

Girija Kumari vs Kalarani on 15 September, 2023

Author: C.Saravanan

Bench: C.Saravanan

C.R.P. (MD) No.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.06.2023

PRONOUNCED ON : 15.09.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.853 of 2023
and C.M.P.No.3910 of 2023

Girija Kumari

... Pet

Vs.

Kalarani

... Resp

Prayer : Civil Revision Petition is filed under Article 227 of Const India, to set aside the Judgment and Decree dated 07.12.2022 passed R.C.A.No.2 of 2021 on the file of the Rent Control Appellate Authority Kuzhithurai, confirming the fair and decretal order dated 20.12.2006 in H.R.C.O.P.No.1 of 2012 on the file of the Rent Controller, Kuzhit

For Petitioner : Mr.V.Balaji

For Respondent : Mr.M.R,Sreenivasan

ORDER

The petitioner is aggrieved by the impugned order dated 07.12.2022 passed by the Sub Court, Kuzhithurai (hereinafter referred to as Appellate Court) in RCA.No.2 of 2021.

<https://www.mhc.tn.gov.in/judis>

2. By the impugned order, the Appellate Court has dismissed RCA.No. 2 of 2021 filed by the petitioner against fair and decretal order dated 20.12.2016 passed by the Principal District Munsif Court (hereinafter referred to as the Rent Controller) in HRCOP No.1 of 2012.

3.By the said order dated 20.12.2016, the Rent Controller had allowed HRCOP No.1/2012 filed by the respondent as the landlord to evict the petitioner under Section 10(2)(i) and 10(vii) of the Tamil

Nadu Buildings (Lease and Rent Control) Act, 1960.

4.Relevant portion of the impugned order of the Appellate Court reads as follows:-

“9.Point for consideration in this appeal is, Whether this appeal has to be allowed or not? decided in this appeal.

11. The appellant/respondent challenged the order of Rent Controller mainly on the ground that the Rent Controller failed to determine the core question or issue that whether there existed the jural relationship between the appellant and respondent is existing or not? The appellant rights in her grounds of appeal stating that nowhere a Rent Controller arrived any finding about the <https://www.mhc.tn.gov.in/judis> jural relationship between the parties.

The respondent is the owner of the petition schedule property. Ex.P5 sale deed denied by the appellant/respondent. The Rent Controller have no authority to decide the title of the parties in regard to the petition schedule property. The civil court alone have jurisdiction about the subject matter. The Rent Controller given reasoning that the respondent/petitioner having title over the petition schedule property is untenable. The Rent Controller conclusion also unsustainable. The appellant/respondent denied the Ex.P1 Rental Agreement. The Rent Controller came into the conclusion that the Appellant has failed to prove and what capacity she is residing in the petition schedule property. The Rent controller inferred the appellant executed the Ex.P1 against the settled principal of law. The expert given opinion that the Ex.P1 signature is not a appellant signature.

The appellant/respondent questioned the genuinity of the Ex.P1. Expert opinion also given in favour of the Appellant/respondent. But the Rent Controller was not accepted the Expert opinion and given findings that the Ex.P1 executed by the appellant/respondent and ordered eviction of non-payment of rent and denial of title.

12. The respondent/petitioner given in her oral evidence admitted that the appellant/respondent and her husband were executed sale deed in <https://www.mhc.tn.gov.in/judis> favour of the respondent/petitioner under Ex.P5. But the appellant/respondent denied the contents of the Ex.P5. The appellant/respondent admitted the execution of Ex.P5 through RW1 oral evidence. But the appellant/respondent denied that Ex.P5 is not a sale deed, Ex.P5 executed only for the security for the loan. This court is not accepted the above said version. Because nowhere stated in the Ex.P5 that the Ex.P5 executed for the security of the loan.

Ex.P5 is the sale deed in respect of petition schedule property, which was executed by the appellant/respondent and her husband in favour of the respondent/petitioner. Ex.P6 is also the sale deed in respect of the petition schedule property.

13. The appellant/respondent admitted the execution of Ex.P5, but denied its contents. As per Evidence Act against documentary evidence, oral evidence inadmissible except with regard to execution of the document alone can be challenged. The RW1 admitted the execution of Ex.P5,

therefore the appellant/respondent have no right to denied its contents of the Ex.P5. The respondent/petitioner proved her title over the petition schedule property. The respondent/petitioner denied the execution of Ex.P1 Rental Agreement.

On what basis the appellant/respondent is in possession of the petition schedule property after execution of Ex.P5 sale deed not explained by the Appellant/Respondent. Therefore the <https://www.mhc.tn.gov.in/judis> Rent Controller considered the facts and circumstances of the case, conduct and character of the appellant/respondent, the Rent Controller held that the Ex.P1 Rental Agreement was executed by the appellant / respondent. The appellant/ respondent admitted the execution of Ex.P5 and denied the contents of Ex.P5.

The denial of contents of Ex.P5 is not a genuine one. The Ex.P1 execution also denied by the appellant / respondent. On considering the facts and circumstances of this case that the appellant / respondent after execution of Ex.P5 sale deed she is in possession of the petition schedule property. But the appellant/respondent on what basis she is in possession of the petition schedule property was not explained. But the respondent/petitioner stated on the basis of Ex.P1 Rental Agreement the appellant/respondent is in possession of the petition schedule property. But the appellant/respondent denied the Ex.P1 Rental Agreement. The appellant/ respondent to disprove the execution of Ex.P1 no evidence were produced.

Therefore, this court is not accepted that the Ex.P1 was not executed by the appellant / respondent for the above said reasons. RW1 already admitted the execution of Ex.P5 sale deed but denied its contents likewise the RW1, appellant / respondent denied the Ex.P1 execution and the same is not reliable. RW1 evidence not accepted in regard to the non-execution of Ex.P1.

<https://www.mhc.tn.gov.in/judis>

14. The appellant/respondent not even filed a single piece of evidence to show that she was paid rent for the defaulted period. Therefore the appellant/ respondent committed willful default.

The appellant / respondent even after execution of Ex.P5 sale deed in favour of the respondent/petitioner, the appellant /respondent denied the title of the respondent/petitioner, knowing fully aware of the fact that the respondent/ petitioner is the owner of the petition schedule property. Therefore the denial of title of the Landlord is proved by the respondent/petitioner. Therefore the Rent Controller is rightly held that the respondent/petitioner proved the landlord and tenant relationship between the parties through Ex.P1 and rightly held that the appellant/respondent defaulted in payment of rents for the default period and the appellant/respondent denied the title of the landlord, rightly ordered eviction on the ground of willful default and denial of title. This court is found no irregularities or illegalities or on perversities on the findings of the Rent Controller. This court is found no merits in this appeal. Therefore this Rent Controller Appellate Authority is dismissed the R.C.A.No.2/2021 for the above said reasons.

In the result, this R.C.A. No.2/2021 is dismissed and the Rent Controller Appellate Authority is confirmed the order and decretal order of the Rent Controller (Principal District Munsif,

Kuzhithurai) <https://www.mhc.tn.gov.in/judis> in H.R.C.O.P.No.1/2012 dated 20.12.2016. Eviction confirmed. Time for eviction 2 months. No costs.”

5. Aggrieved by the same, the petitioner has filed this Civil Revision Petition under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

6. The specific case of the petitioner is that Ex.P1-rental agreement dated 02.02.2011 was not executed by the petitioner in favour of the respondent.

7. It is further case of the petitioner that an Advocate Commissioner was appointed by the Rent Controller at the instance of the respondent for getting an opinion of an expert regarding the alleged signature of the petitioner in Ex.P1-rental agreement dated 02.02.2011 with that of the petitioner's admitted signature in Ex.P5 Sale Deed dated 02.02.2011.

8. It is submitted that the expert has categorically confirmed that the signature in Ex.P1- rental agreement dated 02.02.2011 was in variance with <https://www.mhc.tn.gov.in/judis> the admitted signature of the petitioner in Ex.P5 Sale Deed dated 02.02.2011.

It is submitted that Ex.P1 - rental agreement dated 02.02.2011 was not proved to have been signed by the petitioner in the manner known to law.

9. It is submitted that despite a contra opinion of the expert, the Rent Controller had allowed HRCOP No.1/2012 on 20.12.2016 which decision has been wrongly affirmed by the Appellate Court.

10. It is submitted that the Rent Controller has over looked the deposition of the expert who was cross examined as C.W.1.

11. That apart, it is submitted that the respondent had only a loan arrangement with one John Stalin in favour of whom Ex.P6 - Sale deed dated 15.11.2010 was executed and although the petitioner had executed Ex P.6 Sale Deed dated 15.11.2010, it was meant to be a security for the loan of Rs.

1,83,026/- from the said John Stalin.

12. It is submitted that the said John Stalin along with the petitioner later executed Ex.P5 - Sale deed dated 02.11.2011 in favour of the <https://www.mhc.tn.gov.in/judis> respondent whereby the house and the land are said to have been conveyed to the respondent for a total sale consideration of Rs.3,13,000/-. It was submitted that on the same day, Ex.P.1 lease Agreement dated 02.11.2011 was fabricated by the respondent.

13. It is submitted that the petitioner had filed criminal complaints and initiated proceeding against the said John Stalin, his father Johnson and the respondent before the District Crime Branch at Kanyakumari for grabbing of the property of the petitioner by fraudulently getting Ex.P.6 Sale Deed dated 15.11.2010 executed for the land by the petitioner in favour of John Stalin and subsequently getting Ex.P.5 Sale Deed dated 02.11.2011 executed for the land together with the building by the

said John Stalin and the petitioner jointly in favour of the respondent herein.

14. It is submitted that proceedings initiated against the said John Stalin, his father Johnson and respondent for land grabbing which was originally pending before the District Crime Branch, Kanyakumari was thereafter transferred to the Special Cell for Land Grabbing Cases, wherein, the respondent and Johnson and John Stalin obtained an anticipatory bail on <https://www.mhc.tn.gov.in/judis> 09.04.2012 in Crl.O.P.No.2425 of 2012 and on 26.03.2012 in Crl.O.P.No. 3148 of 2012.

15. The learned counsel for the petitioner would submit that the Rent controller and the Appellate Court failed to exercise jurisdiction under the second proviso to Section 10 (1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. It was submitted that Ex.P.1 - Lease Agreement dated 02.02.2011 was not signed between the petitioner and the respondent.

16. The learned counsel for the petitioner submits that in reply to Ex.P2-Legal notice dated 13.02.2012, the petitioner has categorically denied the title of the respondent herein vide Ex.P3-reply notice dated 24.02.2012.

It is further submitted that there are no records to substantiate that there was a landlord-tenant relationship between the petitioner and the respondent.

17. It is submitted that once these defence were taken before the Rent Control Court, the respondent should have been asked to file a suit in accordance with second proviso to Section 10(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

<https://www.mhc.tn.gov.in/judis>

18. The learned counsel for the petitioner submitted that the Appellate Court has also committed same error that was committed by the Rent Controller and therefore submits that the impugned order was liable to be set aside.

19. In this connection, the learned counsel for the petitioner has drawn attention on the following decision of the Hon'ble Supreme Court :-

- i. J.J.Lal Pvt. Ltd. and others Vs. M.R.Murali and another, (2002) 3 SCC 98. ii. A.V.G.P.Chettiar& Sons &Ors. Vs. T.Palanisamy Gounder,2002(5) SCC 337.

20. Defending the impugned order, the learned counsel for the respondent submits that the impugned order is well reasoned and requires no interference.

21. It is submitted that reference to criminal proceedings which led to anticipatory bail secured by the respondent on 26.03.2012 in Crl.O.P.No. 3148 of 2012 and the said Johnson and John Stalin on 09.04.2012 in Crl.O.P.No.2425 of 2012 were merely intended to divert the attention.

<https://www.mhc.tn.gov.in/judis>

22. It is submitted that in the counter affidavit before the Rent Controller, the petitioner has denied even the rights of her husband to have settled the land in her favour on 02.07.2007.

23. In the counter filed by the petitioner, before the Rent Controller, the petitioner as the respondent therein has been stated as follows:-

1. The petitioners allegation that she is the landlord of the premises bearing Door No. 10-65/3 is denied, it is respectfully submitted that property bearing resurvey No.A7/10 at Vilavan code Village measuring 6 cents and 750 sq. links was actually a Hindu undivided property, as such, the alleged settlement deed in favour of the respondent by her husband, who is only a co-sharer and joint co-owner without the consent and permission of the other co-sharers is not valid As a co-sharer, whose share was not determined in the manner known to law, the execution of the deed convey no till to the respondent.

2. Hence, the alleged sale deed executed by this respondent on 15.11.2010 is not valid in law, in addition, as per the above sale deed only land alone was conveyed and no mention being made regarding the building available in the said land at the time of the above sale, only after 2 months, i.e. on 02.02.2011, sale deed conveying the title to the building was made, the manner and method of execution of the above deed clearly prove that both deed clearly prove, that <https://www.mhc.tn.gov.in/judis> both deeds emanated through deceit and fraud played upon this respondent, the respondent was swayed by the words of the money lender who in the guise of execution of mortgage deed in fact fraudulently got hold of deed which were actually sale deeds by playing fraud upon the respondent.

3. The respondent on realizing the dubious means of the cheaters John Stalin and Johnso lodged a complaint before the District Crime Branch, Kanyakumari District the complaint was then referred to special call for land Grapping cases as per Ref.No.P2/SP/ 3924/ 2011, C.No.90/DSP/ ALGSC/12 and DSP/TKY/ N.Ref.No.655/ DSPT/ PW, but as the accused are all power full one by one they came out of bail.

4. The accused John Stalin and Johnson moved CrI.O.P.No.2425 of 2012 before the Hon'ble Madurai Bench of Madras High Court, (Criminal Jurisdiction) for anticipatory bail on 09.04.2012, the respondent herein has intervener opposed the bail, the Hon'ble Court granted Anticipatory Bail with condition.

5. The petitioner herein Kala Rani also moved Anticipatory Bail for the same offence as per CrI.O.P.No.3148 of 2012, on 26.03.2012, interestingly after filing the HRCOP.1/2012, the application was made, infact the notice for this eviction was dated only on 13.02.2010, and the petition itself was filed only on 02.03.2012 hence, by a fraudulent document no right will flow, the allegation that this respondent is a

lease of the above building is denied, it is also denied the above lease commenced on 02.02.2011, the alleged lease deed being a forged one, is invalid in law.

<https://www.mhc.tn.gov.in/judis>

6. The special cell is since investigating the matter, as per law in view of the dubious nature of the alleged document, it is incumbent upon the petitioner to prove her title to the above property before a competent civil court, the rent controller is not a competent court to decide the title to the property.

7. This respondent as can be seen from the criminal complaint and the proceedings for anticipatory bail the title of the petition being questioned seriously as such, it is highly necessary on the part of the petitioner to prove her title to the property.

8. The allegation that this respondent agreed to pay rent at the rate of Rs.1500/- to the basic building is denied as false, this respondent and her family members are in occupation of the above building as a Hindu undivided family members.

9. As already stated supra the petition is only a devise to hook wink the police to give a civil colour and derail the investigation. The allegation of arrears of rent is denied as false, there was no such arrangement.\

10. There was no agreement, since this respondent is making efforts to prosecute the accused the alleged petition is lodged with another forged agreement the alleged agreement being a forged one has no fore in law.

11. The petitioner has admitted the factum of denied of title made in the reply notice hence she ought to have filed suit before the competent court to prove her title before lodging this petition.

12. The petitioner cannot make a claim upon a fraudulent document.

<https://www.mhc.tn.gov.in/judis>

13. This respondent caused a correct reply to the petitioners notice. All the necessary parties are not made parties in this petition.

14. There was no cause of action, only cause of action for this petition is the imminent danger from the crime branch to register a case and thus by filing this petition they were able to dodge the investigation stating that civil court is seized off the matter.

15. The Court fee paid is also not in consummation with the fact.

16. Hence this petition sought to be dismissed.”

24. That apart, it is submitted that after two Sale Deeds were executed on 15.11.2010 and on 02.02.2011 by the petitioner, the petitioner's brother-

in-law filed O.S.No.78 of 2014 only on 28.03.2014 to partition the suit schedule property. It is therefore submitted that the impugned order does not call for any interference and therefore prayed for dismissal of the present Civil Revision Petition.

25. The learned counsel for the respondent has placed reliance on the following decisions of the Court:-

i) J.Naval Kishore vs. D.Swarna Bhadran 2008 (1) CTC 97;

<https://www.mhc.tn.gov.in/judis>

ii) Kamakshi and Others vs. Karpagam 2019 (2) MWN (Civil) 250;

iii) G.R.Sankarlal vs. S.Kamaraj (2021) 8 MLJ

26. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent. The petitioner has taken inconsistent stand. The petitioner has disputed the ownership over the land and the house.

27. The point to be considered is whether there is a failure on the part of the Rent Controller as well as the Rent Control Appellate Court to exercise the discretion in terms of second proviso to Section 10(1) of The Tamil Nadu Buildings (Lease & Rent Control) Act, 1960.

28. If the Rent Controller finds that the denial of title of the landlord or claim for right of permanent tenancy by the tenant is bonafide, the Rent Controller has to reject the application of the landlord filed for evicting the tenant and the landlord is to be relegated to sue for eviction of the tenant in a Civil Court. Thereafter, the Civil Court may pass a decree for eviction on any of the grounds mentioned in Sections 10 & 14 to 16 of The Tamil Nadu <https://www.mhc.tn.gov.in/judis> Buildings (Lease & Rent Control) Act, 1960, notwithstanding when the Court finds that the denial does not involve forfeiture of the lease or that the claim is unfounded.

29. A Settlement Deed was executed by the husband of the petitioner in favour of the petitioner vide Doc.No.4433/2007 on the file of Joint Sub-

Registrar, Marthandam dated 02.07.2007. Ex.P.6-Sale Deed dated 15.11.2010 is said to have been executed by the petitioner in favour of the said John Stalin whereby the land alone was conveyed.

30. Later by Ex.P.5-Sale deed dated 02.02.2011, the petitioner and the said John Stalin have executed a sale deed in favour of the respondent. Ex.P. 5-Sale Deed dated 02.02.2011 has not been set aside in the manner known to law.

31. On the date of execution of Ex.P.5-Sale Deed dated 02.02.2011, Ex.P.1- Rental Agreement dated 02.02.2011 is also said to have been signed between the petitioner and the respondent. Ex.P.1-Rental Agreement dated 02.02.2011 was for a period of eleven month. As per Ex.P.1-Rental Agreement dated 02.02.2011, the petitioner was to pay a rent of Rs.1,500/- to the respondent. The Court Witness No.1 has found that the signatures in Ex.P.1-Rental Agreement dated 02.02.2011 are in variance with that of the petitioner's admitted signature in Ex.P5 dated 02.02.2011.

32. The petitioner has questioned the title over the property of the respondent herein on the strength of Ex.P.6-Sale Deed dated 15.11.2010 which was executed by the petitioner in favour of John Stalin and Ex.P.5 – Sale Deed dated 02.02.2011 which was executed by the petitioner and John Stalin in favour of the respondent.

33. However, on examining the originals of Ex.P.5-Sale Deed dated 02.02.2011, Ex.P.1-Rental Agreement dated 02.02.2011 and Ex.P.6-Sale Deed dated 15.11.2010, it is clear that the signature in these documents are that of the petitioner herself. Prima facie there is no dispute that Exs.P.1, P5 & P6 have been signed by the petitioner.

34. The petitioner was in possession of the property when Ex.P.1- Rental Agreement dated 02.02.2011 was signed.

<https://www.mhc.tn.gov.in/judis>

35. The respondent has issued Ex.P.2-legal notice dated 13.02.2012 to which the petitioner has replied vide Ex.P3-reply notice dated 24.02.2012 as follows:-

2. On the basis of the above settlement, my client was duped to execute a sale deed on 15.11.2010, interestingly in the above sale deed only land land was conveyed, no mention has been made about any building, after nearly 2 months on 02.02.2011 a sale deed was allegedly executed, and this time the recital in the deed page 3 read that the land and building belong to the sellers jointly. The above two deeds are classic examples of how poor country women are duped by people who run finance business by way of famous pied piper, and lured into debt trap and then property being swindled by dubious means.

3. Even though, on coming to know the real intent and cheating a complaint was lodged before the special cell for land grabbing cases as per ref.No.P2/ SP/ 3924/ 2011 C.No.90/ DS/ ALGSC / 12 and DSP / TKY/ N.Ref.655/ SDOT/ PW nothing came out of the above complaints as the accused were more powerful, and they dodged any F.I.R. being filed.

4. Now in order to bailout your client from the intending follow up on the part of our client this notice is served, it is submitted that allegation that our client took on lease of the above building on 02.02.2011 is denied, the alleged document being a non

registered one has no force in law further the alleged signature is <https://www.mhc.tn.gov.in/judis> not that of my client. It is a forged one. It is also denied that my client paid any Advance and further, it is denied she agreed to pay monthly rent at the rate of Rs.1,500/- per month.

36. The respondent had filed I.A.No.502 of 2012 in HRCOP.No.1 of 2012, wherein the Rent Controller appointed a Advocate Commissioner Mr.C.L.Balaji to get expert opinion from the Assistant Director, Regional Forensic Science Laboratory, Madurai by comparing the disputed signature of the petitioner in Ex.P1-rental agreement dated 02.02.2011 with that of the petitioner's admitted signature in Ex.P5 dated 02.02.2011. The expert's report concluded that the petitioner did not write the signatures marked as Ex.Q1 and Q2 with the following observations:-

The standard signatures have been freely written showing natural variations and they agree in the handwriting characteristics on interse comparison. The questioned signatures have been imitated and they differ significantly from the standard in the handwriting characteristics. The characteristics differences include among other things the following:-

- 1.The skill of writing.
2. The alignment between the letters in the signatures “B” Girijakumari.Girija”
- 3.The location and manner of making dots and underscoring the signatures.
4. The relative sizing between the <https://www.mhc.tn.gov.in/judis> letters“ G& r”; “ u & m”.
5. The manner of connecting the letters “ u& m”.
6. The manner of terminating the letters B, G, r, a, k, m.
7. In the detailed designs such as the beginning and formation of loops and curves of the letters B, G, i, r, j, a, k, u, m.

37. A reading of the deposition of the petitioner indicate that the petitioner has although not denied execution of Ex.P6 Sale Deed and Ex.P.5 Sale Deed dated 02.02.2011, the petitioner has stated that she was unaware of the contents of the same claiming to be illiterate.

38. In the deposition, the petitioner has also stated that she has executed Ex.P.6 in favour of the said John Stalin only as a security for a loan of Rs.1,83,026/- received from the said John Stalin.

39. The petitioner had initiated criminal proceeding against the said John Stalin, his father Johnson and the respondent before the District Crime Branch at Kanyakumari for grabbing of the property of the petitioner by fraudulently getting Ex.P.6-Sale Deed dated 15.11.2010 executed for the land

<https://www.mhc.tn.gov.in/judis> by the petitioner in favour of John Stalin and subsequently getting Ex.P.5- Sale Deed dated 02.11.2011 executed for the land together with the building by the said John Stalin and the petitioner jointly in favour of the respondent herein

40. The said John Stalin, Johnson and the respondent had also secured anticipatory bail from the Court has mentioned above.

41. After HRCOP.No.1 of 2012 was filed by the respondent herein before the Rent Controller at Kuzhithurai, one of the petitioner's brother-in-

law namely Rajendran has filed O.S.No.78 of 2014 on the file of Sub Court, Kuzhithurai to partition the suit schedule properties which included the subject property transferred to the petitioner by her husband vide Doc.No. 4433/2007 on the file of Joint Sub-Registrar, Marthandam dated 02.07.2007 which was later transferred to the respondent herein vide Ex.P.6 dated 02.02.2011.

42. In O.S.No.78 of 2014, the respondent herein was arrayed as the 6 th defendant. In the plaint, it has been averred that the petitioner herein has <https://www.mhc.tn.gov.in/judis> claimed rights over the property from the petitioner's husband, Vijayan and therefore the respondent was added as a necessary party for proper adjudication of the dispute.

43. The respondent has also filed a written statement wherein the respondent has stated that the petitioner had sold the property vide Ex.P5 Sale Deed dated 02.02.2011 and mutation of records have also taken place and that the respondent herein had leased out the property to the petitioner herein and despite the expiry of the lease period, the petitioner was continuing to occupy the same and therefore HRCOP.No.1 of 2012 was filed and the same was pending before the Rent Controller at Kuzhithurai at that time.

44. Fact remains that the petitioner was the owner of the property prior to execution of Ex.P5 and Ex.P6 Sale Deeds. Ex. P.7 Property Tax Receipt is dated 25.02.2010 which is prior to execution of Ex.P5-Sale Deed dated 02.02.2011 and Ex.P6-Sale Deed dated 25.02.2010. The records would have been mutated.

<https://www.mhc.tn.gov.in/judis>

45. Under second proviso to Section 10(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, when the tenant denies the title of the landlord or claims right of permanent tenancy, the Rent Controller has to decide whether the "denial" or "claim" is bonafide or not and if he records a finding to that effect that the "denial" or "claim" is bonafide, the landlord is to be relegated to sue for eviction of the tenant in a Civil Court. The Civil Court may pass a decree for eviction on any of the grounds mentioned in Sections 10 and 14 to 16 notwithstanding the fact that the Court finds that such denial does not involve forfeiture of the lease or the claim is unfounded.

46. Second Proviso to Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 reads as under:-

Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

<https://www.mhc.tn.gov.in/judis>

47. Section 10(2)(vii) of The Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 on the other hand states that if the Rent Controller finds that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bona fide, the Controller shall make an order directing the tenant to put the landlord in possession of the building.

48. The Hon'ble Supreme Court in J.J.Lal Pvt. Ltd. and others Vs. M.R.Murali and another, (2002) 3 SCC 98, held that if the finding of the Controller is that the denial or claim by tenant was not bona fide, the Controller shall make an order directing the tenant to put the landlord in possession of the building. However, if the Controller does not find the denial or claim to be not bona fide he shall deny the landlord's claim for eviction by making an order rejecting the application and such finding and rejection of the landlord's application would not debar the landlord from approaching the civil court for establishing his title. The Court further held that the legislative intent appears to be that denial of title can be decided by the Controller for the limited purpose of finding out whether a ground of <https://www.mhc.tn.gov.in/judis> eviction is made out but the questions of title should be left to be determined by the civil court. Once a question of title has arisen between a landlord and a tenant and such dispute is bona fide, the doors of the civil court are let open to the landlord and therein adjudication, on grounds of eviction otherwise within the domain of the Controller, is also permitted so as to avoid multiplicity of suits and proceedings. All the disputes between the landlord and tenant would be settled in one forum and the need for prosecuting two separate proceedings before two fora would be eliminated.

49. In this Case, the claim of the petitioner (tenant) appears to be not bonafide. Therefore the decision in J.J.Lal Pvt. Ltd. and others Vs. M.R.Murali and another, (2002) 3 SCC 98 relied by the Learned Counsel for the petitioner cannot be applied.

50. The Hon'ble Supreme Court in A.V.G.P.Chettiar & Sons & Ors.

Vs. T.Palanisamy Gounder, 2002(5) SCC 337 followed the above view in J.J.Lal Pvt. Ltd. and others Vs. M.R.Murali and another, (2002) 3 SCC 98 and held in para 44 as follows:-

<https://www.mhc.tn.gov.in/judis>

44. To sum up : we hold that there was a bona fide dispute as to title raised by the appellants and, therefore, the Rent Controller did not have jurisdiction to hear and

finally adjudicate upon the application filed by the respondent before it.

However, we clarify that this finding is limited to the issue of the Rent Controller's jurisdiction and shall not preclude the respondent from approaching a competent civil court for determination of the issue finally and no observations made in this judgment will prejudice the trial of this or any other issue that the respondent may raise on merits. Subject to this observation, for all the reasons stated earlier, we set aside the impugned decision of the High Court and allow the appeal. There will be no order as to costs.”

51. The above ratio will also not apply to the facts of the present case.

52. In the facts of the case as far as discussed above, the claim of the petitioner is not bonafide. Therefore, question of relegating the landlord to workout the remedy before the Civil Court in terms of second proviso to Section 10(1) of The Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 cannot be countenanced.

<https://www.mhc.tn.gov.in/judis>

53. It is for the petitioner to file a suit to declare that the Sale Deeds executed by the petitioner in favour of the said John Stalin vide Ex.P6-Sale Deed dated 15.11.2010 and Ex.P5-Sale Deed dated 02.02.2011 executed by the petitioner along with the said John Stalin in favour of the respondent are void.

54. I do not find any reasons to interfere with the impugned order passed by the Appellate Court upholding the order of the Rent Controller.

Therefore this Civil Revision Petition is liable to be dismissed. No costs.

Consequently, connected Miscellaneous petition is closed.

Index : Yes/No
Neutral Citation : Yes/No
kkd

To

1.The Rent Control Appellate Authority, Kuzhithurai,

2.The Rent Controller, Kuzhithurai.

<https://www.mhc.tn.gov.in/judis> C.SARAVANAN,J kkd Pre-delivery Order in 15.09.2023
<https://www.mhc.tn.gov.in/judis>