

Ramakrishna and Sarojini Vs. Kannan

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Court : Chennai

Decided On : Dec-15-2003

Reported in : (2004)1MLJ516

Judge : K. Gnanaprakasam, J.

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

Appeal No. : Civil Revision Petition No. 3011 of 1998

Appellant : Ramakrishna and Sarojini

Respondent : Kannan

Advocate for Def. : K. Srinivasan, Adv.

Advocate for Pet/Ap. : N. Vanchinathan, Adv.

Disposition : Petition allowed

Judgement :

K. Gnanaprakasam, J.

1. The landlords are the revision petitioners.
2. The landlords filed a petition under Sections

2. The landlady filed the petition under Sections 10(2)(i) and

2. The landlady filed the petition under Sections 10(2)(ii)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, in R.C.O.P. No. 2 of 1991 before the Rent Controller (District Munsif), Chidambaram, for the eviction of the tenant and the said petition was dismissed. The landlords, thereafter, have preferred an appeal in R.C.A. No. 8 of 1997 before the Sub Court, Chidambaram, and the same was also dismissed. Aggrieved by the same, the landlords have preferred this civil revision petition.

3. The landlords in their petition have stated that the respondent is a tenant in respect of the petition premises, which was leased out for non-residential purpose and the rent was Rs. 400/- per month. It is also stated that the tenant has been irregular in payment of rent and as on 30.4.1989, he was liable to pay a sum of Rs. 6,200/- as arrears of rent, which he has not paid and therefore, the default on the part of the tenant is willful. It is also stated in the petition that the petitioner gave a notice on 26.5.1989 demanding the tenant to pay the arrears of rent and also to vacate the petition premises and the respondent, having received the notice, did not comply with the same. It is further stated that the tenant had sent demand drafts between 1.8.1989 and 12.10.1989 amounting to Rs. 2,530/- leaving the balance as arrears of rent and thereafter also, he failed to pay the rent and hence, the respondent was liable to pay a sum of Rs. 11,270/- for the period ending 30.11.1990 after deducting the amounts sent by him through the demand drafts. It is further stated in the petition that the tenant had taken the petition premises for running a photo studio and contrary to the same, he is running a xerox copy shop and a colour lab also and thereby, he put the premises to a different user contrary to the terms of lease and therefore, he is liable to be evicted.

4. The tenant, in his counter affidavit, has stated that he is a tenant in respect of the petition premises under one Venkataparthasarathy and has been paying the rent. It is stated that he was not aware of the ownership of the property and there has been no lease agreement between the petitioner and the tenant. The tenant has also stated that if the petitioners prove that they are the owners of the property, the respondent is prepared to pay the rent to them. The tenant also

denies the monthly rent at Rs. 400/- as claimed by the petitioners. The tenant stated that the monthly rent is only Rs. 120/- and he became a tenant under Venkataparthasarathy in the year 1972 and he had paid an advance of Rs. 5,000/- . He has further stated that the rent has been increased periodically and in the year 1982, it has been enhanced to Rs. 185/- per month and Venkataparthasarathy, who was issuing receipts for the payment of rent, has stopped this practice since 1980. It is further stated that the tenant has been running a photo studio and Venkataparthasarathy had taken photos of himself and his family on several occasions on credit basis and also took photos in respect of the school run by him and on this account, he owes a sum of Rs. 5,425/-. It is stated that the respondent pressed for the said payment, for which, Venkataparthasarathy requested the respondent to adjust the said amount towards the rent payable and accordingly, the rent has been adjusted. It is further stated that the notice dated 19.5.1989 issued by Venkataparthasarathy contains false allegations and after the receipt of the notice, the respondent and his relative Ramakrishnan met him and gave the details of the payment of rent and Venkataparthasarathy accepted the same and therefore, there is no arrears of rent at all, as it was paid up to the end of December 1990. The tenant has stated that subsequently, the rent was refused when offered by the respondent and therefore, the respondent is not at all in arrears of rent and the respondent is liable to pay rent only from January 1991 at the rate of Rs. 185/- per month. It is further stated in the counter affidavit that the respondent is not using the premises for the purpose other than it was let out and the xerox business and colour lab are part of photo studio business.

5. Based upon the above pleadings and also the evidence let in by both the petitioners and the respondent, the Rent Controller did not agree with the case of the landlords and dismissed the petition, which was confirmed by the Rent Control Appellate Authority. Aggrieved by the same, the landlords have preferred this revision.

6. Heard the learned Advocate for the revision petitioners and the respondent.

7. The learned Advocate for the revision petitioners would contend that before filing the petition, the petitioners sent a notice under Ex.A.1 dated 19.5.1989, wherein it is stated that there was a rental agreement between them on 1.1.1982 and also another agreement of lease on 1.1.1983, whereby the rent was enhanced to Rs. 185/- per month and pursuant to the same, the tenant was paying the said rent. It is also stated that the rent was further enhanced to Rs. 400/- from 1.6.1988 and the tenant has agreed to pay the said rent on or before the last day of that month. It is also stated that the tenant was in arrears of rent to the extent of Rs. 6,200/- as on 30.4.1989 and he has not paid the same in spite of repeated demands, to which, the tenant has not given any reply. It is further argued that the petitioners claim that the tenant was in arrears of rent, as stated in the notice Ex.A.1, has got to be accepted. It is also submitted that the very same claim was made in the revision petition also and only in the counter filed by the respondent, he has chosen to dispute the quantum of rent as it was only Rs. 185/- and not Rs. 400/- and the tenant also questioning the title of the landlords. A few lines in the counter filed by the respondent are also pointed out by the learned Advocate for the revision petitioners. In paragraph No. 2 of the counter affidavit, it is stated as follows:-

'the petitioners are put to strict proof of the allegations that the petition mentioned property belongs to the petitioners'

It is further stated in the same paragraph as follows:-

'if the petitioners are proved to be the owners of the property, the respondent is prepared to pay the rent to the petitioners'.

In paragraph No. 4 of the counter affidavit also the tenant has stated as follows:-

'The respondent is liable to pay rent from January 1991 at the rate of Rs. 185/- per month and the respondent is prepared to pay this amount provided the petitioners are entitled to receive the same'.

Relying upon these passages in the counter affidavit, the learned counsel for the revision petitioners has stated that the tenant, for the first time, has chosen to deny

the title of the landlords and therefore, the tenant is liable to be evicted on that ground also. It is also submitted that though the landlords have not taken such a plea in the petition, it is open to them to make such a plea or ground before this Court also.

8. On the contrary, the learned Advocate for the respondent would contend that the monthly rent is only Rs. 185/- per month and the respondent has never agreed to pay the rent of Rs. 400/-. It is further argued that Venkataparthasarathy, the father of the first petitioner was liable to pay a sum of Rs. 5,425/- towards the photographs taken by the respondent on credit basis and after giving credit to the said amount, the tenant is liable to pay rent only from January 1991. But during the course of the arguments, the learned Advocate for the respondent/tenant would submit that the tenant never denied the title of the landlords and also assured that the said statement of the tenant may be placed on record and therefore, the petitioners cannot raise a ground that the respondent has denied the title of the landlords. It is also further submitted that the landlords, having not taken such a ground in the petition, are precluded from raising such a ground, for the first time, in this civil revision petition.

9. Now let us consider whether the tenant has committed willful default in payment of rent.

10. The respondent is a tenant in respect of the petition premises is not in dispute; that the petitioners claimed the monthly rent as Rs. 400/-; that the same is being denied by the respondent; that the landlords have stated that there was an agreement between them to show that the rent was increased to Rs. 400/-, but, no document has been filed to that effect; that the respondent also contended that Venkataparthasarathy was issuing receipts for the payment of rent, but he has also not chosen to file those receipts; that in the said circumstances, it could be construed that neither the landlords proved that the monthly rent was Rs. 400/- nor the tenant has proved that the monthly rent was Rs. 185/-; but however, burden is upon the landlords to prove the quantum of rent; that except the statements made in the notice and the petition, there is nothing on record to come to the conclusion that the rent was raised to Rs. 400/- and that in the said circumstances, I wish to

fix the monthly rent at Rs. 185/-.

11. Ex.A.1 dated 19.5.1989 was issued by the first petitioner to the respondent and the same was received by the respondent on 1.6.1989 under Ex.A. 2. But the respondent has not chosen to give any reply; that in Ex.A.1 itself, the landlords have made it clear that the respondents failed to pay the rent regularly; that a sum of Rs. 6,200/- was due as on 30.4.1989 and that the same was not paid in spite of repeated demands; that if the case of the respondent is that he was not in arrears of rent, then what prevented him from replying to the notice is not made out; that only in the counter affidavit, the respondent, for the first time, has chosen to say that he is not in arrears of rent; that though mere non reply would not amount to an admission, but in the facts and circumstances of this case, when the petitioners/ landlords have made a specific claim that the tenant is in arrears and he has committed willful default and the tenant has not chosen to deny at the earliest point of time, cannot be allowed to say subsequently at the time of filing the counter that he is not in arrears of rent and that in the said circumstances, I am of the view that the Courts below have committed a serious error in not having accepted the case of the petitioners that the respondent/tenant is in arrears of rent.

12. Though the tenant has stated in the counter affidavit that the first petitioner's father was in due of some amount in respect of the photographs taken and he had agreed to adjust the rent towards the due for the photographic charges, there is no proper proof for the same. Even then, the case of the petitioners alone stands proved for the simple reason that the respondent/tenant admits that he was in arrears of rent and the said arrears were adjusted towards the photograph charges. Therefore, it is clearly made out that the respondent/tenant was in arrears, but he has not come forward to pay the same in spite of the demands made by the petitioners through Ex.A.1. The pre-litigation notice was sent only to give an opportunity either to accept or to deny. Especially, in the rent control proceedings, when a notice has been issued making a claim that the tenant has committed willful default and the said notice was left unanswered, we can safely draw a presumption in favour of the landlords and the respondent did not have anything to say against the said allegation and only in the said circumstances, he

has not given any reply. Only in the said view of the matter, once again the case of the petitioner is further strengthened by the non reply of the tenant and also the admission made by him that he was in arrears of rent. But the said amount was agreed to be adjusted towards the photograph charges for which the evidence is lacking and that in the said circumstances, I come to an irresistible conclusion that the tenant had committed willful default in payment of rent as contended by the petitioners.

13. Coming to the next aspect of the case is that the tenant has used the petition premises for a different user than the purpose for which it was let out, it is the contention of the tenant that the xerox business and colour lab are part of photo studio business. One can understand that a colour lab may be the part of the photo studio business but xerox business is also a part of photo studio business cannot at all be understood. It had also been made known to the tenant that xerox business is not the part of photo studio business. As such, here also, there is an admission by the tenant that he is doing xerox business, but there is no evidence that the petition premises was taken for doing xerox business also and on that ground also, the case of the petitioner stands proved and they are entitled for an Order of eviction.

14. Coming to the other aspect of the case that the petitioners have raised a ground that the tenant has denied the title of the landlords in the counter affidavit and the said ground was not taken as a ground in the petition, the learned Advocate for the revision petitioners would contend that even though they have not taken the said plea as one of the grounds in the petition, they have raised it as one of grounds in the civil revision petition and also pointed out ground No. 3, wherein it is stated as follows:-

'The Courts having found from the evidence of the respondent, wherein he says,

'from January 1991 to October 1991 the rent due is only Rs. 1850/- and that he is prepared to pay the rent, if the petitioners prove that they are the owners and entitled to receive the rent'.

This ground, coupled with the statement made in the counter, according to the petitioners, amounts to denial of title and therefore, the petitioners are entitled to make such a ground even at the time of this civil revision petition. To support the said argument, the learned Advocate for the petitioners relied upon a decision reported in A. LAKSHMANAN AND OTHERS v. KANNIAMMAL @ PATTAMMAL 1995 1 L.W. 632, wherein, A.C. Lakshmanan, J, as he then was, had an occasion to consider a case of this nature and had observed as follows:-

'Pointing out the averments in the counter affidavit of the tenants denying the title of the landlady, it was contended that the tenants should be evicted from the premises on the question of denial of title of the landlady, which is apparent. It is stated in the counter affidavit that the landlady is not the owner of the two buildings under the occupation of the tenants, that she is the owner of only the vacant site, that the buildings were put up only by one C.T. Venugopal and he alone is entitled to evict the tenants and that the landlady has no authority to demolish the building put up by the said Venugopal. In the decision reported in : AIR 1989 SC2187 (Majati Subbarao v. P.V.K. Krishna Rao) the Supreme Court has observed that the denial of the title in the course of eviction petition constitutes a ground for eviction provided the denial is not bona fide and it is not necessary that in Order to constitute a ground for eviction, the denial of title must be anterior to the filing of the eviction petition I am of the view, the landlady is entitled to take this plea in this revision itself seeking eviction on the ground of denial of title even though there is omission on her part to amend the petitions by including disclaimer as a ground for eviction.'

15. The respondent has not placed any ruling to take a contrary view, which has been already taken by the Supreme Court in MAJATI SUBBARAO v. P.V.K. KRISHNA RAO : AIR 1989 SC2187 and the same was followed in A.LAKSHMANAN AND OTHERS v. KANNIAMMAL @ PATTAMMAL 1995 1 L.W. 632. As such, the landlords, having taken a ground in the civil revision petition, is entitled to an Order of eviction on that ground also.

16. In the result, the civil revision petition is allowed and the Orders passed by both the Courts below are set aside. No costs.

