

Jothi Vs. Palani

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Court : Chennai

Decided On : Oct-20-2016

Judge : M. Duraiswamy

Appeal No. : C.R.P.(NPD)No. 3914 of 2015 & M.P.No. 1 of 2015 & CMP No. 12015 of 2016

Appellant : Jothi

Respondent : Palani

Judgement :

(Prayer: Civil Revision Petition filed under Section 25 of the Puducherry Buildings (Lease and Rent Control) Act 1969 against order passed in RCA No.14 of 2005 (on the file of Principal District Court, Puducherry), setting aside the order dated 29.04.2004 passed in HRCOP No.53 of 2003 on the file of Rent Controller/Principal District Munsif, Pondicherry.)

1. Challenging the judgment and decree passed in R.C.A No.14 of 2005 on the file of Principal District Court, Puducherry, reversing the order passed in H.R.C.O.P No.53 of 2003 on the file of Rent Controller/Principal District Munsif, Puducherry, the tenant has filed the above Civil Revision Petition.

2. The respondent/landlord filed H.R.C.O.P No.53 of 2003 for eviction, on the ground of wilful default and own use and occupation.

3. The brief case of the respondent/landlord is as follows:

According to the landlord, he is the absolute owner of the property. He let out the demised premises in favour of the petitioner/tenant under the rental agreement dated 12.01.1989, on a monthly rent of Rs.500/-. A sum of Rs.10,000/- was paid as advance. Later, rent was enhanced to Rs.550/- per month. After the purchase made by the landlord, he sent Notices dated 02.08.2000 and 22.11.2000 to the tenant, calling upon him to attorn the tenancy in his favour and pay the monthly rents to him, as he committed default in payment of rent, despite intimation of the same.

4. The landlord also pointed out that he need the premises for his personal occupation as much as he is a Goldsmith and that he needs the property to carry out his business in selling jewellery. On 15.03.2001, the landlord sent a Lawyer's Notice. The tenant, instead of attorning the tenancy in favour of the landlord, proceeded to file a petition under Sec.8(5) of the Puducherry Buildings (Lease and Rent Control) Act in HRCOP No.57 of 2001, however, the tenant did not prosecute the same. Hence the petition was dismissed on 28.08.2003. The tenant has not paid the rent to the landlord, even after dismissal of the petition in HRCOP No.57 of 2001. The tenant had committed wilful default in paying the monthly rents. Hence, the landlord sought for eviction on the ground of wilful default and own use and occupation.

5. The brief case of the petitioner/tenant is as follows:

According to the tenant, the landlord's father agreed to sell the petition property to him, however, the landlord's father had cheated the tenants and registered the sale deed in the names of the landlord and his mother. The landlord is not the owner of the entire property. Himself and his mother are the joint owners of the property. The petition is liable to be dismissed for non-joinder of necessary parties. The tenant is always willing to pay the arrears of rent, as directed by the Court. The sale made by the landlord's father is a binami transaction. The landlord is owning a big complex, known as Sivagami Complex , wherein, 15 shops were constructed. There are two or three shops lying vacant. Therefore, the petition premises is not required for the landlord. The tenant is always ready to deposit the

rent into the Court. There is no wilful default. In these circumstances, the tenant prayed for dismissal of the petition.

6. Before the Rent Controller, on the side of the landlord, he was examined as P.W.1 and three documents Exs.P.1 to P.3 were marked. On the side of the tenant, he was examined as R.W.1 and two documents Exs.R.1 and R.2 were marked.

7. The Rent Controller, after taking into consideration the oral and documentary evidences, let in by both the parties, dismissed the petition. Aggrieved over the same, the landlord preferred an appeal in R.C.A No.14 of 2005 and the Rent Control Appellate Authority reversed the order passed by the Rent Controller and allowed the appeal. Aggrieved over the judgment and decree passed by the Rent Control Appellate Authority, the tenant has filed the above Civil Revision Petition.

8. Heard Mr.V. Manohar, learned counsel appearing for the petitioner and Mr.T.R. Rajaraman, learned counsel appearing for the respondent.

9. Mr.V. Manohar, learned counsel appearing for the petitioner, submitted that since there was dispute with regard to the ownership of the property, the tenant did not pay the rent to the respondent/landlord. Further, the learned counsel submitted that the Rent Control Appellate Authority had reversed the findings of the Rent Controller without any basis. In support of his contention, the learned counsel for the petitioner relied upon a judgment reported in 2016 (8) SCALE 12 (Baburao vs Pokhardas), wherein, the Hon'ble Supreme Court has held as follows:

7. Having considered the rival submissions, we are in agreement with the view taken by the High Court that the evidence on record leaves no manner of doubt that after receipt of notice from the appellant, the respondent-tenant immediately rushed to the Rent Controller and took permission to deposit the amount towards rent of the suit shop. Further, in terms of the liberty given by the Rent Controller the respondent-tenant deposited the amount towards rent of the suit shop before the Rent Controller. That option was resorted to by the respondent-tenant because of dispute relating to ownership of the suit shop. The High Court justly adverted to the dictum in the case of Kannan vs. Tamil Tahlir Kalvi Kazhagam[1] - where, in

similar situation, the tenant deposited the rent in Court which was considered as a valid deposit. The fact remains that the amount towards arrears of rent was deposited by the respondent-tenant in the Court of Rent Controller on 15th April, 1988 and 25th April, 1988 before institution of the eviction application; and intimation in that behalf was given to the landlord. The respondent-tenant continued to periodically deposit the rent amount in Court thereafter. Further, the appellant in his evidence has admitted of having withdrawn the rent amount till Diwali 2003. This finding of fact recorded by the District Court and affirmed by the High Court, being concurrent finding of fact, need no interference. As a necessary corollary, it must follow that the respondent-tenant was not a defaulter muchless willful defaulter. Thus, the ground of default on which eviction of the respondent-tenant was prayed is untenable.

10. Countering the submissions made by the learned counsel appearing for the petitioner, Mr.T.R. Rajaraman, learned counsel appearing for the respondent, submitted that the Rent Control Appellate Authority has rightly reversed the findings of the Rent Controller. Further, the learned counsel submitted that the conduct of the tenant in filing HRCOP No.57 of 2001 for depositing of rent before the Court and leaving it to be dismissed for non-prosecution itself is sufficient to come to the conclusion that the tenant had committed wilful default in paying monthly rents. Further, the learned counsel submitted that the landlord has established that he required the premises for his own use and occupation and therefore, the order passed by the Rent Control Appellate Authority is perfectly correct. In support of his contention, the learned counsel relied on a judgment of the Hon'ble Supreme Court reported in 2016 (3) SCC 296 (Kasthuri Radhakrishnan and others vs M. Chinnian and another), wherein the Hon'ble Supreme Court held that Joinder of all co-owners of the premises is not necessary and the eviction petition, filed by brothers without joining co-owner sister as party, is maintainable and the same is not fatal to the case of the landlord.

11. 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 the learned counsel on either side, it could be seen that it is not in dispute that the petitioner became a tenant under the respondent's vendor Thiagarajan by

virtue of a Lease Agreement dated 12.01.1989. The property was purchased by the respondent and his mother from the said Thiagarajan. After the purchase made by them, the respondent/landlord sent Ex.P.1 Legal Notice dated 15.03.2001, calling upon the petitioner/tenant to attorn the tenancy in his favour and pay the monthly rents to him. Under Ex.P.3, the petitioner/tenant filed a petition under Sec.8(5) of the Puducherry Buildings (Lease and Rent Control) Act to deposit the monthly rents into the court. However, the petition was dismissed for default by the Rent Controller. In spite of filing a petition before the Rent Controller, the tenant has not chosen to pay the monthly rents to the respondent. That apart, the tenant has also failed to deposit any amount into the Court towards the monthly rents. The tenant has not produced any document to prove that he has been making payments of monthly rents without any default to the landlord. The contention of the tenant that the respondent/landlord cannot maintain the Rent Control Original Petition, since his mother was not made as a party, cannot be accepted, in view of the Judgment of the Apex Court reported in 2016 (8) SCALE 12 (Baburao vs Pokhardas).

12. It has been settled by the Hon'ble Supreme Court that a co-owner can maintain Rent Control Original Petition on behalf of other sharers. The conduct of the tenant would establish that he is having no intention to pay the monthly rents to the respondent/landlord. In the counter, the tenant had disputed the rights of the landlord in filing the Rent Control Original Petition. When the tenant had filed a petition in HRCOP No.57 of 2001 for depositing of rents into the Court, he has not paid a single pie towards the monthly rents. Even without prosecuting the HRCOP, he left the HRCOP to be dismissed for default. In these circumstances, the order passed by the Rent Control Appellate Authority finding that the tenant had committed wilful default, in paying the monthly rents, is perfectly correct. So far as own use and occupation is concerned, the landlord has established his contention by adducing oral documentary evidences.

13. It is settled position that the tenant cannot dictate to the landlord as to how the property, belonging to the landlord, should be utilised by him for the purpose of his business. The fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as

he intends to use the tenanted premises for his own business. The tenant cannot remain in possession without paying any rent and dictate the terms with the landlord. In these circumstances, the judgment relied upon by the learned counsel for the petitioner/tenant is not applicable to the facts and circumstances of the present case.

14. When the landlord has established the ground for eviction for own use and occupation by oral and documentary evidences, I do not find any reason to interfere with the judgment and decree passed by the Rent Control Appellate Authority. In these circumstances, the judgment and decree passed by the Rent Control Appellate Authority in RCA No.14 of 2005 is confirmed. The Civil Revision Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, connected MP and CMP are closed.

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