

Ms. Cisons Electronics Vs. Abu Bucker

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Court : Chennai

Decided On : Feb-23-2012

Judge : R.S.Ramanathan, J.

Appeal No. : C.R.P.(NPD)Nos. 956, 957 and 958 of 2009 and M.P.Nos. 1, 1 and 1 of 2009

Appellant : Ms. Cisons Electronics

Respondent : Abu Bucker

Advocate for Def. : Mr. N.C.Siddharth, Adv.

Advocate for Pet/Ap. : Mr. S.Senthilnathan, Adv.

Judgement :

Prayer in C.R.P.No.956 of 2009:

Civil Revision Petition has been filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 to set aside the Judgement and Decree passed in R.C.A.No.603 of 2004 dated 22.9.2008 on the file of the 8th Small Causes Court, Chennai of confirming the order and decree passed in R.C.O.P.No.599 of 2003 dated 29.1.2004 on the file of the 14th Small Causes Court, Chennai.

Prayer in C.R.P.No.957 of 2009:

Civil Revision Petition has been filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 to set aside the Judgement and Decree passed in R.C.A.No.604 of 2004 dated 22.9.2008 on the file of the 8th Small Causes Court, Chennai together with the order and decree passed in the nature of partly allowed the order and decree passed in R.C.O.P.No.133 of 2003 dated 29.1.2004 on the file of the 14th Small Causes Court, Chennai.

Prayer in C.R.P.No.958 of 2009:

Civil Revision Petition has been filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 to set aside the Judgement and Decree passed in R.C.A.No.320 of 2004 dated 22.9.2008 on the file of the 8th Small Causes Court, Chennai together with the order and decree passed in the nature of confirming the order and decree passed in R.C.O.P.No.938 of 2003 dated 29.1.2004 on the file of the 14th Small Causes Court, Chennai.

ORDER

1. The revision petitioners in all these revisions are the tenants.
2. The revision petitioners filed R.C.O.P.No.599 of 2003 under Section 9(3) of the Tamil Nadu Buildings (Lease and Rent Control) Act seeking permission of the Court to deposit the rent stating that there are rival claims to the property and therefore they are not in a position to know who is the rightful owner and therefore they filed the said application to deposit the rent into Court. Earlier to that, the respondents herein filed R.C.O.P.No.133 of 2003 on the file of the 14th Small Causes Court, Chennai for fixation of fair rent under Section 4 of the Act against the revision petitioners. The respondents 1 and 2 also filed R.C.O.P.No.938 of 2003 for eviction on the ground of willful default and willful denial of title and for owners occupation. All the three petitions were heard together and by common Judgement, the learned Rent Controller dismissed R.C.O.P.No.599 of 2003 filed by the revision petitioners, fixing the fair rent at Rs.13,683/- and allowed R.C.O.P.No.133 of 2003 and also ordered eviction in R.C.O.P.No.938 of 2003.

3. The revision petitioners filed the appeals in R.C.A.Nos.603 of 2004, 604 of 2004 and 320 of 2004 against the order passed in R.C.O.P.Nos.599 of 2003, 133 of 2003 and 938 of 2003 respectively and the learned Rent Control Appellate Authority namely the 8th Small Causes Court Judge dismissed all the appeals and against the same, these revisions are filed.

4. Mr. S.Senthilnathan, the learned counsel for the revision petitioners submitted that originally the building was owned by one Sheik Ismail Rowther and after his death the rent was received by his 2nd wife Rokkiammal and the revision petitioners were paying the rent to Rokkiammal and one Ahamed Basha the son of late Sheik Ismail Rowther through his 1st wife issued notice to the revision petitioners stating that he is the Power Agent of other legal heirs of Sheik Ismail Rowther through his 1st wife and therefore the rent for the building should be paid to him and as the 2nd wife also claimed the rent the revision petitioners entertained a doubt about the proper person to whom the rent is to be paid and therefore filed R.C.O.P.No.599 of 2003 under Section 9 (3) of the Act seeking permission of the Court to deposit the rent from February 2003 onwards into Court. The learned counsel for the revision petitioners further submitted that in R.C.O.P.No.599 of 2003 filed by the revision petitioners they impleaded all the Legal Representatives of Sheik Ismail Rowther, as the revision petitioners entertained a doubt about the title of the suit property and it is not known to the revision petitioners who are the legal owners of the suit property. He further submitted that on an earlier occasion also when there were rival claims to the suit property, the revision petitioners filed R.C.O.P.No.864 of 1990 on the file of the 15th Small Causes Court, Chennai and the revision petitioners were allowed to deposit the rent into that Court and thereafter by reason of the order made in M.P.No.336 of 2001 the revision petitioners were paying the rent directly to one Abu Bucker and after the receipt of notice from Ahamed Basha one of the sons of late Sheik Ismail Rowther, the revision petitioners entertained a doubt about the claims made by Abu Bucker and others and therefore they filed a petition to deposit the rent into Court. He therefore submitted that there is no denial of title of the respondents 1 and 2 and as the revision petitioners entertained a bona fide doubt regarding the title of the respondents 1 and 2, they filed that application to deposit the rent and even according to the claim of the respondents 1 and 2, they

cannot claim to be the lawful owners of the property.

5. The learned counsel for the revision petitioners further submitted that admittedly Sheik Ismail Rowther was the owner and he died leaving behind the two widows and two sons through the 1st wife Sarafunnisha and three sons through his 2nd wife Rokkiammal and the sons through 1st wife Sarafunnisha are K.S.Ahamed Basha and K.S.Faruk Ali and the sons through 2nd wife Rokkiammal are one Abu Bucker, Abu Thaher and Mujibur Rahim. Therefore, there are seven legal heirs to Sheik Ismail Rowther and as per the pleadings in R.C.O.P.No.938 of 2003 filed by the respondents the said Sheik Ismail Rowther alleged to have gifted the property under oral Hiba to the sons through the 2nd wife Rokkiammal and admittedly on the date of Hiba the sons through the 2nd wife were minors. It was stated in R.C.O.P.No.938 of 2003 that the Hiba was accepted by the mother and guardian Rokkiammal and as per the Moahammedan Law, the mother cannot act as a legal guardian for the minors property and hence the acceptance of gift in favour of the sons of Sheik Ismail Rowther through his 2nd wife is not valid and he relied upon the Judgement reported in AIR 1995 Supreme Court 1205 (Mahboob Sahab Vs. Syed Ismail and others) in support of that contention. He therefore contended that when the Hiba is not valid as it was not accepted by a proper person, the sons of Sheik Ismail Rowther through his 2nd wife who claimed to be the donee under the oral Hiba did not get any title to the suit property and therefore they cannot convey any interest in that property to the respondents 1 and 2 and therefore the respondents 1 and 2 will not get any absolute title to the suit property and in that context only the revision petitioners entertained a doubt about the title claimed by the respondents 1 and 2 over the suit property and therefore the denial of title cannot be considered as mala fide and it is a bona fide one. He further submitted that the revision petitioners were paying the rent regularly to Rokkiammal till the year 2002 and even in the year 2002 as per the order passed in M.P.No.336 of 2001, the rent for the month of June and July 2002 was paid to Abu Bucker the son through the 2nd wife and thereafter the revision petitioners filed R.C.O.P.No.599 of 2003 seeking permission of the Court to deposit the rent and therefore it cannot be construed that the revision petitioners have committed default in payment of rent. He further submitted that even according to the respondents 1 and 2, they are having another building at Door No.2-A, Kuppiah

Street, West Mambalam and therefore they cannot claim the tenanted premises for their own occupation. He therefore submitted that the eviction petition filed on the ground of willful denial of title willful default and owner's occupation is liable to be dismissed as the respondents did not prove that the revision petitioners willfully denied the title or willfully committed default in payment of rent or the premises is required bona fide for the occupation of the respondents 1 and 2. He further submitted that the Court below without following the provisions of Section 4 of the Act has erroneously fixed fair rent at Rs.13,683/- without any basis.

6. I am unable to accept the contention of the learned counsel for the revision petitioners. It is seen from the allegations made in R.C.O.P.No.938 of 2003 filed by the respondents 1 and 2 that soon after the purchase of the building from the sons of Sheik Ismail Rowther through his 2nd wife, the respondents 1 and 2 issued notice to the revision petitioners informing the purchase and requested the revision petitioners to pay rent to them. The erstwhile owners namely the sons of Sheik Ismail Rowther through his 1st wife also sent notice to the revision petitioners informing about the sale in favour of the respondents 1 and 2 and requested the revision petitioners to pay rent to the respondents 1 and 2. Even thereafter, the revision petitioners did not pay the rent to the respondents 1 and 2 and filed R.C.O.P.No.599 of 2003 for direction to deposit the rent into Court. Admittedly, after the filing of R.C.O.P.No.599 of 2003, the revision petitioners did not deposit the rent into Court or paid the rent to the respondents 1 and 2. Therefore, from March 2003 till date the revision petitioners committed default in payment of rent and in my opinion, the default committed by the revision petitioners can only be construed as willful default and therefore the revision petitioners are liable to be vacated.

7. As regards the denial of title by the revision petitioners, we will have to see whether the denial of title is bona fide or not. It is contended by the learned counsel for the revision petitioners that admittedly, there are seven legal heirs of Sheik Ismail Rowther. The respondents 1 and 2 purchased the tenanted property from the other legal heirs of Sheik Ismail Rowther and therefore they claimed absolute right over the property. It is admitted that Sheik Ismail Rowther had two wives and two sons through the 1st wife and three sons through the 2nd wife and

the respondents 1 and 2 are the sons through the 1st wife. The learned counsel for the revision petitioners contended that the Hiba alleged to have been executed by Sheik Ismail Rowther in favour of his three sons through the 2nd wife is not a valid one as admittedly on the date of said Hiba the said sons are minors and the mother cannot act as guardian as per the Mohammaden Law and as held by the Hon'ble Supreme Court in the Judgement reported in AIR 1995 Supreme Court 1205 (Mahboob Sahab Vs. Syed Ismail and others) and therefore the sons through the 2nd wife could not have derived title under the said Hiba and therefore they could not have conveyed title to the respondents 1 and 2. The arguments of the learned counsel for the revision petitioners cannot be accepted. Even assuming that the 2nd wife of Sheik Ismail Rowther cannot act as a guardian of her minor sons and therefore the alleged Hiba by Sheik Ismail Rowther in favour of his minor sons through his 2nd wife is not valid, it is admitted that the respondents 1 and 2 claim title through the sons of Sheik Ismail Rowther through his 2nd wife. Even in the absence of Hiba, the sons of Sheik Ismail Rowther are entitled to claim some share in the property and therefore that extent of share was conveyed to the respondents 1 and 2 who are none other than the other legal heirs of Sheik Ismail Rowther. Therefore, when some of the legal heirs of Sheik Ismail Rowther namely the respondents 1 and 2 accepted the title of other legal heirs of Sheik Ismail Rowther and purchased that right as if their vendors are the absolute owners, the respondents 1 and 2 became the absolute owners of the property as they have purchased the interest of other co-sharers under the said document. Therefore, even accepting that Hiba is not valid considering the fact that the respondents 1 and 2 purchased the property from other legal heirs of Sheik Ismail Rowther, it is not open to the revision petitioners to contend that the respondents 1 and 2 will not get any title to the suit property. Admittedly, the other legal heirs namely Ahamed Basha, the 2nd wife of Rokkiammal did not claim any title to the suit property. Considering all these aspects, the learned Rent Controller has rightly held that even after the receipt of the notice from the respondents 1 and 2 no attempt was made by the revision petitioners to demand the proof of title from the respondents 1 and 2 and without making any enquiry he refused to pay the rent to them and also questioned the title. Therefore, the learned Rent Controller has rightly held that the revision petitioners willfully denied the title of the landlord and the same

was also confirmed by the learned Rent Control Appellate Authority and I do not find any infirmity in the orders of the Court below. Hence, both the Courts below have rightly held that the revision petitioners willfully denied the title of the landlord.

8. As regards the bona fide requirement of the premises by the respondents 1 and 2, it is not the case of the revision petitioners that the respondents 1 and 2 are in occupation of any other non-residential building. It is stated in the petition in R.C.O.P.No.938 of 2003 that the 1st respondent was doing business in partnership with another person and he was asked to retire from the said partnership and therefore he requires the premises for his own business. The respondents 1 and 2 also stated that they are the owners of the building at Door No.2-A Kuppiah Street, West Mambalam and also stated the reasons for not selecting that building for that business stating that the total area of that building is only 300 Sq.ft. whereas the building in the occupation of the revision petitioners is suitable for the business. Considering all these aspects, both the Courts below have rightly held that the building is bona fide required for the business of the respondents 1 and 2. Hence, I do not find any merit in the submissions of the learned counsel for the revision petitioners and therefore, the C.R.P.No.958 of 2009 against R.C.O.P.NO.938 of 2003 is dismissed and the order of eviction passed by the learned Rent Controller in R.C.O.P.No.938 of 2003 and the order passed by the learned Rent Control Appellate Authority in R.C.A.No.320 of 2004 are confirmed.

9. The Rent Controller fixed the fair rent at Rs.13,683/- and the learned Rent Control Appellate Authority modified the fair rent and fixed at Rs,12,900/- per month and it was not seriously objected by the learned counsel for the revision petitioners that the modification of fair rent by the learned Rent Control Authority is not in accordance with law under the provisions of Section 4 of the Act. Hence, the order of the learned Rent Control Appellate Authority made in R.C.A.No.604 of 2004 is confirmed and the C.R.P.No.957 of 2009 is dismissed.

10. As there is no rival claims to the suit property, the petition filed under Section 9 (3) of the of the Act is not maintainable and that was rightly dismissed by the

Courts below and hence, the C.R.P.No.956 of 2009 is also dismissed.

11. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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