

In the Court of Subordinate Judge, Aruppukottai

**Present : Thiru. A.R.V. Ravi, B.A.B.L.,
Subordinate Judge, Aruppukottai.**

R.C.A. No.1 of 2018r

Dated on Thursday, the 7th Day of February 2019.

Nagarajan Appellants/ Tenant

/ Vs/

Kalyanasundaram Respondent/Landlord

**This Rent Control Appeal came up from the Order and Decretal Order of the Learned
Rent Controller/ District Munsif, Aruppukottai in R.C.O.P. No. 2 of 2016 dated 06.02.2018.**

Before the Rent Controller/District Munsif Court, Aruppukottai

R.C.O.9. No. 2 of 2018

Kalyanasundaram Petitioner/ Landlord

/ Vs/

Nagarajan Respondent/ Tenant

This Rent Control Appeal came up for final hearing before me on 31.01.2019, in the presence of Thiru. B. Kannan Advocate for the Appellant/ Tenant and Thiru. J. Suresh Kumar, Advocate Respondents/ Landlord and upon hearing both side arguments and upon perusing the documents filed on both sides, having stood over till date for my considerations, this Court passed the following

ORDER

1. This Rent Control Appeal was filed by the Appellant/Tenant against the Respondents/Landlord with the prayer to allow this Appeal and thereby reversing the Order and Decretal Order of the Rent Controller/ District Munsif Court, Aruppukottai in R.C.O.P. No.2 of 2016, Dated 06.02.2018 and to Pass the Order and Decretal Order in favour of the Appellants/ Tenant with the Costs of the Appellants/ Tenant.

2. For the sake of better understanding the Appellants in this Appeal Suit are mentioned as Tenant and the Landlord are referred as Respondent as per the Original Petition.

3.Facts leading to this Appeal Suit are:

(i) That the Plaitiffs had filed a Rent Control Original Petition before the Learned Rent Conroler/ District Munsif, Aruppukottai against the Respondent in R.C.O.P. No. 2 of 2018 with a prayer to evict the Appellant from the Petition mentioned Residential House which is required for personal use under Section 10(3)(a)(i) of the Tamilnadu Buildings (Lease and Rent Control) Act 1960 and for the costs of the litigation.

(ii) That the Property in the Rent Control Original Petition was a Residential House, which was agreed for a rent of Rs.5,000/- Per Month and the time period was for 2 years and the advance amount was Rs.25,000/- as per the agreement dated 02.12.2013, between the Appellant and the Respondent.

(iii) That the Appellant had paid the rent regularly and after the 2 years period was over the House is in need of the Respondent for his own use, since he is going to retire from his service as a Development Officer of LIC, Rajaplayam, in the Month of April 2014.

(iv) That the Rent Conroler after Enquiry had erroneously ordered the Appellant to evict House and hence the Rent Control Appeal was filed with the above prayers.

4. The Respondent appeared in this Appeal through his Counsel.

5. I have heard the arguments of both side and perused the records.

6. The Learned Rent Controller/ District Munsif, Aruppukottai had answered the following Questions:

1. Whether the Petitioner/ Landlord is eligible for the relief of eviction of the Respondent/ Tenant from the Petition mentioned Residential House for the personal use of the Petitioner/ Landlord under Section 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 or not?

7. After full trial the Learned District Munsif, Aruppukottai had allowed the Rent Control Original Petition with the costs of the Respondent. Hence, the Appellant had filed this Rent Control Appeal.

8. Questions to be answered are:

1. Whether this Rent Control Appeal, filed by the Appellants/ Tenant against the Order and Decreeal Order passed by the Learned Rent Controller/ District Munsif, Aruppukottai in R.C.O.P. No. 2 of 2016 dated 06.02.2018, is to be allowed or not?

9. On the side of the Appellants/ Tenant, Thiru. B. Kannan, Advocate for the Appellants/ Tenant, argued that the lower Court had not considered the fact that the oral agreement was for 10 years and the expenses of Motor Pump set and the Electrical Wiring and Painting and Erection of Electrical Wire for Air Condition and the furniture work done for Almirah were not paid by the Landlord and the Landlord in having other house properties and the Appellant is constructing a new house and hence prayed to allow this Appeal.

10. Per contra, Thiru. Suresh Kumar, Learned Counsel for the Respondent/ Landlord, strictly sticking to the Lower Court Order and Decreeal Order and reiterated the Order and Decreeal Order of the Lower Court and argued that there is no mistakes in the Lower Court Order and Decreeal Order. It

was also argued on the side of the Respondent/ Landlord that the Order and Decreetal Order were passed by the Lower Court after full scrutiny of the document and there is no necessity to revoke the Order and Decreetal Order of the Lower Court.

11. The Learned Counsel for the Respondent/ Landlord also prayed to dismiss this Appeal suit with the exemplary Costs of the Respondent/Lanlord.

12. Discussions on the Question No.1:

13. Regarding the Issues No. 1, the Lower Court had given the following findings:

“20. மேற்படி மனுதாரர் மற்றும் எதிர்மனுதாரர் தரப்பு வழக்குரைகள் வாய்மொழி சாட்சியங்கள், சான்றாவணங்கள் மற்றும் வாதுரைகள் ஆகியவற்றை விரிவாக ஆராய்ந்ததன் அடிப்படையில் குறிப்பாக

1. மனுதாரர்/ம.சா.1 மற்றும் எதிர்மனுதாரர்/எ.ம.சா.1 ஆகியோரது வாய்மொழி சாட்சியங்கள் மூலமாக மனுதாரருக்கு மனுச் சொத்து அமைந்துள்ள அருப்புக்கோட்டையில் சொந்தமாக வேறு வீடோ, கட்டிடமோ இல்லை என்பது தெளிவாகியுள்ள நிலை,

2. மனுதாரர் எல்ஐசி-யில் பணிபுரிந்து வரும் வகையில் மனுவில் குறிப்பிட்டுள்ளவாறு அவரது பூர்வீக ஊரான அருப்புக்கோட்டை மற்றும் அதன் அருகிலுள்ள பகுதிகளில் பணி மாறுதலாகி மனுக் கட்டிடத்தில் தனது குடும்பத்தாருடன் வசித்துக்கொண்டு பணிபுரிய வேண்டுமென மனுதாரர் தனது 56 வயதில் எண்ணுவது நியாயமானது என்றும் சட்டப்படி ஏற்கக்கூடிய காரணம் என இந்நீதிமன்றம் கருதும் நிலை,

3. மனுதாரர்/ம.சா.1ன் வாய்மொழி சாட்சியம் மனுக் கட்டிடம் அவரது சொந்த உபயோகத்திற்காக தேவைப்படுகிறது என்பதை உறுதிப் படுத்தும் வகையில் எவ்வித முரண்பாடுகளும் இன்றி தெளிவாக மனுதாரர் தரப்பு வழக்கிற்கு ஆதரவாக அமைந்துள்ள நிலை,

4. எதிர்மனுதாரர்தரப்பில் தான் மனு சொத்தில் பல மராமத்து வேலைகள் பெயிண்டிங் உள்ளிட்ட பல வேலைகளை செய்துள்ளதாக

தெரிவிக்கப்பட்டிருந்தாலும்கூட, அவை மனுச் சொத்தில் எதிர்மனுதாரருக்கு சட்டப்படி எவ்வித உரிமையும் ஏற்படுத்தாது என்றும், அவ்வாறு வேலை செய்துள்ளதால் மட்டுமே நிலச்சுவான்தாரரான மனுதாரருக்கு மனு கட்டிடம் அவரது சொந்த உபயோகத்திற்கு தேவைப்படும்போது எதிர்மனுதாரர் மனுக் கட்டிடத்தை காலி செய்ய மாட்டேன் என சட்டப்படி எவ்வித கட்சியும் முன் வைக்க இயலாது என்று இந்நீதிமன்றம் கருதும் நிலை,

5. முக்கியமாக, எதிர்மனுதாரர்தரப்பில் தாக்கல் செய்யப்பட்டுள்ள மறுப்புரையில் அருப்புக்கோட்டையில் எதிர்மனுதாரர் புதிய வீடு கட்ட ஏற்பாடு செய்வதாகவும் மேற்படி வீடு கட்டி முடித்தவுடன் மனுச்சொத்தை காலி செய்ய தயாராக இருப்பதாகவும் 1.9.2016 அன்று மறுப்புரை தாக்கல் செய்யப்பட்டுள்ள நிலையில் தற்போது சுமார் 14 மாதங்களுக்கு மேலாகிவிட்ட நிலையில் எதிர்மனுதாரர்தரப்பு கட்சிபடியே அவர் வீடு கட்டுவதற்கான ஏற்பாடுகளை அனைத்து வகையிலும் முடித்திருக்கவே வாய்ப்பு உள்ளதாக இந்நீதிமன்றம் கருதும் நிலை,

ஆகியவற்றை ஒட்டுமொத்தமாக கருத்தில் கொண்டு ஆராயும்போது மனு கட்டிடமானது நிலச்சுவான்தாரரான மனுதாரரின் சொந்த உபயோகத்திற்கு தேவைப்படும் காரணத்தினால் மனு கட்டிடத்தை எதிர்மனுதாரர் காலி செய்து, அதன் சுவாதீனத்தை மனுதாரரிடம் ஒப்படைக்க சட்டப்படி எதிர்மனுதாரர் கடமைப்பட்டுள்ளார் என்றே இந்நீதிமன்றம் முடிவு செய்கிறது.

முடிவாக இம்மனு மனுதாரர் தரப்பு செலவுத்தொகையுடன் மனுவில் கோரியுள்ளவாறு அனுமதிக்கப்பட்டு, தமிழ்நாடு கட்டிடங்கள் குத்தகை மற்றும் வாடகைக் கட்டுப்பாடு சட்டம் 1960 சட்டப்பிரிவு 10(3)(a)(i)ன்கீழ் மனு கட்டிடம் மனுதாரரின் சொந்த உபயோகத்திற்கு தேவைப்படும் காரணத்தினால் எதிர்மனுதாரர் மனு கட்டிடத்தை இன்று முதல் ஒரு மாத காலத்திற்குள் காலி செய்து அதன் காலி சுவாதீனத்தை மனுதாரர் வசம் ஒப்படைக்க வேண்டுமென உத்தரவிடப்படுகிறது."

14. As per the above findings it is clear tht all the points raised by the Appellant was dicussed and analized by the Rent Controler and the Rent Conroler had passed the Order on proper evidence adduced by the Respondent.

15. Regarding the eviction of a tenant for the own use the **Honble High Court of Madras** had held in the case of “**S. Ramakrishnan vs Nagoor Meeral**” Dated: **21.04. 2016** held as below:

“19. Secondly, the contention of the learned counsel for the respondent that claim of the respondent for owner's occupation is malafide on the ground that claim of wilful default and damages to petition premises were rejected is not acceptable . The respondent proved requirement of owner's occupation and Courts below have held that the requirement as bonafide requirement. The petitioner before the Courts below contended that respondent has another property next to her property and hence the plea of owner's occupation is malafide. The said contention has been rightly rejected as the tenant cannot dictate terms to the landlord and state that other property is better suited than petition premises.

20. The learned counsel for the petitioner relied on the Judgments and referred to above and contended that respondent failed to plead and furnish details with regard to owner's occupation and therefore, Courts below erred in ordering eviction. On the other hand, the learned counsel for the respondent relied on the Judgments and contended that petitioner aware of the issue with regard to claim of respondent that petition premises is required for her own occupation for establishing tailoring business of her son and daughter and both the parties have let in evidence. Therefore, the Courts below have rightly considered this issue on merits and decided the same in

favour of the respondent and there is no error in the said finding. This contention of the learned counsel for the respondent has considerable force.

21. The petitioner as well as respondent let in evidence with regard to claim of owner's occupation. The petitioner has alleged that respondent owns another vacant site next to her house which is more suitable to the business of the son and daughter of respondent rather than petition premises. It is well settled that quoting wrong provision of law or not quoting provisions of law or not furnishing the details of claim in rent control proceedings will not be fatal to the claim of petitioner. The Judgments relied on by the counsel for the petitioner do not advance the case of the petitioner. On the other hand, the Judgments relied on by the learned counsel for the respondent are squarely applicable to the facts of the present case.

22. The Courts below have considered all the materials and the law in the proper perspective and ordered eviction. There is no reason or circumstances warranting interference by this Court. In the result, the Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed. ”

16. Further, the Honorable Supreme Court held in the case of **“Chhotelal Pyarelal vs Shikarchand”** Dated: 27.07.1984, [Equivalent citations: **AIR 1984 SC 1570, 1984 (2) SCALE 125, (1984) 4 SCC 343, 1985 1 SCR 268, 1984 (16) UJ 1124 SC**], held as below:

“U.R. Lalit and Mrs. J. Wad for the Appellants. V.A. Bobde and A.G. Ratnaparkhi for the Respondent. The Judgment of the Court was delivered by BHAGWATI, J. The respondent filed an application under clauses 13 (3) (vi) and (vii) of the C.P. and

Berar Letting of Houses and Rent Control Order of 1949 (hereinafter referred to as HRC Order) to evict petitioner No. 1 firm of M/s. Chhotelal Pyarelal. The respondent alleged that the firm was a tenant in respect of the premises and eviction of the firm was sought on the ground of bona fide requirement of the respondent for the purpose of his occupation under paragraph (vi) as also for the purpose of making essential repairs under paragraph (vii) of Clause 13(3). The firm of Chhotelal Pyarelal raised a preliminary contention that no application could be maintained against a partnership firm and such an application was liable to be rejected. This contention ultimately came to be considered by a learned single Judge of the High Court at Nagpur. The learned single Judge being under the impression that there was still operative a judgment of another single Judge of the High Court taking the view that such an application against a partnership firm was not maintainable, referred this question to a larger Bench. This question accordingly came up before a Division Bench of the High Court. It was pointed out before the Division Bench that undoubtedly a view was at one time taken by a learned single Judge that an application for eviction against a partnership firm was not maintainable but this view was over ruled by a Division Bench of the High Court in a Letters Patent appeal filed against that decision. The Division Bench accordingly held that an application for eviction under the HRC Order was maintainable against a partnership firm without joining any partner constituting the partnership firm as a respondent to the application. This view taken by the Division Bench is assailed in the present appeal filed by the firm of M/s. Chhotelal Pyarelal with special leave obtained from this Court.

Now, there can be no doubt that since the Code of Civil Procedure does not apply to proceedings under the HRC Order, no application for eviction can be maintained against a firm in the firm name. The firm is merely a compendious name for the partners constituting it and it is only by virtue of the provisions of Order 30 of the Code of Civil Procedure that a firm can sue and be sued in its own name without the partners being impleaded co-nominee. It is therefore clear that the firm of M/s,

Chhotelal Pyarelal could not be sued in the firm name by the respondent in so far as the application for eviction under the HRC Order was concerned. But we agree with the Division Bench of the High Court that this cannot by itself result in the dismissal of the application. It would be merely a case of misdescription of the respondents to the application and this misdescription can be corrected at any stage of the proceedings. There can be no doubt that the partners of the firm are before the Court though in a wrong name.

The learned counsel appearing for the respondent has, therefore, applied to us for leave to amend the cause title of the original application by adding the names of the partners of the firm of M/s Chhotelal Pyarelal as respondents along with the firm of M/s Chhotelal Pyarelal and carrying out necessary consequential amendments in the body of the application. We allow the application for amendment and remit the case back to the Rent Controller so that he may dispose it of on merits. The respondent will carry out the amendment in the application for eviction within two weeks from the date of receipt of this Order by the Rent Controller and the newly added respondents will file their written statement in answer to the application for eviction within a further period of four weeks thereafter. The Rent Controller will then proceed to dispose of the application for eviction as expeditiously as possible and in any event before the expiration of a period of 6 months. There will be no order as to costs of the appeal.

M.L.A. Appeal allowed.”

17. As per the above Judgments, it is clear that the Tenant cannot chose the place of residence of the Landlord. When the plea of the Landlord is bonafide with supportive evidence, it is necessary to pass an eviction order in favor of the Landlord under Section 10 (3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960. Hence, the Order and Decreetal Order of the Rent Controller/ District Munsiff, Aruppukottai, in R.C.O.P.No. 2 of 2016, dated 06.02.2018 needs no interference and

this Rent Control Appeal in R.C.A. No. 1 of 2018 is liable to be dismissed with the costs of the Respondent.

18. As a result with costs, this Rent Control Appeal in R.C.A. No. 1 of 2018 is dismissed and Order and Decreeal Order passed in R.C.O.P. 2 of 2016 dated 06.02.2018 on the file of District Munsif Court, Aruppukottai is confirmed.

Dictated to the Stenographer and typed in the computer directly and after correction, this Order is pronounced in the Open Court.

This the 7th day of February, 2019.

Subordinate Judge,
Aruppukottai.

Copy to
The Principal District Munsif,
Aruppukottai.

Uploading Orders/Judgment/Deposition: Yes/No

Sub Court, Aruppukottai
R.C.A. No.1 of 2018
Fair/Draft Order
Dated: 07.02.2019