

(2002) 07 MAD CK 0305

In the Madras High Court

Case No : C.R.P. N.P.D. No. 820 of 2002

Amirthavalli, Vedaiyan, Govindaraj, Ramalingam, Kumari,
Chandrakumar, Marahathavalli and Rajathi

APPELLANT

Vs

Visalatchi Ammal W/O Late Murugesu Mudaliar, Pattukottai,
Thenamirthavalli @ Thenmozhi, Marikkannu, Rani, Ramani,
Chidambaram @ Thambi and Balasubramanian

RESPONDENT

Date of Decision : 19-07-2002

Acts Referred:

Transfer of Property Act, 1882 — Section 108

Citation : (2002) 3 LW 687

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : N. Sankaravadivel, for the Appellant; S. Thiruvenkataswamy, for the Respondent

Final Decision : Dismissed

Judgement

K. Sampath, J.—An interesting question on the rights and liabilities of lessor and lessee u/s 108 of the Transfer of Property Act, 1882 arises for consideration in the civil revision petition.

2. u/s 108(d) it is stated that,

"If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease."

The question is: if the lessee encroaches upon adjoining land and enjoys such encroached portion, whether he must surrender such land to the lessor at the expiry of the term, irrespective of the land being waste land or land in the use of another.

3. In Md. Ahmed Amolia and Others Vs. Nirmal Chandra Roy and Others, it has been held that,

"when a tenant encroaches on the land outside his tenancy, but belonging to his landlord, he cannot acquire absolute title thereto by adverse possession, but obtain only that right of tenancy under his landlord."

4. In Chapsibhai Dhanjibhai Danad Vs. Purushottam, it has been held by the Supreme Court that,

"under Section 108(d) of the Transfer of Property Act, if any accession is made to the leased property during the continuance of the lease, such accession is deemed to be comprised in the lease. If any accession is by encroachment by the lessee and the lessee acquires title thereto by prescription, he must surrender such accession together with the leased land to the lessor at the expiry of the term. The presumption is that the land so encroached; upon is added to the tenure and forms part thereof for the benefit of the tenant so long as the lease continues and afterwards for the benefit of the landlord."

5. In the present case, the question has arisen under the following circumstances:

The revision petitioners were held to be entitled to the benefits of the City Tenants Protection Act and a decree was passed in their favour in C.T.O.P.No.36/86 on 4.9.1992. As per the terms of the decree, an area of 1136 sq.ft. was directed to be transferred to them by the respondents within two months therefrom, that the rest of the property was to be surrendered to the owners, namely, the respondents herein, that after transfer of the property within the stipulated period of two months, the respondents should make the necessary application for withdrawal of Rs.25730/- in deposit to the credit of the proceedings.

6. On 15-1-1999 the first petitioner herein through her counsel, filed a memo before the lower Court stating that it would be enough if the extent of 1136 sq.ft. as per the four boundaries was sold to the petitioners, that the rest of the area on the eastern and the southern sides could be measured and taken possession of by the respondents and that the memo was being filed to show that the additional extent was being surrendered. Notice of memo was given on 15-10-1999 itself.

7. However, the respondents filed a petition in E.P.No.32/2001 stating that as per the memo they had not surrendered possession to the respondents and therefore, the E.P. was being filed for delivery of the vacant site. The execution petition was filed under Order 21 Rules 22 and 35. In the description of the property, besides giving the property immediately to the south of the property sold to the revision petitioners, some portion in S.No.78-B was also included. In that Survey Number, which appears to be property belonging to the municipality, the revision petitioners had constructed a toilet, bathroom and a septic tank.

8. The revision petitioners contested the execution petition contending that the southern portion had already been taken possession of by the respondents, that

they could not claim any right in S.No.78-B and that that was not the subject matter of the decree. According to them, the toilet, bathroom and the septic tank were constructed only in a strip of poramboke land and in as much as that poramboke land did not belong to the respondents, they could not seek delivery of the property including the said strip of the said poramboke land.

9. An Advocate Commissioner was appointed. He visited the property and noted down the physical features and he filed his report along with two sketches. The Advocate Commissioner found that the constructions were on the disputed strip of poramboke land abutting the suit property on the western side. The eastern wall of the toilet, bathroom and the septic tank was on the patta land of the respondents. On the date the Commissioner visited the property, the toilet, bathroom and the septic tank appeared to be newly constructed and they were being plastered. The Commissioner was also examined with reference to his sketches and report. He found that the northern part of the trip of poramboke land comprised in S.No.78-B was found already in the possession and enjoyment of the revision petitioners. While constructing their house in the demised property, they had raised the western mother wall to their house over the northern portion of the disputed strip of the poramboke land. Thus, out of the entire stretch of the poramboke land abutting the suit property, the northern part is in the enjoyment of the revision petitioners, while the southern part is now in dispute. The sketch clearly shows that the new toilet, bathroom and the septic tank had been so put up by the revision petitioners deliberately with an evil design to obstruct the access of the respondents to the main road. Apparently, the revision petitioners have some backing in the municipality.

10. Be that as it may, the fact remains that the revision petitioners had put up a toilet, a bathroom and a septic tank in the poramboke land adjacent to the land demised to the revision petitioners originally by the respondents.

11. The learned District Munsif held that the revision petitioners were bound to surrender possession of the property including the disputed strip of poramboke land comprised in S.No.78-B, as otherwise, the respondents would be denied the convenient enjoyment of the remaining property. The learned District Munsif relied on Section 108(d) of the Transfer of Property Act and held that it was an accession to the property demised and on the termination of the lease, the landlords would be entitled to get back the demised property along with any accession.

12. It is as against this, the present revision has been filed.

13. Mr. Sankaravadivelu, learned counsel for the revision petitioners, submitted that the learned District Munsif was in error in allowing the respondents to execute and take possession of the extent in S.No.78-B under the guise of executing the decree relating to S.No.83. According to the learned Counsel, there is not even a prayer in the E.P. for removal of the bathroom and latrine which were constructed by the revision petitioners. The lower Court was in error in

going behind the decree, which clearly referred to only S.No.83 and not S.No.78-B. The relief sought was not in consonance with the prayer of the respondents.

14. Per contra, Mr. Thiruvengkataswamy, learned Counsel for the respondents, submitted that the parties have been in the Court from 1984, that the area in S.No.78-B where the revision petitioners have put up a toilet, a bathroom and a septic tank has been rightly held to be an accession to the property demised by the respondents to the revision petitioners, that on the termination of tenancy, the tenants were bound to surrender possession of the demised property with any accretion or accession. The learned Counsel further submitted that the revision petitioners have deliberately put up the construction in the poramboke land immediately to the west of the property with an evil design to prevent the respondents from enjoying the property conveniently in such a way as to deny access to the main road.

15. I have carefully gone through the records. I have stated in the beginning of the order that any accession by the lessee, be it even an encroachment on waste land or poramboke land, on the termination of the tenancy, should be surrendered to the owners along with the property leased. This principle appears to be well established by a series of judicial decisions. See:

1. Indu Bhusan Bose Vs. Atul Chandra Biswas and Others,
2. NESPITT VS. MABLETHRPE URBAN COUNCIL (AIR 1918 (2) K.B. 1
3. Md. Ahmed Amolia and Others Vs. Nirmal Chandra Roy and Others,
4. Chapsibhai Dhanjibhai Danad Vs. Purushottam,
5. MUTHURAKU VS. ORR. 21 MLJ 615 = 10 I.C. 575
6. PROHLAD TEOR VS. KEDAR NATH ILR 25 Cal 302 and
7. Saroj Kumar Bose Vs. Surjya Kanta Sarkar and Others,

16. It is not open to the revision petitioners to contend that it is not part of the demised premises. May be as pointed out by the learned District Munsif, the revision petitioners are technically right in stating that this property is not subject matter of the decree. But, it has to be stated that the revision petitioners have been given the right to purchase only an extent of 1136 sq.ft. and that the rest they had to surrender possession though actually it was found that at the time the E.P. Was filed, they had not surrendered possession.

17. Further as found above, the encroachment by the revision petitioners on the poramboke land on the western side has been deliberately done with a view to cause annoyance and obstruction to the respondents. Obstruction in the sense that they are prevented from accessing the main road from their property. The act of the revision petitioners in the manner they have done is mischievous to the core and deliberate. The respondents, in equity, are entitled to have the portion encroached upon by the revision petitioners as an accession to the

original demise. Justice and equity have weighed with the lower Court in granting the prayer.

18. In Chennichi Alias Parikkal Goundar Vs. D.A. Srinivasan Chettiar, it has been held as follows:

"The exercise of the revisional powers of the High Court u/s 115 of the Code of Civil Procedure, is purely discretionary. The High Court will not take a technical view and necessarily interfere in every case, where an order is wrong and even improper, if such interference will produce hardship or injustice. The revisional jurisdiction of the Court is intended to secure and subserve the ends of justice and not to deny or defeat it. If interference in a particular case will result in hardship or injustice to a party, the High Court will be justified in refusing to interfere in the exercise of its revisional jurisdiction, even if the order is found to be one without jurisdiction."

19. When justice has been done as has been held in S.N. KUBA VS. P.P.I. VAITHYANATHAN 1988 TLNJ 1 jurisdiction u/s 115 of the CPC should not be exercised. I therefore decline to interfere and dismiss the revision petition with cost of Rs.2500/-.