

Kannika Vs. Krishnasamy

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Court : Chennai

Decided On : Oct-24-2002

Reported in : (2003)1MLJ225

Judge : P. Thangavel, J.

Acts : Pondicherry Buildings (Lease and Rent Control) Act, 1969 - Sections 25

Appeal No. : Civil Revision Petition Nos. 952 to 954 of 1999 and C.M.P. Nos. 5177 to 5177 of 1999

Appellant : Kannika

Respondent : Krishnasamy

Advocate for Def. : U. Karunakaran, Adv. for G.H. Mani Associates

Advocate for Pet/Ap. : R. Subramaniam, Adv.

Disposition : Petition closed

Judgement :

ORDER

1. These Civil Revision Petitions are filed by the tenant as revision petitioner against the common judgment and decrees dated 25.1.1999 and made in M.A.Nos.19 to 21 of 1995 on the file of the learned Principal District Judge(Appellate Authority) at Pondicherry, confirming the common order and

decretal orders dated 14.11.1997 in R.C.O.P.Nos.19 to 21 of 1995 on the file of the Rent Control (Principal District Munsif) Court, Pondicherry.

2. The respondent herein, who was the petitioner before the Rent Control Court, Pondicherry, is the owner of the premises described in the Rent Control Original Petitions filed for eviction against the revision petitioner, who is admittedly tenant of the demised premises on a monthly rent of Rs.1,800/- on the grounds of committing wilful default in payment of rent, subletting and own use and occupation. Eviction was sought for on the ground of wilful default for not paying rent from June, 1994 to November, 1994. Eviction was sought for on the ground of subletting portions of demised premises along with municipal platforms to one Ramesh for running 'Malligai Lottery Agency' and to one Venkatesh for doing business in bangles, ear rings, etc., on a monthly rent of Rs.600/- and Rs.200/- respectively. Eviction was sought for on the ground of own use and occupation as the demised premises is required for his second son, who is doing pawn broker business in an insufficient and inconvenient small room of his residential house bearing Door No.98 (old Door No.68), Kalatheeswaran Koil Street, Pondicherry to which portion a separate Door number was given as Door No.100, from the year 1992.

3. The tenant as respondent before Rent Control Court resisted the claim of landlord on the following grounds:- The premises described in the Rent Control Original Petitions was let out to Saraswathi, the mother of this revision petitioner to run a book shop for Rs.1,200/- per month and an advance of Rs.3,600/- was also received by the respondent herein from Saraswathi, under a lease deed dated 5.2.1982 and the lease deed was renewed on 5.2.1983 and again on 5.1.1991. The rent was increased to Rs.1,500/- per month with increased advance of Rs.4,500/- from Rs.3,600/- already paid. Again a fresh lease deed was entered into on 5.6.1994 between the revision petitioner and the respondent herein, in which the revision petitioner had agreed to pay rent of Rs.1,800/- per month with the increased advance of Rs.6,000/- from Rs.4,500/-. The revision petitioner is continuing as tenant in the demised premises till this date. The respondent herein, contrary to the terms of the lease agreement dated 5.6.1994, demanded rent of Rs.2,500/- per month from June, 1994 and refused to receive the rent at

Rs.1,800/- per month tendered by the revision petitioner. The respondent herein asked to vacate the premises unless the revision petitioner is willing to pay rent at Rs.2,500/- per month. While the revision petitioner was attempting to arrive at an amicable settlement to run the book shop in the demised premises through common well-wishers, the respondent herein issued a notice with mala fide intention. The revision petitioner immediately sent a banker's cheque dated 2.1.1995 bearing No.540845 for Rs.10,800/- to the respondent herein towards rent from June, 1994 to December, 1994. The revision petitioner continued to pay the rent for subsequent period through banker's cheque and the said amount was received. The second son of the respondent is in occupation of a big and sufficient space to carry on his pawn broker business and the respondent herein and other members of his family are having lot of properties within the Pondicherry Town limits. As the premises under the occupation of the second son of the respondent herein is convenient, sufficient and comfortable to carry on pawn broker business, the requirement of the demised premises for own use and occupation is not bona fide. The allegation that the revision petitioner had sublet the demised premises and is receiving rent is also not correct. The revision petitioner has paid a 'pagadi' of Rs.40,000/- to the respondent herein to occupy the premises and had invested a sum of Rs.3 lakhs in stocking of books and therefore, the revision petitioner has sought for dismissal of the petitions.

4. After considering the material evidence available on record and after hearing the arguments on both sides, the learned Rent Controller ordered eviction on all grounds. Aggrieved at the common order and decretal orders dated 14.11.1997 and made in R.C.O.P.Nos.19 to 21 of 1995, the tenant as appellant has preferred the appeals in M.A.Nos.19 to 21 of 1998 on the file of the learned Principal District Judge (Appellate Authority), Pondicherry. After hearing the arguments on both sides in the light of material evidence available on record, the learned Principal District Judge, Pondicherry has concurred with the finding of the learned Rent Controller in all the three Rent Control Original Petitions and dismissed the appeals. Aggrieved at the common judgment and decrees dated 25.1.1999 and made in M.A.Nos.19 to 21 of 1998 on the file of the learned Principal District Judge, Pondicherry, the tenant as revision petitioner has come forward with these Civil Revision Petitions.

5. The point for determination is whether there are grounds to interfere with the finding of the learned Principal District Judge, Pondicherry
6. The respondent herein was examined as P.W.1 and Exs.A-1 to A-8 in R.C.O.P.No.19 of 1995, Exs. A-1 to A-9 in R.C.O.P.No.20 of 1995 and Exs. A-1 to A-9 in R.C.O.P.No.21 of 1995 were marked on the side of the respondent herein. One A.E. Panchatcharam, husband and Power of Attorney Agent of the revision petitioner was examined in chief as R.W.1 and Exs. B-1 to B-13 were marked on the side of the revision petitioner. R.W.1 was not produced for cross-examination subsequently by the revision petitioner. Therefore, the evidence of R.W.1 and Exs. B-1 to B-13 cannot be taken into consideration as rightly conceded by the learned counsel appearing for the revision petitioner. The learned counsel appearing for the revision petitioner also submitted that the Civil Revision Petitions have to be decided in the light of the evidence available on the side of the respondent herein, who is expected to prove his case for eviction in the light of the denial made by the revision petitioner in the counters filed at the first instance and cross-examination made while P.W.1 was examined.
7. The fact remains that the premises bearing Door No.171 (old Door No.59) in Jawaharlal Nehru Street, Pondicherry-1 belongs to the respondent herein and a portion measuring 12 feet x 12 feet to the South of Jawaharlal Nehru Street and West of Bharathi Street was leased out to one Saraswathi, the mother of the revision petitioner on a monthly rent of Rs.1,200/- and an advance of Rs.3,600/-, on 5.2.1982 and the said lease was renewed in favour of Saraswathi on 5.2.1983 admittedly. Exs. A-1 and A-2 are the agreements of lease between the above said Saraswathi and the respondent herein. The said lease was renewed in the name of the revision petitioner by the respondent herein on 5.1.1991 as seen in Ex. A-3 and the rent was increased to Rs.1,500/- from Rs.1,200/- per month with an increased advance of Rs.4,500/- from Rs.3,600/-. The said lease was renewed as seen in Ex. A-4 dated 5.6.1994, but with increased rent of Rs.1,800/- from Rs.1,500/- per month and with the increased advance of Rs.6,000/- from Rs.4,500/- already paid. Therefore, there is no dispute that there is relationship of landlord and tenant between the respondent herein and the revision petitioner and the agreed rent per month was Rs.1,800/-.

8. Ex. A-6 dated 26.12.1994 in R.C.O.P.No.21 of 1995, is the notice sent by the respondent herein through his counsel to the revision petitioner asking him to pay the arrears of rent from June, 1994 at the rate of Rs.1,800/- per month within a period of 15 days from the date of receipt of the said notice and to vacate and hand over possession of the demised premises on the ground of wilful default in payment of rent from June, 1994, for own use and occupation and on the ground of subletting. Ex. A-7 dated 2.1.1995 in R.C.O.P.No.21 of 1995 is the reply notice sent by the revision petitioner through her counsel to the counsel for the respondent herein. In Ex. A-7, the revision petitioner has stated that she tendered the rent at the rate of Rs.1,800/- per month as per the terms of the agreement, Ex.A-4, but the respondent herein had refused to receive the rent demanding Rs.2,500/- per month contrary to the terms of agreement and that therefore, the revision petitioner had attempted to have an amicable settlement through common friends of the revision petitioner as well as the respondent herein. In the meanwhile, according to the revision petitioner, the respondent herein issued the notice Ex. A-6 in R.C.O.P.No.21 of 1995 and therefore, she had sent the reply Ex. A-7 in R.C.O.P.No.21 of 1995 along with banker's cheque dated 2.1.1995 bearing No.540845 for Rs.10,800/- towards the rent from June, 1994 to December, 1994. Ex. A-9 dated 14.1.1995 in R.C.O.P.No.21 of 1995 is the rejoinder issued by the respondent herein after receipt of Ex. A-7, the reply notice dated 2.1.1995. In the said rejoinder, after denying the averments made in the reply notice with regard to tender of rent and demand of Rs.2,500/- per month, it is admitted about the receipt of Rs.10,800/- by banker's cheque dated 2.1.1995 bearing No.540845 and another banker's cheque dated 6.1.1995 bearing No.540895 for Rs.1,800/- towards the arrears of rent due upto December, 1994. It is evident from Exs. A-7 and A-9(R.C.O.P.No.21 of 1995) that the revision petitioner had paid the rent within 15 days from the date of receipt of the notice Ex. A-6(R.C.O.P.No.21 of 1995) dated 26.12.1994. Of course the respondent herein had stated in Ex. A-7 (R.C.O.P.No.21 of 1995) dated 14.1.1995 i.e., after receipt of the banker's cheque dated 6.1.1995 bearing No.540895 for Rs.1,800/-, that he has received the rent without prejudice to his right to initiate action against the revision petitioner on the ground of wilful default in payment of rent. But he has not chosen to send any rejoinder or reply that he has received the rent sent under banker's cheque dated

2.1.1995 bearing No.540845 for Rs.10,800/- without prejudice to his right to initiate eviction proceedings. It has to be deemed that he has received the said amount willingly and not without prejudice to his right.

9. It is not in dispute that explanation to section 10(2) of the Pondicherry Buildings (Lease and Rent Control) Act, 1969, dealing with eviction of tenant for committing wilful default, was introduced by amendment to the main Act on 3.7.1980 and the same has come into force on 30.7.1980. The explanation deals with issue of two months' notice by the landlord claiming the arrears of rent, but such notice was not issued in this case, except demanding payment of arrears of rent within a period of 15 days. As already pointed out, the arrears of rent was paid by the revision petitioner within a period of 15 days from the date of receipt of the notice issued by the respondent herein.

10. The learned counsel appearing for the revision petitioner has brought to the notice of this Court, the decision reported in *Dakaya alias Dakaian - vs. - Anjani*, 1996-1, Law Weekly, 25, wherein the Hon'ble Apex Court was pleased to hold as follows:-

'This Court in the aforesaid case of *S. Sundaram Pillai (S. Sundaram Pillai etc. - vs. . - V.R. Pattabiraman* has indicated that default per se cannot be construed as wilful and keeping in mind the beneficial purpose of the Rent Act to protect the eviction of the tenant, if the payment has been made before the institution of the suit, the cause of action for institution of the suit, will vanish. In the instant case, immediately on receipt of demand of payment of rent, the tenant initially sent a sum of Rs.375/- by money order and therefore a bank draft for Rs.1125/- covering the entire period of default from September, 1988 to November, 1988 was sent to the landlady. It, therefore, appears to us that there was no occasion to proceed on the footing that there was a wilful default for which an order for eviction of the tenant has to be passed. As the tenant had already sent the Bank draft covering the entire default, there was also no occasion on the Rent Controller to direct deposit of arrears within the stipulated period. In our view, the Rent Controller, the first appellate Court, and the High Court have failed to appreciate the incidence of tendering the entire amount under default before the institution of the suit. As a

result, the Courts below have erroneously proceeded on the footing that there had been a wilful default for which the landlady was entitled to a decree for eviction.'

In Kandaswamy Pathar - vs. - Meenakshi Bai and another reported in , a learned single Judge of this Court, following the decision reported in Dakaya alias Dakaian - vs. - Anjani, 1996 1 L W 25, has held that the landlord has no cause of action for filing the rent Control Original Petition, since the entire rent has been paid before institution of the suit. In view of the principles laid down by the Hon'ble Apex Court, followed by this Court, the learned counsel for the revision petitioner was right in contending that the respondent herein has no cause of action to file the eviction petition on the ground of wilful default after receiving the rent sent by the revision petitioner, even before filing of the Rent Control Original Petition. In view of the said position, the Courts below have committed illegality in coming to the conclusion contrary to law that the revision petitioner has committed wilful default in payment of rent.

11. The next point to be considered is whether the revision petitioner has sublet the demised premises or a portion of the demised premises to any third party by receiving rent from such third party

12. As already pointed out, the premises let out to the revision petitioner by the respondent herein is 12 feet x 12 feet in the corner of the premises bearing Door No.171 (old Door No.59) in Jawaharlal Nehru Street. According to the averments in the Rent Control Original Petition in R.C.O.P.No.19 of 1995, the revision petitioner has erected cement sheet covering municipal platform and divided them in two shops and leased out one portion to one Ramesh to run 'Malligai Lottery Agency' and another portion to one Venkatesh for doing business in bangles, ear rings, etc., and has been getting rent of Rs.600/- and Rs.200/- respectively from them. It is specifically denied by the revision petitioner that she had not sublet any portion of the premises let out to her by the respondent herein and is not receiving any rent as alleged by the respondent herein by subletting any portion of the rented premises. P.W.1 himself would admit during cross-examination that the premises let out to 'Malligai Lottery Agency' and to bangle shop are located on the municipal platform and the said platform is not covered under the lease

agreement. Therefore, even if the alleged leasing of a portion to 'Malligai Lottery Agency' and bangle shop by the revision petitioner on rent is true, it is a municipal platform, which is not subject matter of lease between the revision petitioner and the respondent herein.

13. In M/s. Delhi Stationers and Printers - vs . - Rajendra Kumar reported in , the Hon'ble Apex Court was pleased to hold as follows:-

'Under Section 13(1)(e) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, (hereinafter referred to as 'the Act'), the tenant is liable to be evicted, if he has assigned, sub-let or otherwise parted with the possession of the whole or any part of the premises without the permission of the landlord. Sub-letting means transfer of an exclusive right to enjoy the property in favour the third party and the said right must be in lieu of payment of some compensation or rent. Parting of the legal possession means possession with the right to include and also a right to exclude others. Mere occupation is not sufficient to infer either sub-tenancy or parting with possession see Gopal Saran - vs . - Satya Narayana, .'

In Sree Venkateswara Varukadalai Mills represented by its Partner N.V. Ramaswamy - vs. - Tmt. Vijayalakshmi reported in , a learned single Judge of this Court has held as follows:-

'A tenant can be said to sub-let the demised premises to a third party only when the tenant had permitted the third party to occupy the premises and had divested himself completely of the possession of the premises or part thereof. In other words, there must be transfer of the exclusive right to enjoy the demised premises by the tenant in favour of a third party and the said right must be in lieu of payment of some compensation or rent. If a tenant had permitted a third party to use the premises along with him while the tenant retains legal possession, it will not amount to sub-letting.'

In this case, the premises let out to the revision petitioner by the respondent herein has been in the possession of the revision petitioner and only the municipal platform upon which a shed was put up by the revision petitioner and let out to third parties by the revision petitioner according to the respondent herein himself.

If the decisions referred to above are applied to the facts and circumstances of the case, it will certainly mean that there was no subletting of any portion of the rented premises by the revision petitioner to the third parties.

14. The decision relied on by the learned counsel for the respondent herein reported in *M/s. Vijaya Traders by Executive Partner, V. Saradha - vs. - C.K. Sampath* and another can have no application to the facts and circumstances of the case, since it relates to subletting of the rented premises itself. In view of the foregoing reasons, this Court is not able to agree with the conclusion arrived by the Courts below that the revision petitioner was liable to be evicted on the ground of subletting.

15. The next point to be considered in this case is whether the requirement of the demised premises for the occupation of the second son of the respondent herein to carry on pawn broker business is bona fide?

16. As per Section 10(3)(a)(iii) of the Pondicherry Buildings (Lease and Rent Control) Act, 1969, a landlord may, subject to the provisions of clause(d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building, in case it is any other non-residential building, if the landlord or his son is not occupying for purposes of a business which he or his son is carrying on a non-residential building of his own in the Commune concerned.

17. In the notice sent under Ex. A-7 dated 26.12.1994 in R.C.O.P.No.20 of 1995, the respondent herein has stated that his second son K. Gobinathan is doing pawn broker business in a small room in his residential house bearing Door No.98 (Old Door No.68), Kalatheeswaran Koil Street, Pondicherry from 1992. It is also stated that a separate Door No.100 was given to the pawn broker shop by the municipality. In the pleadings in R.C.O.P.No.20 of 1995 filed for eviction on the ground of own use and occupation, the very same averment was made. It is evident from the said pleadings that the second son of the respondent herein is running pawn broker business in a shop bearing Door No.100 in Kalatheeswaran Koil Street, Pondicherry from 1992. Ex. A-5 (R.C.O.P.No.20 of 1995) is the pawn broker licence issued to K. Gopinathan, who is admittedly, the second son of the respondent herein to carry on pawn broker business. The above said business is

being carried by K. Gopinathan from 1.4.1994 to 31.3.1995 in Door No.100, Chetty Street, Pondicherry-1. It is relevant to point out that pawn broker shop bearing Door No.100 is not in the residential building bearing Door No.98(Old Door No.68), Kalatheeswaran Koil Street Pondicherry-1. It is in Chetty Street in Pondicherry, which is a different street. In the light of the documentary evidence, Ex. A-5 produced in R.C.O.P.No.20 of 1995 by the respondent herein, the contention raised by the learned counsel for the respondent herein that the pawn broker shop run by K. Gopinathan, the second son of the respondent herein, is situate in a part of the residential building bearing Door No.98 (Old Door NO.68), Kalatheeswaran Koil Street, cannot be accepted. It is a separate building in Chetty Street and not part of the residential building bearing Door No.98(Old Door No.68) in Kalatheeswaran Koil Street, Pondicherry. It will mean that either the respondent herein or his second son is owning a separate non-residential premises to carry on pawn broker business by K.Gopinathan.

18. As per section 10(3)(a)(iii) of the Pondicherry Buildings (Lease and Rent Control) Act, 1969, the respondent herein can seek direction from the Court to vacate the tenant and to put the landlord in possession, if he or his son is not occupying for purposes of the business which he or his son is carrying on a non-residential building of his own in the Commune concerned. Since the respondent herein or his son is in occupation of the shop of their own in Chetty Street, Pondicherry to carry on pawn broker business by K. Gopinathan, they have no right to seek eviction of the revision petitioner from the demised premises on the ground of own use and occupation.

19. It is evident from a perusal of Ex. A-4 dated 5.6.1994 that the respondent herein had agreed to renew the lease in favour of the revision petitioner on a monthly rent of Rs.1,800/- with increased advance of Rs.6,000/- from Rs.4,500/-. As already pointed out, K. Gopinathan, the second son of the respondent herein, has been carrying on pawn broker business from 1992. P.W.1 as a witness in R.C.O.P.No.20 of 1995 would admit that there is no sufficient income in the pawn broker business run by K.Gopinathan, his second son, and that his second son is not an income-tax assessee as there was no sufficient turn over in the said business. The above said admission of P.W.1 during cross-examination would

disclose that there is no expansion in the pawn broker business from 1992 to seek possession of larger premises to carry on the business of pawn broker by K. Gopinathan. If really there was any such requirement, there would not have been any necessity for the respondent herein to renew the lease on an increased rate of rent on 5.6.1994 as seen in Ex. A-4 in R.C.O.P.No.20 of 1995. The fact of renewing the lease as mentioned above with enhanced rent in favour of the revision petitioner by the respondent herein would disclose that the premises was not required for the pawn broker business of K. Gopinathan, the second son of the respondent herein on the ground of insufficiency or inconvenience of space to carry on pawn broker business, as rightly contended by the learned counsel for the revision petitioner.

20. It is relevant to point out that it is not specifically stated in the pleadings in the Rent Control Original Petition No.20 of 1995 that the respondent herein or his son is not owning any non-residential building of his/their own and therefore the demised premises is required for own use and occupation to carry on pawn broker business. If the circumstances stated supra are taken into consideration, it is very difficult to accept the contention raised by the learned counsel for the respondent herein that the demised premises is required bona fide for carrying on pawn broker business by K. Gopinathan, second son of the respondent herein.

21. The learned counsel for the revision petitioner has also brought to the notice of this Court, the decision reported in 'Super Forgings and Steels (Sales) Private Limited - vs. - Thyabally Rasuljee(dead) through L.Rs., 1995 1 M.L.J. 59 (SC), wherein it was held that even if the landlord is not the absolute owner of a premises, but a co-owner of the premises, it has to be held that landlord is in occupation of his own non-residential building and such co-ownership disentitles him to the benefit of eviction of tenant in respect of a non-residential building. In view of the foregoing reasons, this Court is unable to agree with the conclusions arrived by the Courts below that the requirement of the demised premises for own use and occupation of the second son of the respondent herein is bona fide.

22. The jurisdiction of the Court is limited, if the Court is sitting in revisional jurisdiction and it can interfere with the concurrent findings of the Courts below

only if there is any illegality, irregularity or impropriety in the orders or proceedings and not otherwise. Such power alone can be exercised even under section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

23. The facts narrated supra would disclose that the Courts below have committed illegality or irregularity or impropriety in coming to the conclusion in favour of the respondent herein. Therefore this Court has got every right to interfere to render justice to the aggrieved party. Accordingly this Court has to set aside the concurrent findings of the Courts below that the revision petitioner has committed wilful default in payment of rent, sublet the premises described in the Rent Control Original Petitions and the requirement of the demised premises for own use and occupation of the second son of the respondent herein is bona fide.

24. In fine, all the three Civil Revision Petitions are allowed and the common judgment and decrees of the learned Rent Control Appellate Authority (Principal District Judge), Pondicherry are set aside, but without costs. In view of the disposal of the main Civil Revision Petitions, the petitions in C.M.P.Nos.5177 to 5179 of 1999 are closed.

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