

B. Vanajakshi and Others Vs. A. Parthiban and Others

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Court : Chennai Madurai

Decided On : Sep-28-2016

Judge : C.T. Selvam

Appeal No. : C.R.P.(NPD) (MD) No. 1425 of 2007 & M.P.(MD) No. 1 of 2008

Appellant : B. Vanajakshi and Others

Respondent : A. Parthiban and Others

Judgement :

(Prayer: Civil Revision Petition filed u/s.25 of Tamil Nadu Buildings (Lease and Rent Control) Act against the judgment and decree dated 14.02.2007 made in R.C.A.No.34 of 2005 on the file of learned Principal Subordinate Judge, Nagercoil, reversing the judgment of learned Rent Controller, Nagercoil, passed in R.C.O.P.No.17 of 2002 on 01.09.2005.

1. This revision is preferred against the judgment of learned Principal Subordinate Judge, Nagercoil, passed in R.C.A.No.34 of 2005 on 14.02.2007.

2. It is the case of petitioners/landlords that the they are owners of non-residential building situated at Balamore Road, Nagercoil, bearing Door No.113, which was leased to respondents/tenants on a monthly rent of Rs.4,500/-. Respondents/tenants have paid rent by cash till November 1993 and thereafter, they have paid rent by cheque till June 2000. Since July 2000, there is wilful default in payment of rent. Respondents/tenants have also made some alterations

in to the rented premises and sub-let the same towards conduct of sweet stall, lottery sales counter, S.T.D., I.S.D. and telephone booths, without the permission of landlords. Informing willful default in payment of rent and their requirement of petition premises towards expanding their book shop, petitioners/landlords sent a notice on 15.12.2001 to respondents/tenants terminating the tenancy as on 31.12.2001 and sought vacation of petition premises. As respondents/tenants have issued a false reply and no cheque has been enclosed as alleged by them, petitioners/landlords filed R.C.O.P.No.17 of 2002 on the file of learned Additional District Munsif, Nagercoil, seeking an order of eviction on the ground of willful default in payment of rent, sub-letting, bonafide requirement of petition premises for own use and occupation and denial of title. By way of counter, respondents/tenants contented that the petition premises belonged to Anandasamuthram Gramma Brahmin Trust and hence, petitioners/landlords have no locus standi to file the petition. The trust has terminated agreement with petitioners and O.S.No.22 of 2001 on the file of District Munsif Court, Nagercoil, is pending. Against the agreed rent of Rs.3,700/-, petitioners/landlords have collected Rs.4,000/-, the rent has been paid regularly and as such, there is no willful default in payment of rent.

3. Before the Rent Controller, petitioners/landlords examined three witnesses and marked nine exhibits. One witness was examined on behalf of respondents/tenants and eleven exhibits were marked.

4. On consideration of rival submissions and the materials on record, the Rent Controller, under orders dated 01.09.2005, allowed the petition on the ground of willful default in payment of rent, sub-letting and denial of landlord title u/s.10(2)(a), 10(2)(vii) and 10(2)(i) of the Tamil Nadu Buildings Lease and Rent Control Act, 1960 and dismissed the same on the two other grounds u/s.10(2)(ii) and 10(3)(iii) of the Tamil Nadu Building Lease and Rent Control Act, 1960 and directed the respondents to vacate the premises within a month. Against such finding, respondents/tenants filed R.C.A.No.34 of 2005 on the file of learned Principal Subordinate Judge, Nagercoil. Petitioners/landlords filed Cross Appeal against other two findings. Under judgment dated 14.02.2007, the appellate authority allowed the appeal and dismissed the cross appeal. There against the present

revision has been filed.

5. Heard Ms.N.Krishnaveni, learned counsel for petitioners and Mr.K.Sree Kumaran, learned counsel for respondents 1 to 4.

6. For purposes of easy appreciation, this Court informs here under the findings of the lower authorities and reasons afforded therefor:

R.C.O.P.No.17 of 2002:

Findings	Reasons
Tamil Nadu Building Lease and Rent Control Act defines a landlord. It does not stipulate landlords to be the owners of the building and land on which the building is situated. This definition includes any person who is entitled to receive rent as the landlord and the explanation to section 2(b) also includes the original tenant and sub-lessee. In case of sub-lessee, the landlord is the original tenant. If the petitioner does not have any right, the sub-tenant too does not have any right to be in possession.	In this case, it is admitted that from the first petitioner, the respondents father and first respondent took the building on rent. There is a rent agreement between the first petitioner and first respondent which has been admitted by RW-1 also. Others derive their right through them. In such agreement, the quantum of rent has been fixed at Rs.3,700/- p.m. while Rs.4,500/- is being received. Hence, there is a landlord and tenant relationship between the parties. While the tenant himself has been paying rent to the landlord, he cannot dispute the same. Therefore, the contention of denial of title of landlord is not bonafide. Hence, petitioners have locus standi to conduct the case and the tenant is liable to be evicted on this ground.

As per evidence, the book shop under the name and style of Hari and Co. was commenced by deceased Bojarajan in 1988 after his retirement. For extending the shop, the petition premises really is not necessary because it is a very large building with several rooms and the petitioners cannot really utilize all the space for storing books. There is no evidence on record to show that petitioner has huge means to purchase books. Further, the second petitioner is an aged woman and petitioners 3 and 4 are engaged in their own professions and the shop is being looked after by a servant. Moreover, the present book stall is run in own premises. There is no evidence that the present business is meeting with any loss in the present premises. It is also in a busy locality of town. There are more two shops adjacent to the book stall. These two shops can very well be utilised by petitioners to expand their business, because these two shops also belong to petitioners. Only a dividing wall has to be removed. The requirement is not bonafide because one of the shops has been let out for rent in the year	No eviction on the ground of own use and occupation can be ordered because the requirement does not seem to be bonafide and it would cause greater hardship to the respondents. When the relative hardships are considered, the balance of convenience lies on the side of the respondent. Already petitioners are conducting business in their own premises under the established name and style of Hari and Co. and the business is being carried on profitably. So, no loss will be caused to petitioners, if the building is not shifted. Further, if eviction is ordered, the respondents have to search for another large premises within Nagercoil Town for their business, which is not a easy task. Moreover, the respondents have earned a goodwill in their business.
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Petitioners have also alleged that the building has been sub-let without petitioners' consent, hence eviction must be ordered on this ground also. On this point, respondents' counsel argued that conducting the telephone booth is an ancillary requirement of the lodge, hence it is part of respondents business and he has also categorically asserted that there is no prohibition on sub-lease as per the tenancy agreement. He also claimed that respondent has not lost control of the building but has only sub-let a portion thereof.	Even if there is no prohibition on sub-lease the presumption is that the tenant shall not sub-let without owners permission. PW-3's evidence reveals that S.T.D. Booth is conducted separately by one Nagalingam Pillai within the petition premises. This S.T.D. Booth has been commenced after 12.3.2001. If it is an ancillary purpose to the lodge, the respondent himself must be the owner of the telephone booth. It should be run by a servant of the respondent. Sub-letting to a third person cannot be the ancillary business of the respondent. Nagalingam Pillai himself has sent an application to the telephone department. Therefore, the respondent is the guilty of sub-letting the premises without petitioner's permission. No oral or written permission of the petitioners has been obtained.
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Petitioners have also filed this petition for eviction on the ground of willful default of payment of rent from August 2000. On the date of Ex.P1 notice, it is alleged by the petitioner that the respondent is in willful default of payment of rent from August 2000 to November 2001 i.e. for a period of six years which amounts to an arrear of Rs.72,000/-. For this notice, respondent has issued a reply alleging that the quantum of rent payable is Rs.3,600/- but Rs.4,500/- is being collected and the respondent has made improvements to the tune of Rs.10,00,000/- in the petition property. No written consent of the landlord or permission of Rent Controller is produced. No evidence of any agreement towards improvement cost being spent by respondent and adjusted in the rent is pleaded or proved. On the contrary, the respondent has pleaded that he was paying rent through cheque till July 2000 and thereafter at the request of the original petition it was paid by cash. The bank pass-book of golden lodge marked as Ex.R2 reveals that till August 2000, the respondent has been paying Rs 4 500/- to	Once the rent is not remitted regularly it amounts to default and it cannot be cured by subsequent payment. After filing R.C.O.P.No.23/02 the respondent has given Ex P3
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R.C.A.No.34 of 2005:

Findings	Reasons
The contention of tenants that the petition is not maintainable on the ground of non-joinder of necessary parties has been rejected.	It has been proved through Ex.P5- Will, that the petition premises belonged to petitioners/landlords.
The contention of landlords that there is willful default in payment of rent since July 2000 has been negated.	Though the tenants have deposited the amount collectively, as on date there is no default in payment of rent and the same is evident through Exs.P3 and P4.
The contention of tenants that the S.T.D. Booth is being run by them was negated by the appellate authority. However, the contention of landlords that the tenants have sub-let premises is found unacceptable.	It was the evidence of PW-3, who is working in the office of BSNL, Nagercoil, that the S.T.D. Booth is in the name of one Nagalingam. Hence, the contention of tenants that they are owners of the S.T.D.Booth was rejected. However, the petition premises was rented towards conducting lodge and hotel business and the same is not disputed. While so, the renting out premises to others is an acceptable one. Hence, the contention of landlords that the tenants have sub- let the premises is unacceptable.

In Ex.P1- notice issued by Bojarajan (deceased), nothing has been said regards denial of title of first respondent. However, in Ex.P2- reply notice, the first respondent has stated that there is no willful default in payment of rent and as the petition premises belonged to trust, Bojarajan (deceased) has no right to file a petition to evict him. However, RW-1 has deposed that one Andireddiyar, has taken the petition premises on rent from Bojarajan (deceased) and was running hotel and after his demise, the respondents are continuing the business. While so, it could be construed that the tenants have agreed that the petition premises belonged to Bojarajan (deceased) and after his demises, the petitioners became owners of the petition premises.	From the records, it is seen that the respondents/tenants regularly have paid rent to the petitioners/landlords and after filing of this petition, they have deposited the rent into Court. Hence, it could be decided that the respondents/tenants have not denied landlords' title of property. Hence, the order of eviction on this ground is liable to be rejected
The contention of tenants that the landlords having rented the petition premises along with accessories, it is not open to them to file a petition before rent controller and they have to file petition before civil Court only has been negatived.	No records were available to substantiate the contention that the petition premises have been rented to tenants along with accessories.

Cross Objections:	
The contention of landlords that they require the petition premises for expanding their book stall has been rejected.	PW-1 has deposed that she is aged 66 years, she is not able to run the book stall and the same is being maintained by a servant. The second petitioner is an Advocate and the third petitioner is working in a private concern. From the above, it is clear that neither of them is in a position to run the book stall.
The contention that the tenants have not maintained the petition premises and caused damage to the premises has not been accepted.	To substantiate the contention that the tenants have caused damage to the premises, no steps have been taken to appoint an Advocate Commissioner to visit the property and submit his report.

7. We have extracted the findings and reasons informed by the forums below only towards informing that the Rent Controller has arrived at a appropriate decision of willful default in payment of rent, sub-letting and denial of title of the petitioners. The comparative reading of the findings on these issues makes abundantly clear that the Rent Controller Appellate Authority has been most brusque, illogical and erroneous in upsetting the well reasoned finding of the Rent Controller. We can only hope that the Rent Control Appellate Authority has not been pre-determined. Petitioners/landlords have been denied their right of having possession of the property for more than 10 years as the order of the Rent Controller directing eviction was of date 01.09.2005.

8. Learned counsel for respondents made a submission that the property belongs to a Public Charitable Trust and hence the same stood exempted from the operation of the Tamil Buildings (Lease and Rent) Control Act, 1960. The argument is that when so, a petition for eviction under the Act could not be filed. The submission is recorded only to be discarded. An exemption is a privilege and none can be forced to avail the same. From the submission of learned counsel for respondents of the trust having filed a suit against petitioner, it is seen that the Trust has exercised such privilege. In so far as petitioners and respondents are concerned, all that is necessary to maintain a petition under the Tamil Nadu Buildings (Lease and Rent) Control Act, 1906, is relationship of landlord and tenant, which requirement stands met.

9. The Civil Revision Petition stands allowed and the findings of the Rent Control Appellate Authority on Sections 10(2)(a), 10(2)(vii) and 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1906 are set aside and that of the Rent Controller dated 01.09.2005 is restored. The findings of the Forums below on Section 10(2)(ii) and 10(3)(iii) are affirmed. The respondents are directed to vacate the premises within one month from today. No costs. Consequently, connected M.P.(MD) No.1 of 2008 is closed.