

Padmavathy vs Amudha Pearls on 11 March, 2024

Author: V.Sivagnanam

Bench: V.Sivagnanam

CRP.No

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.02.2024

PRONOUNCED ON : 11.03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP.No.2766 of 2022

and

CMP.No.14555 of 2022

1.Padmavathy

2.Sasikala Jayachandran

...

Petitioners

vs.

1.Amudha Pearls

2.M/s.KPP Housing and Properties Pvt.Ltd.,

Registered under Companies Act,

rep.by its Authorised Signatory

K.P.Revathi.

...

Respondents

PRAYER : This civil revision petition has been filed under Article 226 of the Constitution of India to strike off R.L.T.O.P.No.8 of 2022 on the Rent Court -cum-District Munsif at Poonamallee.

For Petitioners

... Mr.K.Sakthivel

For Respondent

No.1

... Mr.T.G.Balachandran

Respondent No.2

... Not ready in notice

Page 1 of 14

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

CRP

ORDER

This civil revision petition has been filed to strike off R.L.T.O.P.No.8 of 2022 on the file of Rent Court -cum-District Munsif at Poonamallee.

2.The facts of the case is as follows:

(i).The first respondent is landlord and the second respondent is tenant. The first respondent entered into a Rental Agreement with the second respondent in respect of the petition mentioned property along with goods attached to the property on 10.02.2021. The tenure of rental agreement is 11 months. It expires on 10.01.2022. The monthly rent is fixed at Rs.25,000/- and Maintenance charge is at Rs.1000/-. Further, since the second respondent failed to pay the rent and maintenance Charges for the month of March and April, 2021, the first respondent requested the second respondent to pay the rent and maintenance by his letter dated 12.05.2021. On receipt of the same, the second respondent did not pay any amount. Further, due to non payment of rent for the month of May 2021, the first respondent sent a letter dated 12.06.2021 terminating the tenancy <https://www.mhc.tn.gov.in/judis> and requested the second respondent to pay the rent and maintenance amount of Rs.78,000/- and to hand over the vacant possession of the petition premises.

(ii). As per terms and conditions, the second respondent should obtain prior confirmation and no objection from the first respondent before sub renting or subleasing the petition premises to any third party. The second respondent, without getting prior confirmation and no objection from the first respondent, sub-leased the petition premises to the petitioners (sub lessee) after getting an amount of Rs.10,00,000/- towards sub lease in respect of the petition mentioned property. The receipt of such amount by the second respondent is highly illegal and unreasonable.

(iii).The rental agreement between the first and second respondent lapsed on 10.01.2022. The petitioners and the second respondent have got no right to occupy the petition mentioned property in the absence of written rental agreement. In respect of the same, the first respondent issued legal notice dated 18.11.2021 to vacate and deliver the vacant possession <https://www.mhc.tn.gov.in/judis> of the petition mentioned property, which was returned as 'left' and 'unclaimed' and the petitioners (sub lessee) issued a reply notice 22.11.2021, with false allegation on the first respondent, without any privity of contract. Hence, the first respondent filed a petition in R.L.T.O.P.No.8 of 2022 against the petitioners as well as the second respondent for eviction and other reliefs. Questioning the maintainability of the said R.L.T.O.P., the present civil revision petition has been filed.

3.The learned counsel appearing for the petitioners submitted that the petition in R.L.T.O.P.No.8 of 2022 has been taken on file without jurisdiction as there is no registered tenancy agreement. The unregistered rental agreement entered into between the first and second respondent cannot be given any effect in view of Section 4A of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (herein after referred as “Act 2017”). Further, the learned counsel contended that admittedly the rental agreement is dated 10.02.2021 is subsequent to the enforcement of the Act 2017. Therefore, such rental agreement shall not come within the purview of

Section 21(2)(a) of the Act <https://www.mhc.tn.gov.in/judis> and thus, pleaded to strike off R.L.T.O.No.8 of 2022 on the file of the Rent Court-cum-District Munsif at Poonamallee.

4.To support his argument, the learned counsel appearing for the petitioners relied upon the judgment of this Court in the case of S.Muruganandam & others Vs. J.Joseph & Others, reported in CDJ 2022 MHC 674.

5.The learned counsel appearing for the first respondent submitted that the original petition is very well maintainable. The applicant/first respondent herein in the original petition entered into a rental agreement with the second respondent herein in respect of the schedule mentioned property along with the goods attached to the property on 10.02.2021. The tenure of rental agreement is 11 months. It expires on 10.01.2022. As the petitioners and second respondent have got no right to occupy the schedule mentioned property in the absence of written rental agreement, therefore, the first respondent caused legal notice on 18.11.2021 calling upon them vacate and deliver the schedule mentioned property to the first respondent. <https://www.mhc.tn.gov.in/judis> The petitioners received the said notice and sent a reply notice dated 22.11.2021 with false allegations and the petitioners failed to comply with the requirement of 4(2) of the Act entered into an agreement as required under the new Act and therefore, pleaded to dismiss the civil revision petition.

6.I have considered the matter in the light of the submissions made by the learned counsel appearing an either side and perused the materials available on record.

7.The revision petitioners herein has sought to strike off the R.L.T.O.P.No.8 of 2022 on the file of the Rent Court-cum-District Munsif, Poonamallee on the ground that the rental agreement between the landlord/first respondent and the main tenant/second respondent is dated 10.02.2021, which is subsequent to the enforcement of the Act 42 of 2017. Therefore, the rental agreement shall not come within the purview of Section 21 (2)(a) of the Act and therefore, the Rent Court-cum-District Munsif has no jurisdiction.

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8.The petitioners herein is the second respondent and the first respondent is the applicant in R.L.T.O.P.No.8 of 2022.

9.The petitioners is allegedly said to be a sub-lessee, but however, there is no particular as to when she entered into the premises as sub- lessee.

10.In the above factual background, I have considered whether the R.L.T.O.P. has to be struck off on the ground that the original rental agreement dated 10.02.2021 is subsequent to enforcement of the Act 2017 and remains unregistered.

11.Section 2(n) defines, who is tenant, as follows:

(n) “tenant” means a person by whom or on whose account or behalf the rent of any premises is, or, but for a contract express or implied, would be payable for any premises and includes any person occupying the premises as a sub-tenant and also, any person continuing in possession after the termination of his tenancy whether before or after <https://www.mhc.tn.gov.in/judis> the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made;

Therefore, the definition includes any person occupying the premises as a sub-tenant and also persons, who are continuing in possession after termination of tenancy, whether such termination was before or after the commencement of the Act i.e. 22.02.2019.

12.The petitioners, though a sub-lessee, is to be considered as a tenant, in so far this Act is concerned, especially, when there is no material to show when she became a sub-lessee.

13.Now I have to consider whether the original rental agreement dated 10.02.2021 viz., subsequent to the enforcement of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (T.N.Act 42 of 2017) shall not come within the purview of Section 22 (2) (a) of the Act.

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14.Section 2 (a) defines an “Agreement” or “Tenancy Agreement” as follows:

(a) “Agreement” or “Tenancy agreement” means the written agreement executed by the landlord and the tenant as required under this Act and shall include a sub-tenancy agreement and sub-

lease agreement;

Therefore, after repealing the then applicable Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, this Act, has been ushered in and importance giving predominance to an agreement as required under this Act. Hence, the definition assumes significance. This Act contemplates a written agreement between the Landlord and Tenant. The concept of oral tenancy or lease is done away with. It is now mandatory for a written lease agreement as required under the Act being capable of enforcing under the various provisions of this Act. By relegating parties to the civil Court would only defeat the laudable object of the Act.

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15.The learned counsel for the petitioners strongly relied upon the judgment of this Court in S.Muruganandam and Ors. Vs. J.Joseph and Ors reported in CDJ 2022 MHC 674.

16.A valid rental agreement, as per the Act should be as required under this Act and as stated under Section 2(a) of the Act. This is not brought to the knowledge of the learned Judge while passing the order in the case of S.Muruganandam and Ors. Vs. J.Joseph and Ors reported in CDJ 2022 MHC 674. Therefore, it is not helpful to support the argument of the learned counsel for the petitioners.

17.A reading of Section 2(a) clearly says that any agreement or tenancy agreement should be executed as required under this Act. In fact, the petitioners has admitted that the rental agreement is dated 10.02.2021, which is subsequent to the enforcement of Act 42 of 2017, but it cannot be construed as a tenancy agreement as defined as required under this Act. This Act requires that an agreement or tenancy agreement shall be <https://www.mhc.tn.gov.in/judis> registered with the rent authority appointed under Section 30 of Act by the landlord or tenant, by making an application in the form specified in the first schedule, within such time as may be prescribed.

18.Interestingly, Section 21 (2)(a) gives a ground for eviction only in case of failure to enter into a tenancy agreement as contemplated under Section 4 (2). Section 4(2) deals with cases only where the tenancies were created before the commencement of the Act.

19.The object of this Act has to be considered at this stage. The object is for achieving the regulation of rent as per terms and conditions of agreement between the landlords and tenants, to balance the rights and responsibilities of landlords and tenants and also to provide a fast adjudication process for resolution of disputes. There is no obstacle in the way of judges and it is open to them to find a way out to achieve the objects of the Act. Therefore, though Section 4(2) deals with cases only where the tenancy were created before the commencement of the Act, if any tenancies were agreement executed after the commencement Act, it <https://www.mhc.tn.gov.in/judis> must be in accordance with the Act and if it is not, it cannot be construed as an agreement as required under this Act. Therefore, it has to be treated as no agreement at all.

20.In this case, the disputed lease agreement is not in accordance with the Act.

21.In view of the above, The RLTOP filed under Section 21 (2) (a) is very well maintainable before the Rent Court and I find no valid grounds to strike off RLTOP No.8 of 2022 on the file of the Rent Court – cum – District Munsif at Poonamallee. The civil revision petition fails.

In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
sms
To
Rent Court -cum-District Munsif,
at Poonamallee.

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V.SIVAGNANAM ,J.

sms

Pre-delivery Order made in
and

11.03.2024

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