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M.R. Devarajan Vs. M. Palani and Another

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Court : Chennai

Decided On : Feb-18-1998

Reported in : 1998(2)CTC415; (1998)IIIMLJ678

Judge : R. Balasubramanian, J.

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

Appeal No. : C.R.P. No.1394 of 1992

Appellant : M.R. Devarajan

Respondent : M. Palani and Another

Advocate for Pet/Ap. : Mr. K. Balachandran, Adv.

Judgement :
ORDER

1. The revision petitioner is the landlord/petitioner in RCOP No.3177 of 1985 on the file of the Rent Controller (14th Judge Court of Small Causes) Madras and the respondent in RCOP No.327 of 1989 on the file of the appellate authority (7th Judge, court of Small Causes) Madras. The first respondent in this revision petition is the second respondent before the Rent Controller and the second respondent herein is the first respondent before the Rent Controller. The revision petitioner is the landlord; the second respondent is the chief tenant and the first respondent is the alleged sub-tenant. In this order, the parties to this revision are described as

the landlord, chief tenant and sub-tenant.

2. The landlord filed the eviction petition seeking eviction on two grounds namely, wilful default in payment of the rent and unauthorised sub-letting. The chief tenant remained absent and ex parte even before the Rent Controller. The case of the landlord is that the agreed rent is Rs.110 per month and that the chief tenant had not paid the rent wilfully for the period commencing from 1.3.1985 to 3.9.1985. As far as the sub-tenancy concerned,his case is that the privity of contract of tenancy was between him and the chief tenant and that the sub-tenant is an unauthorised sub-tenant. In other words, the case of the landlord in this context is that, he is not a party to any written instrument enabling the chief tenant to sublet. The eviction was opposed by the sub-tenant on the following lines:

As early as 1976, the chief tenant had sold the business, which he was carrying on in the petition premises including the entire stock-in-trade to him, and since then he has been carrying on the said business in the petition premises. Such an arrangement of continuing the tenancy was made by the chief tenant with the knowledge and consent of the landlord. Therefore, his case is that he is the direct tenant under the landlord from 29.9.76, on which date he purchased the business of the chief tenant. As far as the default complained of is concerned, it is his case that he had been paying the rent directly to the landlord for several years and that it was received from him as a direct tenant. After the sub-tenant became the direct tenant, the chief tenant stopped paying the rent to the landlord. The rent payable by the sub-tenant to the landlord from March, 1985 had already been deposited by him in a separate Bank Account opened by him for the specific purpose of depositing the rent refused by the landlord. This was done because, the landlord who had been receiving the rent all along from the sub-tenant treating him as a direct tenant, suddenly with ulterior motives refused to receive the same, which was clearly set out in his notice dated 28.1.1996, which also met with a reply dated 6.2.1986 and a rejoinder dated 10.2.1986.

3. On behalf of the landlord, he examined himself as P.W.1 and on behalf of the respondents in this rent control O.P., the second respondent gave evidence as R.W.1. On the side of the landlord, 11 exhibits were marked and on the side of the

respondents 4 exhibits were marked as Exs.P.1 to P.11 and R.1 to R.4 respectively. The rent control order is a common order relating to a connected proceedings as well, with which we are not concerned in this revision. The learned Rent Controller, on going through the materials placed before him, found that the landlord had made out his case for eviction on both the grounds and ordered eviction. On appeal by the sub-tenant, the appellate authority agreed with him on all grounds and set aside the order of eviction passed by the learned Rent Controller. The correctness of this order is being questioned in this revision.

4. There is no dispute in this case that the privity of contract of tenancy is between the landlord and one Perumal, who was the first respondent in the rent control petition. The second respondent in the rent control petition also admits such a position. However he would state that with effect from 29.9.76, he purchased the business of the first respondent carried on in the petition premises and since then onwards, he is the owner of the said business as well as the direct tenant under the landlord. Ex.R.1 shows the transfer of the business of the first respondent to the second respondent. The sub-tenant would contend that such a transfer of the business as evidenced by Ex.R.1 and the transfer of tenancy in favour of him was with the knowledge and consent of the landlord himself. Section 10(2)(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act contemplates that sub-letting should not be without the written consent of the landlord. The courts have held that there is no substitutefor written consent and any amount of knowledge or acquiescence would not take the place of that written consent. In the background of the fact that the privity of contract of the tenancy is between the landlord and the-chief tenant, which position remains established in this case, if the sub-tenant wants to escape the clutches of law, then the burden is very heavy on him to show that his occupation of the petition premises is with the written consent of the landlord. The sub-tenant relies upon Ex.R.l which evidences the transfer of the business of the chief tenant in favour of the sub-tenant; Ex.R.2, the licence fee paid in the name of the sub-tenant to the Corporation of Madras is for running the business; Ex.R.3 series, the rental receipts and Ex.R.4, the money order coupon to show that he had been in possession of the petition premises for a number of years, paying rent directly to the landlord and therefore he must be deemed to be the direct tenant under the landlord.

5. Ex.R.3 series, the rental receipts starting from 5.2.83 onwards and ending with 11.1.85 are in the name of the chief tenant, namely Perumal. Ex.R.4 is a single money order coupon evidencing a sum of Rs.990 having been sent towards the rent for the period from March, 1985 to November 1985 and it appears to have been sent on 10.1.86. It is no doubt true that this document shows that this was sent by the sub-tenant. This appears to have been refused by the landlord, and thus returned to the sub-tenant. Therefore it is seen that the case of the sub-tenant that since 1976 he had been paying the rent directly to the landlord as a direct tenant is not substantiated by any of the records produced on his side. Except Ex.R.4, which was sent on 10.1.86, the entire Ex.R.3 rental receipts are in the name of Perumal. The default period complained of in the rent control petition is from 1.3.85 to 30.9.85. There is absolutely no proof whatsoever in this case either by way of any documentary evidence or oral evidence to show that the rent for the period from 1.3.85 to 30.9.85 had ever been tendered by the chief tenant. In fact, it is the case of the sub-tenant that from 1976 when the subtenant became the owner of the business under Ex.R.1, the chief tenant stopped paying the rent, and that, only he had been paying the rent to the landlord. When he claims that he is the direct tenant, it is impossible to understand as to how he went on receiving the receipts till 11.1.85 issued in the name of the chief tenant.

6. Now let me consider the evidence placed by the landlord in this case. Ex.P.1 is the counterfoil of the rental receipt dated 3.4.85 issued by the landlord in the name of the chief tenant for having received the rent for the month of February 1985. Ex.P.6 is the notice dated 16.8.85 issued on behalf of the landlord by his lawyer to the chief tenant and the sub-tenant. In this notice, there is a mention about the arrears of rent from March 1985 to August, 1985 and sub-letting. Both the notices have been returned with the endorsement refused and the returned covers are marked as Exs.P.7 and P.8. Ex.P.9 is the notice dated 28.1.86 issued on behalf of the sub-tenant to the landlord stating that the landlord had refused to receive the rent from March, 1985 to November, 1985. Therefore he was called upon to name a bank. This met with a reply on behalf of the landlord marked as Ex.P.10 in this case and the rejoinder dated 10.2.86 marked as Ex.P.11 in this case. I have already noticed in the counter statement of the sub-tenant that consequent to the refusal of thelandlord to name a bank, he opened a separate Bank Account and

started depositing the monthly rent in that account. But however though such a stand is taken before court, yet no documentary evidence whatsoever is produced before court in substantiation thereof.

7. Therefore looking at the entire materials placed before the courts below, it is clear that the landlord had established that the tenant committed wilful default in the payment of the rent for the period mentioned in the rent control petition and that there is an unauthorised sub-letting. The second respondent before the rent control court had not established that he came into possession of the petition premises with the written consent of the landlord and that the rent for the period complained of in the rent control petition had been tendered by the chief tenant. Even as far he is concerned, there is no material at all to hold that the rent was also tendered by him. It may be true that the sub-tenant might have been there from 1976. But that by itself in the absence of a written consent would not enable him to continue in the building. Any amount of knowledge or acquiescence will not take the place of the written consent is the law laid down by this court in two judgments of this court and they are as follows:

: (1989)1MLJ438

In view of the categorical pronouncement of law laid down by this court in the two judgments referred to above, I have no hesitation to hold that though, the sub-tenant might have been there since 1976, yet it cannot cloth him with any right as a tenant to continue to occupy the building. What is the burden of proof cast upon the parties whenever a case is brought before the court for eviction on the ground of sub-letting has been succinctly laid down by a learned single Judge of this Court in his judgment reported in Malliga v. A.P. Kathja Beevi and others, : (1998)1MLJ302 . (Justice S.S.Subramani).

'When the landlord has proved that a stranger is in possession and is doing business in the premises, it is for the tenant to substantiate the circumstances under which the stranger came into occupation. Mere denial may not be sufficient. The arrangement between the tenant and the sub-lessee is a secret arrangement and the details of the same can be spoken to only by them. Burden on the landlord is discharged when he proves that a stranger is in exclusive possession at least in

respect of a portion of the premises.'

8. Under these circumstances, I hold that the learned appellate authority had committed an error of law in setting aside the well considered order of eviction passed by the Rent Controller. Accordingly the judgment and decree dated 19.3.91 in RCA No.327 of 1989 on the file of the appellate authority (7th Judge court of Small Causes) Madras is set aside and the order and decretal order dated 22.2.89 granting an order of eviction in RCOP No.3177 of 1985 on the file of the Rent Controller (14th Judge Court of Small Causes) Madras is restored. The revision is accordingly allowed. There will be no order as to costs.

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