

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.8.2005.

CORAM

THE HON'BLE MR.JUSTICE AR.RAMALINGAM

C.R.P.(NPD)No.697 of 2002

1. Murugan

2. Krishnaraj

3. Gnanaprakash

4. Sudha

Petitioners/Tenants.

vs.

Noorjan

Respondent/Landlord.

Civil Revision Petition against the decretal order dated 18.2.2002 in R.C.A.No.44 of 2001 passed by the Appellate Authority (III Additional District Judge), Pondicherry confirming the order dated 21.9.2001 in H.R.C.O.P.No.88 of 1998 on the file of the Rent Controller, Pondicherry.

For petitioners: Mr.V.Raghavachari

For respondent : Mr.G.Masilamani, Senior Counsel for
M/s.G.M.Mani Associates

ORDER

Aggrieved against the concurrent findings and consequent orders of eviction passed by the Rent Controller, Pondicherry in H.R.C.O.P.No.88 of 1998 and the appellate authority cum III Additional District Judge, Pondicherry in R.C.A.No.44 of 2001, the revision petitioners/tenants (being the legal representatives of the original tenant Krishnamurthy) have filed this revision.

2. The landlady, who is the respondent herein, viz., Noorjan filed the H.R.C.O.P. against the tenant Krishnamurthy who is none other than her brother under section 10(3)(a)(i) of the Pondicherry Buildings (Lease and Rent Control) Act in respect of the house belonging to her bearing door No.2/10, situate in Drowpathiamman Koil Street, Murugapakkam, Pondicherry on the ground of requirement for own occupation. The same was resisted by the said Krishnamurthy by filing counter to the effect that there was no landlady-tenant relationship between the said Noorjan and Krishnamurthy

and in fact, when the property was purchased in the year 1982, a sum of Rs.8000/= towards sale consideration was paid by Krishnamurthy and he is having a share upon the property as a co-sharer or co-owner with Noorjan and that he has also spent Rs.5000/= for effecting repairs in the house and consequently, the H.R.C.O.P. is liable to be dismissed.

3. After having considered the oral and documentary evidence available on either side, the Rent Controller passed the eviction order. The said Krishnamurthy preferred R.C.A. before the III Additional District Judge, Pondicherry and the III Additional District Judge also, after having gone through the oral and documentary evidence available on either side in the light of submissions made by the counsels appearing for either side, has found and come to the conclusion that the requirement is bona fide and denial of landlady tenant relationship is not bona fide and consequently, dismissed the R.C.A. by confirming the eviction order.

4. Inasmuch as this revision has been preferred against the concurrent finding and orders of both the courts below viz., the Rent Controller as well as the appellate authority, this court has to find out whether there is illegality or perversity in exercising the jurisdiction or appreciating the evidence by the authorities below.

5. Learned counsel appearing for the revision petitioners, after taking me through the oral and documentary evidence available on either side, submitted that the existence of relationship between Noorjan and Krishnamurthy as landlady and tenant has not been proved and that the Exhibits marked in support of the existence of such relationship viz., Exs.A6 and A7 are not true and signed by the said Krishnamurthy and that the alleged requirement for own use and occupation by Noorjan is not a true and bona fide one and that the H.R.C.O.P. itself has been filed with the oblique motive of evicting the tenant Krishnamurthy.

6. On the other hand, learned counsel appearing for the respondent/landlady herein submitted that there is relationship of landlady and tenant between the parties and Exs.A6 and A7 are indication of such relationship and the denial of Exs.A6 and A7 as if Krishnamurthy did not sign them cannot be true and accepted and that the requirement of the landlady for her own use and occupation that too after the retirement of her husband as employee of Neyveli Lignite Corporation, cannot be disputed by her own brother Krishnamurthy by raising some untenable contentions with ulterior motive probably due to conversion of his sister to Islam and her marrying a Muslim man and such contentions cannot be sustained in the eye of law and thereby the revision petition is liable to be dismissed.

7. On perusal of Exs.A6 and A7, I am able to see that they have come into existence on 19.6.1997 and that as per Ex.A6, in pursuance of the advice of some mediators, the husband of Noorjan viz., one Nawab John seems to have paid Rs.2400/= within the stipulated time to Krishnamurthy and he, in turn, assured to vacate the petition mentioned premises before

12.7.1987. Likewise, on perusal of Ex.A7, I am able to see that the said Krishnamurthy has consciously assured to vacate the premises before September 1987 and till then to pay monthly rent of Rs.60/= to Nawab John by describing the nomenclature of the same as rent receipt. The cumulative effect of the recitals made in Exs.A6 and A7, in my view, clearly goes to indicate that there is relationship of landlady tenant between Noorjan and Krishnamurthy and in any event, the said Krishnamurthy has confirmed his status only as a tenant of the petition mentioned premises. In this context, it is more significant to note that there is no recital in both Exs.A6 and A7 as if the said Krishnamurthy ever paid any amount much less Rs.8000/= towards sale consideration when purchase was made by Noorjan in the year 1982.

8. Moreover, on perusal of Ex.A1, which is the original sale deed dated 13.2.1982, I am able to see that the petition mentioned premises has been purchased by Noorjan for Rs.10,000/= and the sale deed has been attested by her brother viz., the very same Krishnamurthy as attester as well as identifying witness before the Sub Registrar. If really there was some contribution by the said Krishnamurthy for the sale deed, nothing would have prevented for joint purchase in joint names. More than all, the said Krishnamurthy never claimed any right of ownership much less co-ownership upon the petition mentioned premises till issue of notice by Noorjan through advocate. Therefore, all these factors go to indicate that there is relationship of landlady and tenant between Noorjan and Krishnamurthy and consequently, the denial of such relationship by the said Krishnamurthy followed by his legal heirs cannot be a true and acceptable one.

9. No doubt, a feeble attempt has been made by the said Krishnamurthy by examining his own son Murugan as RW1 and the son of the vendor under Ex.A1 Sridharan as RW2 to show as if the said Krishnamurthy is having some ownership upon the petition mentioned premises. In this context, it is to be noted that RW1 Murugan and RW2 Sridharan, who were aged about 12 and 15 at the time of execution of Ex.A1, cannot be accepted to speak about the transaction relating to Ex.A1 of the year 1982. On the other hand, R.Ws.1 and 2, at the tender age at the time of Ex.A1, cannot be expected now to speak about the details of nature of the transaction and payment of sale consideration, etc. It is more so when the said Krishnamurthy himself, who was alive at the time of examination of witnesses in the H.R.C.O.P., has not chosen to come to the witness box and speak about those details relating to Ex.A1 and its sale consideration, etc. and particularly to dispute as if the signatures found in Exs.A6 and A7 are not his signatures. There is no reason as to why the said Krishnamurthy avoided witness box and examined the boys of tender age on his side and particularly when the said RW1 Murugan is not competent to deny the signatures of his father in Exs.A6 and A7 and likewise, RW2 Sridharan is not competent to speak about the details of such transaction relating to Ex.A1.

10. In this context, it is also to be pointed out that under section 68 of the Indian Evidence Act and the proviso therein, it is not necessary to call any attesting witnesses relating to Exs.A6 and A7 also inasmuch as Ex.A1 is a registered document. Likewise, it is further to be pointed out that when it is the case of the landlady to the effect that Exs.A6 and A7 are documents showing the existence of landlady and tenant relationship between herself and her brother Krishnamurthy, it is the duty of the said Krishnamurthy to deny his signature in those documents and mere filing of counter as if he did not sign is not enough. Therefore, the conduct of the said Krishnamurthy in having avoided witness box and examined the tender aged boys as witnesses on his side itself goes to indicate that the said Krishnamurthy alone has chosen to squat upon the petition mentioned premises with ulterior motive.

11. The fact remains that the landlady Noorjan was residing at the quarters provided by Neyveli Lignite Corporation on account of her husband's employment and after his retirement, the said Noorjan has chosen to reside at the petition mentioned premises and when she required for her occupation, the said Krishnamurthy, without considering such requirement of his sister, has gone to the extent of contesting the H.R.C.O.P. in one way or other without any basis. Therefore, the concurrent findings and consequent eviction orders passed by the authorities below, in my view, are based upon proper appreciation and consequently, there is no acceptable ground for interference.

12. Accordingly, the revision petition is dismissed. No costs. Time for vacating the premises is 45 days.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssk.

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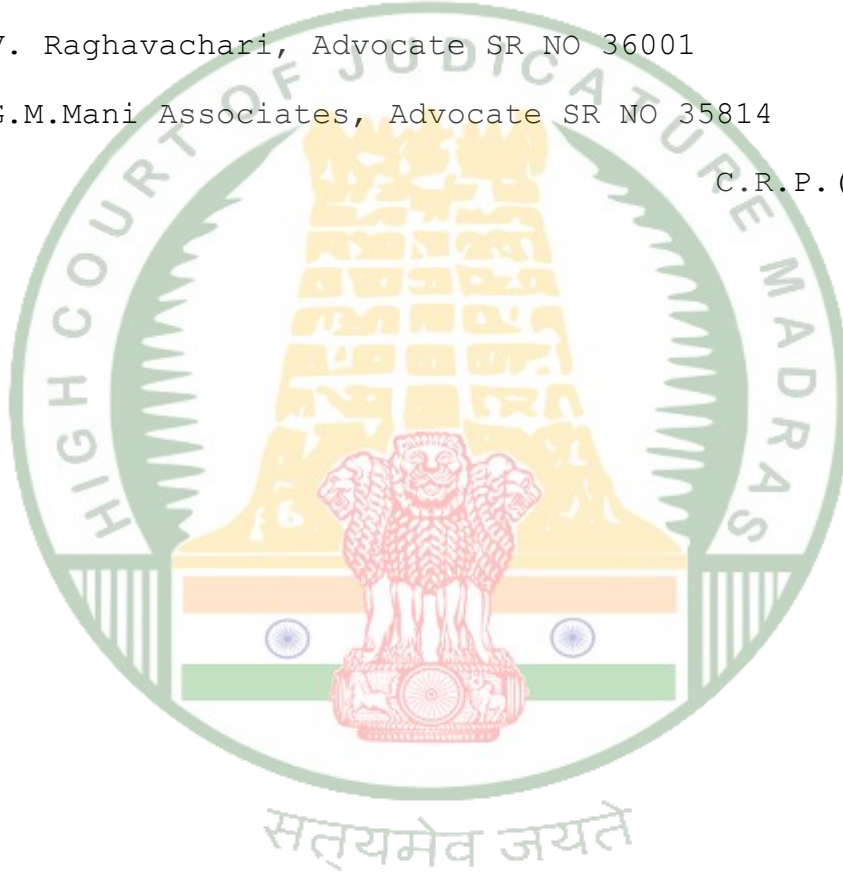
1. The III Additional District Judge,
Pondicherry.
2. The Rent Controller,
Pondicherry.
3. The Record Keeper,
V.R.Section,
High Court,
Chennai.

+ 1 CC to Mr. V. Raghavachari, Advocate SR NO 36001

+ 1 CC to Mr. G.M.Mani Associates, Advocate SR NO 35814

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