent of the petitioner and as such, he has committed act of waste.

14.When this common order was sought to be challenged before the learned Rent Control Appellate Authority, the learned Rent Control Appellate Authority reconsidered the entire evidence and the findings arrived at by the learned Rent Controller.

15.During the pendency of the Rent Control Appeals, Miscellaneous petitions were filed by the appellants / tenants to take up the preliminary issue of making further

enquiries in the R.C.O.P. and also to consider the subsequent event of execution of alienating the property.

After going through the averments contained in the petition, those petitions were dismissed by the R.C.A. Further, petitions were also filed to receive additional documents.

These petitions were also dismissed by the RCAA on the ground that no sincere efforts were made by them to obtain those documents and to file them before the Rent Controller.

16. While considering the issue of non-joinder of all the co-owners in the petitions filed for eviction, the learned Rent Control Authority held that a co-owner is always a co-owner and it cannot be said that co-owner is only a fractional owner or owner to a limited extent unless the property is partitioned between the co-owners. Therefore, the learned Rent Control Authority held that the eviction petition is very much maintainable.

17. The learned Rent Control Authority while considering the argument that the building is only 35 years old and therefore, it is not in a dangerous condition and requiring immediate demolition, held that the age and the condition of the building is not a syniconon for maintaining a petition for eviction on the ground of demolition and reconstruction.

While considering the question of means for demolition and reconstruction of the building, the learned Rent Control Authority observed that for getting eviction under Section 14 of the Rent Control Act, the landlord has to necessarily establish that he has bonafide intention to demolish the existing superstructure.

There is no dispute regarding the fact that the entire area of the land comes to about 4 grounds and 822 sq.

ft.

After getting the sanctioned plan, the petitioner intends to construct a Multi Storey Complex which would fetch more income to the petitioner.

In order to achieve the said object, the petitioner has made the family arrangement with the rest of the co-owners wherein all of them have agreed for joint development of the property.

If the existing construction is demolished and re-construction is carried out in the entire area of 4 grounds, certainly income would be manifold than what the property is getting now.

The portions already vacated by the other two tenants are still kept vacant in order to achieve the object of demolition and re-construction.

Thus, after re-appreciating and re-considering the entire facts and the evidence adduced, the learned Rent Control authority has held that the petitioner has satisfied all the essential requirements of Section 14(1)(b) of the Act.

18.I am of the considered view that both the authorities below including the Appellate Authority have properly and clearly considered the respective contentions and arrived at the findings correctly on the basis of the evidence adduced before them and also on the basis of the law holding the filed.

In such circumstances, this Court while exercising its powers under Section 25 of the Tamil Nadu Act, cannot interfere with the concurrent factual findings given by both the Courts below, unless there is illegality and perversity in those findings.

19.The learned Senior Counsel for the revision petitioners has very much relied on the decision rendered in 2007 (5) CTC277(M.Chinniyan versus Kasthuri and otheRs.and submitted that the eviction petition is not maintainable as the co-owners have not been made as parties in the said eviction petition.

20.I am unable to accept the submissions made by the learned Senior counsel in this regard.

A perusal of the judgment relied on by the learned senior counsel would show that the facts in that case are entirely different from the facts of the present case.

In M.Chinnaiyan versus Kasturi and others case referred to above, R.C.O.P.was filed by the petitioners 1 to 3, calling themselves as the exclusive owners of the

property.

Here, there is no such claim of exclusive ownership and the petition has been filed by clearly stating that he is also one of the co-owneRs. In so far as the admissibility of Ex.P6, which is the Deed of Declaration, it has been relied upon by both the authorities below, the learned senior counsel contends that Ex.P6 is not admissible in evidence and if Ex-P6 is eschewed from the evidence, then it cannot be said that the R.C.O.P. has been filed by one co-owner on behalf of the other co-owneRs. The learned senior counsel points out that it is an unauthenticated and inadequately stamped document and therefore, it could be questioned at any stage including the stage of revision before this Court for the fiRs.time.

In support of her submissions, the learned senior counsel relies on the following judgments of the Hon'ble Supreme Court reported in: 1.2003 (8) SCC752(R.VE.Venkatachala Counder versus Arulmigu Viswesaraswami & V.P.Temple and another) and 2.2004 (7) SCC107(Dayamathi Bai (Smt) versus K.M.Shaffi).21.I am unable to accept these submissions also made by the learned senior counsel.

22.Even though for argument sake, if it is considered that Ex.P6 is not admissible in evidence, even then, I am unable to understand how this would help the revision petitioners to hold that RCo.itself is not maintainable.

It is not in dispute that the petition has been filed by one of the co-owners and it is his case that the petition is filed on behalf of the other co-owners also.

If at all the other co-owners have not authorized him to do so, the aggrieved party is the other co-owners and in that event, they would have definitely come forward to raise their objections.

It is not in the evidence adduced before the Courts below that the other co-owners did not accept the act of the petitioners to file these eviction petitions and it is an admitted fact that they have not come forward to disown the petition filed by the petitioner.

In such circumstances, there is absolutely no merit in the C.R.P.s' and therefore, I have no hesitation in upholding the orders of the authorities below ordering eviction of the tenants.

23.In the result, all the above Civil Revision Petitions are dismissed.

No costs.

Consequently, connected miscellaneous petitions are also closed.

26.03.2014 Index : Yes Internet: Yes cse To 1.The VIII Small Causes Court, Madras 2.The XIII Small Causes Court (Rent Controller) Madras.

S.RAJESWARAN, J.

cse Pre-delivery order made in C.R.P.(NPD)Nos.2688 to 2691 of 2012 and M.P.Nos.1 to 1 of 2012 26.03.2014

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com