

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/02/2004

CORAM

THE HONOURABLE MR JUSTICE T.V.MASILAMANI

Civil Revision Petition No.641 OF 1996

1.N.Rizwan Ahmed
2.N.Rafiq Ahmed
3.N.Shabbiar Ahamed
4.N.Shafiq Ahmed
5.N.Azgar Ahmed
6.N.Ishrath Ahmed ... Petitioners

-VS-

Periasami Pillai ... Respondent

Civil Revision Petition filed against the order and decretal order dated 18.04.1995 in RCA.No.1 of 1994 on the file of the First Additional Sub-Ordinate Judge(Appellate Authority) Erode, confirming the order and decretal order dated 25.10.1993 in RCOP.No.36 of 1991 on the file of the First Additional District Munsif (Rent Controller), Erode.

!For petitioners : Mr.Hajee P.K.Jamal Mohamed

^For Respondent : Mr.T.R.Rajaraman

:O R D E R

This revision has been filed by the petitioners challenging the fair and decretal order passed by the Rent Control Appellate Authority (First Additional Sub-ordinate Judge), Erode, in RCA.No.1 of 1994, confirming the fair and decretal order passed by the Rent Controller (First Additional District Munsif), Erode on 25.10.1993 in RCOP.No.36 of 1991.

2. The respondent herein is the tenant of the demised premises and revision petitioners filed the petition before the Rent Controller for eviction on the ground of willful default in the payment of rent and also for own use and occupation. Both the Courts below rendered the concurrent finding that the respondent is not guilty of willful default in the payment of rent and that the petitioners herein are not entitled to evict the respondent for the reason that the respondent has become a co-owner of the demised premises belonging to the petitioners. Therefore, the petition filed before the Rent Controller was dismissed and the appeal preferred as against the order of dismissal before the Rent Control Appellate Authority also failed. Hence, the revision.

3. It is not in controversy that the petitioners let out the petition premises to the respondent on a monthly rent of Rs.1400/- and received Rs.20,000/- by way of advance from the respondent. While so, the petition was filed on the ground of willful default in the payment of rent by the respondent for six months from February to July, 1991 to the tune of Rs.8,400/-. It has been held by both the courts below in their concurrent findings that since the landlords received a sum of Rs.20,000/- from the tenant by way of advance inasmuch as the alleged arrears of rent from February to July 1991 is Rs.8400/-, the said sum could have been adjusted in the advance amount paid by the tenant and that therefore there is no willful default in the payment of rent on the part of the tenant.

4. It is well settled by preponderance of decisions of this Court that the landlord can retain one month's rent by way of advance and any excess amount with the landlord should be adjusted towards the arrears of rent and in that case, there is no willful default in the payment of rent. In view of the above aspect of the matter, this Court is of the considered view that the concurrent findings rendered by the Courts below has to be affirmed in this respect.

5. The next contention of the learned counsel for the petitioners is that the tenant is estopped from denying the title of the landlord even if he acquires a moiety in the demised property. Relying on the decision reported in *N.Rajeswari and others Vs. S.P.palaniappan and others* (1984 (2) MLJ 62), he has urged that the respondent's contention that since he has purchased 107/128 share and also entered into an agreement of sale in respect of 1/20th share in respect of the demised property (vide) documents R4 to R14 in the Rent Control Proceedings, the said proceedings as against him is not maintainable, cannot be accepted.

6. In answer to such contention, the learned counsel for the respondent has relied on the ratio laid down in the same decision to the effect that if the tenant has become a co-owner, the landlord's remedy is only to file a suit for partition and separate possession. He has drawn my attention to Para-31 which runs as follows:

"So far as respondents 1 and 2 are concerned, taking note of subsequent events, namely, of their acquisition of a share in the building, no order for eviction need be passed against them, leaving it open to the parties to seek appropriate relief by way of partition and separate possession of their respective shares in the premises in question."

Hence, he has vehemently contended that since the respondent has become a co-owner of the demised premises along with the petitioners herein, the rent control proceedings as against the respondent is not maintainable in law.

7. On a careful consideration of the rival contentions of both parties and in the light of the ratio enunciated in the said decision (vide Para-29), this Court is of the considered view that the parties to this proceedings have to be directed to be in joint possession of the demised property leaving it open to them to sue for partition and separate possession of their respective shares.

8. The relevant observation in Paragraph-29 in the said decision is extracted as under:

" Following the decision of the Supreme Court (in *Venkateswaralu Vs. Motor*

and General Traders 1975 (1) SCC 770), it must be held that the petition was maintainable on the date when it was filed and that it will not be a non-est proceeding merely on account of the purchase by respondents 1 and 2 of a moiety share, though it will have relevance to the relief that may be granted to the petitioners. The tenants being already in possession of the building, the proper order that could be passed in the circumstances of the case will be to direct the landlord to sue for partition of his specific share in the property."

9. It is seen from the concurrent findings on this aspect of the matter that even before the rent control proceedings has been initiated, the said documents in favour of the respondent herein came into existence. Hence, in view of the said decision rendered by a Division Bench of this Court, the respondent is not liable to be evicted from the demised premises. Thus, the Civil Revision Petition is allowed, setting aside the fair and decretal orders of the Courts below. The parties to the revision petition are directed to seek appropriate relief by way of partition and separate possession of the respective shares in the demised premises. However, there will be no order as to costs.

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Index:Yes

Internet:yes

To

1. The Additional Subordinate Judge,
(Appellate Authority) Erode.

2. The Additional District Munsif,
(Rent Controller) Erode

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