

Thangamaharaja Vs. Sumathi

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Court : Chennai

Decided On : Jan-06-2014

Judge : The Hon'Ble Mr Justice K.Kalyanasundaram

Appellant : Thangamaharaja

Respondent : Sumathi

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED : 6.1.2014
CORAM THE HON'BLE MR JUSTICE K.KALYANASUNDARAM
C.R.P.(NPD).3679 of 2010 and M.P.No.1 of 2010 Thangamaharaja ..Petitioner
versus Sumathi ..Respondent Civil revision petition preferred under Section 25 of
the Tamil Nadu Buildings (lease and rent Control) Act, 1961, read with Act 23 of
1973, against the judgment and decree dated 13.9.2010 passed by the Sub
Judge, Mannargudi, in RCA No.1 of 2010, reversing the order dated 30.6.2009
passed by the Rent Controller cum District Munsif, Thiruthuraipoondi, in RCo.No.6
of 2005.

For Petitioner : Mr.A.Ilango For Respondent : Mr.S.Sathiamurthi

ORDER

This civil revision petition is directed against the the judgment and decree dated
13.9.2010 passed by the Sub Judge, Mannargudi, in RCA No.1 of 2010, reversing
the order dated 30.6.2009 passed by the Rent Controller cum District Munsif,

Thiruthuraipoondi, in RCo.No.6 of 2005.

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

The landlady filed an eviction petition in RCo.No.6 of 2005 before the Rent Controller, Thiruthuraipoondi, for eviction, on the ground of own use and occupation'.

3.The parties, for the sake of convenience, are referred to hereunder according to their litigative status in the RCo.proceedings.

4.The case of the landlady is that she purchased the petition premises through a sale deed dated 24.1.2005.

Her parents are residing at Thiruthuraipoondi and she wanted to start a business in 'furniture and home appliances' at Thiruthuraipoondi.

The tenant agreed to vacate the premises within two months from the date of purchase, but subsequently, he failed to vacate the premises, giving some lame excuses.

It is the further case of the landlady that with a view to start a business, she had received quotations from the suppliers of furniture and home appliances and she had applied to the Deputy Sales Tax Officer, seeking licence to run the business.

The said application was returned on the ground that the tenant is carrying on business in the said premises.

5.Hence, the landlady had filed the eviction petition seeking eviction of the tenant from the petition premises.

The tenant filed his counter stating that in the same premises, other shops bearing Door No.20-A in the ground floor and three more shops bearing Door Nos.17-B2, 17-B3 and 17-B4 in the fiRs.floor are vacant, and the said fact was not disclosed by the landlady in the eviction petition.

The father of the landlady is running a business in the name and style of 'Sindhiya Metal Mart', opposite to the petition premises and only for business rivalry, the father of the landlady purchased the petition premises in the name of the landlady and only to harass the tenant, the landlady, seeks eviction of the petition premises.

In short, the tenant had contended that the requirement of the landlady is not a bona fide and genuine one.

6.Before the Rent controller, the landlady examined herself as P.W.1 and marked Exs.P1 to P17.

On the side of the tenant, two witnesses were examined as R.W.1 and R.W.2 and Ex.R1 was marked.

7.The learned Rent Controller dismissed the petition holding that the landlady did not disclose the availability of other portions in the petition premises and only during cross-examination, she admitted the same.

Further, there was an agreement between the landlady and her vendor for return of the advance amount, which is also denied by the landlady in her evidence.

It is further held by the learned Rent Controller that the landlady is permanently residing at Karaikkal in her own house and her father is carrying on business in the name and style of 'Sindhiya Metal Mart', so, with a view to evict the tenant, the petition was filed.

The learned Rent Controller held that the bona fide requirement of the landlady was not proved.

8.Aggrieved by the said judgment and decree, the landlady filed an appeal in RCA No.1 of 2010 before the Sub Judge, Mannargudi.

The learned Rent Control Appellate Authority allowed the appeal and ordered eviction.

9.Challenging the judgment and decree of the Rent Control Appellate Authority, the tenant is before this Court, by way of revision.

10. Heard Mr.A. Ilango learned counsel for the petitioner and Mr.S.Sathiamurthi learned counsel for the respondent.

11. The learned counsel for the petitioner submitted that the landlady is permanently residing at Karaikkal and she was also carrying on business there.

The petition premises was purchased by the father of the landlady, who is running a business just opposite to the petition premises.

Therefore, the requirement is not bona fide.

The learned counsel further submitted that for evicting a tenant, the landlady should prove that the need is bona fide and genuine one and till the objective standard is proved, the landlady is not entitled for eviction decree.

The learned counsel also submitted that the landlady had suppressed the fact of availability of other portions in the premises; that the landlady had denied the agreement between herself and her vendor with regard to the return of advance amount, which shows that the landlady filed the eviction petition only with mala fide intention.

The learned counsel relied on the judgments of the Honouable Apex Court reported in 1998-2-L.W.Reports (vol.102)-Hameedia Hardware Stores v.

Mohand Lal Sowcar and AIR 1999 SC2507 Shiv Sarup Gupta v.

Dr.Mahesh Chand Gupta, to substantiate his contention.

12. Per contra, the learned counsel for the landlady submitted that the the landlady purchased the petition premises only to carry on business.

Door No.20, where the tenant carries on business, is facing main road, hence it is suitable for her business, which is facing the main road.

So, the non-disclosure of other vacant portions in the petition premises, cannot be termed as 'mala fide' intention.

The landlady, after purchasing the premises, had received quotations from the suppliers of furniture and home appliances and they are marked as Exs.P2 to P4.

The landlady had also approached the Sales Tax authorities to get the licence for running the business, which is marked as Ex.P5.

The landlady had already taken steps to run the business in the petition premises, which proves that the requirement is a bona fide and genuine one.

The learned counsel further submitted that the family of the landlady was already running a business at Karaikkal and therefore, the landlady wanted to start her own business in Thiruthuraipoondi, which cannot be rejected on the ground that her father was doing business, just opposite to the petition premises.

The learned counsel submitted that the oral evidence of P.W.1-the landlady and the documents marked by her namely, Exs.P1 to P5 would establish that the landlady bone fide requires the petition premises for her own use and occupation.

In support of his contention, the learned counsel relied on the judgments of this Court reported in (i)2012-2-L.W.22 Syed Safiullah Husaini v.

M.Raghupathi (ii) 2012-5-L.W.159 M/s.Salem Stainless Steel Suppliers rep.by is Partners v.

T.S.Sundaresa Davey and (iii) (2013) 7 MLJ490 V.Jeevaramamoorthy v.

Ms.Sabana Berween.

13.It is seen from the records that the landlady purchased the petition property by a sale deed dated 24.1.2005.

After purchasing the property, the landlady with an intention to start the business, received quotations from the suppliers of furniture and home appliances, which are marked as Exs.P2 to P4.

The landlady applied for licence to the Sales Tax Department, but the Deputy Sales Tax Officer, turned the papers on the ground that in the premises already

business was run by the tenant.

The order of the Deputy Sales Tax Officer was marked as Ex.P5.

The learned Rent Control appellate Authority had considered the oral evidence of P.W.1 and the documents Exs.P1 to P4 to come to the conclusion that the requirement of the landlady is bona fide one, but while giving such a finding, the learned Judge has not properly worded that the landlady had proved her bona fide requirement.

The learned appellate authority had relied on the judgments of this Court reported in (2005) 5 CTC474- (ii)(2008) 2 CTC400(iii) (2007) 4 CTC494and (iv) (2007) 2 CTC797for coming to the conclusion that to prove the bona fide requirement, the landlady need not carry on business actually and if one step is proved, it will satisfy the requirement of Section 10(3)(a)(iii).14.In 2012-2-L.W.22, referred to supra, this Court, while explaining the meaning of the phrase 'carrying on business' held that the landlord need not carry on business actually and it is enough if the landlord bona fide intended to start business in the premises in the occupation of the tenant.

15.In 2013(7) MLJ409 this Court, while considering the requirement of the premises for own occupation of the landlady, for the purpose of running coconut business, held that the landlady was running coconut business already in a different place and therefore, there is no necessity for her to show preparatory work to do the same business at petition premises.

The absence of any preparatory work cannot be put against the landlady to contend that there was no bona fide on her part.

16.In 2012(5) L.W.159, this Court has held that the tenant cannot dictate terms as to which of the tenement should be vacated from the demised premises.

It is the proprietary right of the landlord to ask for the premises for his own occupation on his choice.

In that case, the landlady is residing in the first floor, whereas, the demised premises is located in the ground floor.

On the basis of evidence it was held that the demised premises is the convenient premises for conducting the business of landlord.

17. In view of the above settled proposition, the judgments relied on by the learned counsel for the tenant are not applicable to the facts and circumstances of this case.

18. In the case on hand, the landlady has stated that the petition premises is facing the main road and it is convenient for her to run the business.

Therefore, the tenant cannot plead that the other portions are vacant in the premises and the landlady can carry on business in the other vacant portions.

Testimony of P.W.1 and Exs.P1 to P5 would prove that the claim of the landlady is bona fide and genuine.

The learned Rent Control Appellate Authority also, on the basis of the evidence, had allowed the eviction petition, hence I could see no infirmity or illegality in the said judgment.

19. In the result, the civil revision petition is dismissed.

However, considering the fact that the tenant is running a business in the petition premises, he is given three months' time to vacate the premises.

No costs.

Consequently, connected miscellaneous petition is dismissed.

Ms.06.01.2014 Index:Yes/No Internet:Yes/No To 1. The Sub Judge, Mannargudi.

2. The Rent Controller cum District Munsif, Thiruthuraipoondi.

K.KALYANASUNDARAM,J.

Ms.C.R.P.NPD.No.3679 of 2010 06.1.2014

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