

Pandian Vs. A. Abitha Begam

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SooperKanoon Citation : sooperkanoon.com/776223

Court : Chennai

Decided On : Nov-21-2000

Reported in : (2001)1MLJ402

Judge : V. Kanagaraj, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 10 (2)(3) and 102

Appeal No. : C.R.P.No. 2116 of 2000 and C.M.P.No. 11652 of 2000

Appellant : Pandian

Respondent : A. Abitha Begam

Advocate for Def. : Mr. M. Ajmalkhan, Adv.

Advocate for Pet/Ap. : Mr. V. Ayyadurai, Adv.

Judgement :

ORDER

1. The above civil revision petition is directed against the judgment and decree dated 25.4.2000 made in RCA No.4 of 1998 by the Rent Control Appellate Authority and the Court of Subordinate Judge, Sivaganga thereby confirming the fair and decretal order dated 24.4.1998 made in RCOP No.5 of 1997 by the Rent Controller and the Court of Principal District Munsif, Sivaganga.

2. An application has been filed by the petitioner/landlady before the Rent Controller seeking eviction of the respondent/tenant from the premises bearing door No.25 in Ward No.16, Nehru Bazaar of Sivaganga town under Sections 10(2)(i) and 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act (hereinafter referred to as 'The Act'). The averments of the petition are that the petition property was originally belonging to and in enjoyment of one Abdul Azeez and the appellant became the lessee under him on a monthly rent of Rs.300; that while so, on 9.11.1995, the respondent/landlord purchased the petition property from the said Abdul Azeez for proper consideration under a registered sale deed dated 9.11.1995; that her husband is running a grocery shop opposite to the petition property, in door No.263 for the last nine years occupying the same on a monthly rent of Rs.450; that it was revealed that the property was required for her own use and occupation, further demanding a monthly rent of Rs.450; that the respondent/tenant in spite of having agreed to the proposal, did not pay the rent as promised. Further more, since the building is required for her own purpose of her husband running a grocery shop, the rent control application has been filed before the rent controller.

3. In the counter filed on behalf of the respondent/tenant, besides generally requiring the petitioner/landlady, to prove her allegations in the petition, he would deny that there was any landlady-tenant relationship between them; that he filed a suit in O.S.No.56 of 1996 against the original owner Abdul Azeez and the present landlady's husband, viz., Jaffar and against herself in the Court of District Munsif, Sivaganga, and the same was decided ex parte; that they did not prefer any appeal before the appellate forum; that the tenancy was not attorned, and hence, she has no locus standi to file the application; that he became the tenant in the year 1970 with the original owner Md. Maideen for a monthly rent of Rs.60 and after gradual enhancement, he was ultimately paying Rs.300 per month as rent; that in September, 1995, after the death of Md. Maideen, his son Azeez demanded a rent of Rs.500 per month which was not agreed by the tenant, as a result of which, the said Azeez refused to receive the rent for the month of October, November and December, 1995 and in spite of the same having been sent by Money Order, the said Azeez, refusing to receive the same, made attempts to evict him by third degree methods and only at that stage, he filed the

suit in O.S.No.56 of 1996, but no one appeared especially, the said Azeez nor did he reveal that he had sold the property in favour of the present petitioner.

4. The further averments of the counter is that since he came to know that the petitioner's husband had purchased the property, he impleaded him as a party, but he left it ex parte and later coming to know that the petitioner had only purchased the same, impleaded her as the third defendant, but no one appeared nor revealed the fact of the sale having taken place, as a result of which, on 10.1.1977, the above case was decided ex parte. On the part of the defendants therein, no one took any genuine step to set aside the judgment and decree passed by the said Court. Hence, till date, there is absolutely no landlady tenant relationship in between the petitioner and this respondent; that he is depositing the monthly rent in the Court from October, 1995, and, therefore, there is no wilful default in the payment of rent. So far as the other ground for owner's occupation is concerned, only false averments have been advanced; that the petitioner and her husband are owners of many buildings; that it is further false to allege that the rent of the building is Rs.450, but it is only Rs.300; that since she has not intimated to this respondent/tenant to the effect that she became the owner of the property, she has no locus standi to file the rent control application. For such reasons, the respondent/tenant would pray to dismiss the RCOP with costs.

5. The Rent Controller, on these pleadings by parties, having framed one issue for decision, viz., whether the petition could be allowed has conducted an elaborate enquiry into the facts and circumstances of the case, in which, on the part of the petitioner, three witnesses have been examined as PWs.1 to 3 and 7 documents have been marked as Exs.A1 to A7. On the contrary, two witnesses have been examined on the part of the respondents, as DWs.1 and 2 and 18 documents have been marked as Exs.B1 to B18. The Rent Controller, based on such evidence placed on record and appreciating the same, would ultimately arrive at the conclusion to allow the said application ordering eviction of the petition property.

6. Aggrieved, the tenant has preferred an appeal before the rent control appellate authority in RCA No.4 of 1998 and the said authority also, having framed one point, viz., whether the appellant denied the title of the landlady and whether such

denial is bona fide and assessing the case from another angle, had ultimately confirmed the fair and decretal order passed by the rent controller. It is only aggrieved against these concurrent decisions taken on the part of the rent controller and the appellate authority, the tenant as the petitioner, has come forward to institute the above civil revision petition on certain grounds as brought forth in the memorandum of grounds of CRP.

7. During arguments, the learned counsel appearing on behalf of the revision petitioner/tenant would submit that the petition premises is a non-residential building; that he is a tailor and is running a tailoring shop in the petition property; that he got inducted into possession of the property as tenant in the year 1970 by the father of PW2; that when PW2 demanded higher rent in or about 1995, he refused and consequently, PW2 started refusing to receive the rents for October, November and December 1995, but indulged in unlawful acts of evicting the lawful tenant by third degree methods, and hence, he filed the suit in O.S.No.56 of 1996 for not evicting him unless by the procedures established by law; that the tenant was depositing his rent without any default in the I.A. in the suit; that none had contested the matter and they allowed the suit to be decreed ex parte on 10.1.1997; that thereafter on 24.6.1997, the present RCOP No.5 of 1997 had been filed by the respondent/landlady stating that she became the owner by sale deed dated 9.11.1995 and the said purchase might have been known to the petitioner/tenant.

8. The learned counsel for the petitioner/tenant would further submit that the grounds under which the petition had been filed by the respondent/landlady are Sections 10(2)(i) and 10(3)(a)(iii) of the Act that is on wilful default and owner's occupation; that no failure of wilful default has been mentioned in the petition; that there was no agreement or information regarding the purchase of the property of PW2, nor PW2 attorned the tenancy; that in the counter, it was revealed that there was no landlady-tenant relationship particularly, when the petitioner was not put on notice by way of attornment or by other means; that the conduct of the landlady in remaining ex parte in O.S.No.56 of 1996 would make the tenant to believe that she would not have purchased the property.

9. So far as the ground on wilful default is concerned, the rent was deposited regularly; that no period of default is mentioned in the RCOP, and hence, it cannot be characterised as the wilful default at all. On the other ground, viz. owner's occupation also, the petition cannot be sustained since the landlady and her family members own number of buildings in the town and the premises is not at all required for owner's occupation; that the rent controller has not framed proper issues; that when the tenant has pleaded that there is no relationship between the landlady and the tenant, the authority should have framed an issue to decide the said point; that the rent controller negatived the original grounds, viz., wilful default and the owner's occupation, but ordered eviction on ground of denial of title without affording any opportunity for the tenant to contest the same; that in the order dated 24.4.1998, the finding on the question of denial of title, the court expresses that there is no need in law to attorn the tenancy nor is there any necessity to issue the notice; that mere presumption of knowledge by the tenant is enough; that the rent controller has recorded a finding on presumption that the tenant might have had knowledge about the sale in favour of the respondents from the fact of impleading them as a party to the suit; that this conclusion is not based on any legally acceptable material and runs contrary to the available materials and all probabilities; that on the same line, the appellate authority has also confirmed the orders adding one more imaginary ground that the offer of sale of the demised property was not admitted by the tenant, and hence, it is but natural for the tenant to deny the title of the subsequent purchaser.

10. Regarding the necessity for attornment of tenancy, the learned counsel would cite a judgment delivered in Chandramohan. C. v. Sengottaiyan (Dead), wherein it is held that the tenant's assertion that landlord is co-owner does not amount to denial of title unless tenant renounced his relationship as tenant in case of derivative title of landlord and there was no notice of transfer in favour of landlord or attornment of tenancy; that the conduct of the landlady is motivated to evict the tenant somehow or other and would categorise the following points, viz.,

(i) the landlady not appearing in the suit in O.S.No.56 of 1996;

(ii) failure to inform the tenant the actual owner and the attornment of tenancy;

(iii) the suit was decreed ex parte on 10.1.1997 and RCOP has been filed after five months that is on 24.6.1997;

(iv) in the absence of pleading in the petition regarding purchase, no question of evidence could be let in and there is no specific issue framed; and

(v) the findings of the court below are not legally acceptable and the same are perverse. With these arguments, the learned counsel would pray for setting aside the orders passed by both the rent controller and the appellate authority and to allow the CRP.

11. In reply, the learned counsel appearing on behalf of the respondent/landlady would submit that for the eviction sought on account of wilful default and for owner's occupation, both the courts below have concurrently ordered eviction on the other ground of denial of title that is under Section 10(2)(vii) of the Act and the question whether eviction can be ordered on a new ground when it is not specially pleaded, it could be possible under Section 10(2)(vii) of the Act as held by Courts in various propositions of law such as in (i) M. Narayanaswami v. Roy Poulc Amala, 1995 TLNJ 298, and (ii) K.T.H. Ahmed Mustapa v. Annapuranathamma and another, 1996 TLNJ 424.

12. In the first judgment cited above, it is held that court can take note of in the eviction proceedings even those which have not been pleaded. In the second judgment cited above, it is held that without filing a petition for eviction on the ground of denial of title, it is open to the landlord to ask for eviction on the ground of denial of title when there is no bona fide on the part of the tenant in denying the title of the landlord over the superstructure; that the tenant fully knowing the landlady as the owner, positively denies the title and the denial of title has not been accepted by courts and this is concurrently held by both the courts below. On such grounds, the learned counsel would pray to dismiss the revision with costs.

13. In consideration of the pleading by parties and having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that it is a petition filed by the landlady for eviction of the tenant under two specific provisions of the Act that is under Section 10(2)(i) and 10(3)(a)(iii) that

is on wilful default in payment of rent and for owner's occupation. But, both the courts having found that on both these grounds under which the application for eviction of the tenant had been filed, the petitioner-landlady failed to establish her case in evidence. The rent controller and the appellate authority have suo motu exercising their discretion, have ordered for eviction of the tenant under Section 10(2)(vii) of the Act that is denial of title of the landlady, which is not bona fide.

14. It is relevant to point out that both the grounds under which eviction of the tenant is sought for specifically on the part of the landlady in this case, have failed for want of proof. Though the case of the petitioner landlady and the defence of the respondent/tenant have been gone into by the rent controller, so casually rather carelessly he would not frame proper issues based on the pleadings by parties and the only issue framed is in a generalised form, viz., whether the petition could be allowed. The rent controller should have assessed the pleading by the landlady for seeking eviction of the tenant for wilful default in payment of rent under Section 10(2)(i) and should have framed an issue to determine that point.

15. Next, he should have focussed his attention on the second ground under which the eviction is sought for that is Section 10(3)(a)(iii) that the property is required for the owner's occupation and should have framed an issue for determining this point and on further going through the counter filed on the part of the tenant, wherein he has denied notices and knowledge of the fact that the petitioner had become the owner of the premises. On all facts pleaded by parties in a rent control application, unless proper issues are framed, the parties would be left in wilderness without being able to assess their standpoint and then to let in evidence. Serious lapses have been committed on the part of the rent controller in not framing proper issues on facts pleaded and in framing the only issue in a generalised form, the rent controller has proved that he has not taken serious note of the warranting procedures established by law that are to be scrupulously followed in deciding the matter in a legal manner. But on the contrary, in arbitrary exercise of power, which in the circumstances of the case, he is not expected to exercise, nor authorised by law, such as, granting a relief that has not been prayed for nor the very petition filed by the petitioner has any nexus or bearing which power could be resorted to sparingly and in rarest of the rare cases.

16. The rent controller having rejected the pleas of the landlady seeking eviction of the tenant under both the grounds of wilful default and owner's occupation as not substantiated, had no reason to all of a sudden, jump to the conclusion that the respondent/tenant had denied the title of the landlady, whereas on materials placed on record, there is no iota of evidence in proof of the fact that the landlady either intimated the tenant of her having become the owner of the premises or demonstrated the same in any other manner responding to the suit filed against her husband and herself, and therefore, no blunt conclusions could be arrived at to the effect that the tenant has denied her title to the suit property.

17. In short, the rent controller has not at all gone into the aspect of finding out whether the petitioner is the landlady or not, so as to jump to the conclusion first that she is the landlady and then deciding the other question whether the respondent, on his part, with full knowledge, had denied title of the landlady of the premises in a deliberate manner which is wanton or wilful. This conclusion arrived at on the part of the rent controller is absolutely bereft of any evidence or proof, and hence, there is no question of wasting the time of the court, making unnecessary investigations to find out what has been bluntly concluded by the rent controller which deserves further discussion.

18. Equally, yet another casual and careless order has been passed on the part of the appellate authority following the same line of thinking of the rent controller wherein also, leaving both the grounds raised on the part of the petitioner/landlady seeking eviction of the tenant in the petition, the appellate authority would frame an issue on a ground that was not even raised in the petition, but taken on the part of the respondent/tenant in the counter thereby denying the title of the landlady on ground that there had been no notice or intimation to the transfer of title in favour of the petitioner pleading that there is neither the relationship of landlady-tenant, so as to entertain an application of this sort filed by the petitioner/landlady since according to the tenant, without the attornment of tenancy, there does not exist the relationship of landlady-tenant between them and therefore, the petitioner has no locus standi to seek eviction of the respondent on the other grounds of wilful default and for owner's occupation.

19. Based on this, without framing proper issue on this fundamental question raised by the tenant, the rent controller, without even affording an opportunity to establish this plea framing proper issue on this plea has decided suo motu that the tenant had mala fide denied the title of the landlady as though the landlady had established her title. The appellate authority too, having framed a point whether the denial of the title of the landlady is bona fide and having discussed on the said subject, would jump to the conclusion saying P.Ws.1 and 2 have given evidence to the effect that immediately after the sale under Ex.A2, the appellant was duly informed of the transfer and he was directed to pay the rent to the respondent. I have no hesitation in believing the evidence given by P.Ws.1 and 2. As the petition mentioned property is situated just opposite to the building in which the respondent is conducting a business, it is but natural that such transfer is duly informed, thus deciding the question bluntly based on the evidence adduced on the part of P.Ws.1 and 2, who are interested parties without even a plea taken on this point in the petition nor claiming any relief on this ground.

20. Without any pleading or prayer in the petition to the effect of this ground which falls under the specific Section 10(2)(i) of the Act regarding which the petition is totally silent, nor any relief sought for under that provision of law by the petitioner, the rent controller and the appellate authority as well hasten to give a relief under this provision of law as though, firstly, the petitioner has proved her ownership in an authoritative manner and with due opportunity for the tenant to contest that claim based on proper issues framed; secondly, as though in spite of proper notice and knowledge, both the rent controller and the appellate authority have concluded that the tenant has deliberately denied the title of the landlady as though either she had established her title in evidence or had put the tenant on specific notice, whereas both these vital questions go without proof at all. The authorities below have only arrived at blunt and hasty conclusions based on suppositions and surmises, hypothesis and conjectures which would only show that the rent controller and the appellate authority in this case have decided the case with scant regard for law and the rules and procedures established by law besides, making a mockery of the same.

21. First, there must be pleadings to the effect of the relief granted by the court. Secondly, it is incumbent on the part of the court to frame proper issues based on specific pleadings so as to pave the way for parties to adhere the issues and adduce evidence towards establishing the points involved in the case. Thirdly, on such oral and documentary evidence collected and based on the evidence and the circumstances and adhering the position of law, the rent controller and the appellate authority in appreciation of the evidence in the proper manner, should have passed orders in accordance with law. Here, the authorities have given the relief in favour of the petitioner/landlady which she has not sought for in spite of the grounds under which specific reliefs have been sought for on the part of the landlady, admittedly by the authorities below not being established. In short, what legally the petitioner/landlady had failed to prove, the rent controller and the appellate authority have accorded otherway round without any basis or proof, arbitrarily, declaring that they are empowered by law to grant such reliefs under Section 10(2)(vii) of the Act.

22. There is absolutely no evidence or proof to the effect of the ownership of the petitioner which itself is to be established especially in the wake of denial by the tenant. There is no notice, or attornment of tenancy as warranted by law. But both the rent controller and the appellate authority hasten to grant the relief suo motu in favour of the petitioner under some pretext or other. The arguments of both the courts below that they can suo motu grant the relief under Section 10(2)(vii) of the Act is nothing short of an Act revealing either their total ignorance of law or indifference to act in accordance with the dictum of law. No where, it is declared under law that they have got such discretionary powers to exercise in the absence of any petitioner pleading or relief sought for.

23. Section 10(2)(vii) of the Act is very clear to the effect that only on an application filed by the landlady on specific pleading under this Section, the rent controller after giving the tenant a reasonable opportunity of cause against the application and if he is satisfied that the tenant has denied the title of the landlady and that such denial was not bona fide, only then the rent controller shall make an order directing the tenant to put the landlady in possession of the building. While the Section is so clear and telling to the effect that such an order could be passed

only on a petition with specific plea and prayer filed under this provision of law that is under Section 10(2)(vii) of the Act and the rent controller with due opportunity to the respondent and showing cause against the application and following such procedures established by law, could make a legal order and definitely not in the manner as the rent controller and the appellate authority have attempted to malign and mar the dictum of law.

24. There is absolutely no reason of justification in the conclusion arrived at by both the rent controller and the appellate authority and the conclusions arrived at by the rent controller and the appellate authority have no legal basis, nor any valid or tangible reasons prevail on such conclusions arrived at by them. Both the fair and decretal orders passed by the rent controller and the appellate authority as well, suffer from patent errors of law and perversity in approach, besides being infirm and inconsistent legally and they cannot sustain in law. In these circumstances, the only conclusion that could be arrived at by this Court is to set aside both the orders passed by the rent controller and the appellate authority as well.

In result, the above civil revision petition succeeds and the same is allowed with costs through out.

The judgment and decree dated 25.4.2000 made in RCA No.4 of 1998 by the Rent Control Appellate Authority and the Court of Subordinate Judge, Sivaganga thereby confirming the fair and decretal order dated 24.4.1998 made in RCOP No.5 of 1997 by the Rent Controller and the Court of Principal District Munsif, Sivaganga, is hereby set aside.

The eviction petition filed by the respondent in RCOP No.5 of 1997 on the file of the Rent Controller and the Court of Principal District Munsif, Sivaganga, is dismissed.

Consequently, CMP No.11652 of 2000 is closed.