
(1985) 03 MAD CK 0022
In the Madras High Court

Anandan	Vs	APPELLANT
K.R. Lakshmanan Chettiar		RESPONDENT

Date of Decision : 01-03-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12
Limitation Act, 1963 — Section 6, 7
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3)(a)(1), 10(3)(a)(i), 10(3)(c)

Citation : (1986) 99 LW 999 : (1987) 1 MLJ 346

Hon'ble Judges : M.N. Chandurkar, C.J

Bench : Single Bench

Judgement

M.N. Chandurkar, C.J.—This is a tenant's revision petition challenging the concurrent findings of the Rent Control authorities, that the

landlord needed the premises in question bona fide for the residence of his son through his first wife and his family. The respondent landlord had

filed the petition alleging that his family consisted of fourteen members and that the accommodation available to him was insufficient, apart from the

fact that there were often quarrels between his son Balanageswaran (P.W. 2) through his first wife, and the landlord's second wife. The stand

taken by the tenant was that there were other premises in the possession of tenants on the ground floor of the building in question, out of which the

landlord could get one and give it to his son. The claim that the accommodation in the possession of the landlord was insufficient or that his son

through his first wife and his family were not able to get along with the landlord's second wife was also denied.

2. The landlord in his evidence gave details of his family and deposed to the disputes between his second wife and his son through his first wife.

The son was also examined as a witness. The Rent Controller found that the landlord's son through his first wife and his second wife were not getting on well. He also found that there was no vacant accommodation available to the landlord and that the portion in the occupation of the tenant-petitioner had independent bath-room and latrine, while the other tenants had common bath-room and latrine. Accordingly the landlord's application was allowed. This Order was confirmed by the Rent Control Appellate Authority.

3. The main contention raised in the revision petition is that the claim of the landlord should, as a matter of fact, fall u/s 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, and not u/s 10(3)(a)(i). This contention was also raised before the Appellate Authority. Now, it is settled

law in this Court that the words "of his own" occurring in Section 10(3)(a)(i) meant that the premises must belong exclusively to the landlord and

that, where the landlord owns and occupies premises of which he is a co-sharer, he cannot be said to be in occupation of premises "of his own".

This was the view taken by Ismail, J. (as he then was) in *S.M. Abdul Makki v. M.K. Abdul Azeez* (1978) 2 M.L.J. 9. This was followed by

Sengottuvelan, J. in *K.M. Kassim v. P. Thangavelu* (1981) T.L.N.J. 297. In that case the landlord and his brother occupied the first floor, and he

had filed the eviction petition on the ground that his brother needed the portion on the ground floor. It was held by the learned Judge that the

petition u/s 10(3)(a)(1) of the Act was maintainable.

4. In this view of the law, it is obvious that on the finding that the landlord's son through his first wife was not able to get along with the landlord's

second wife, which is a finding of fact, there does not seem to be any bar to the claim of the landlord that he requires the premises bona fide for his

own use. The lower Courts have proceeded on the footing that the landlord and his son are joint owners of the property and that the landlord

cannot be said to be in possession of the premises in his occupation in his own right exclusively. In my view, there is no substance in this Civil

Revision Petition. It is accordingly dismissed. There will be no Order as to costs. The tenant is given three months time from today to vacate the

premises, provided that he gives an undertaking within one week from this date that he will vacate the premises on or before 31st May, 1985 and

that he will not induct anybody else into the premises.

If then the first defendant and the plaintiff were in law co-owners, the question is whether there is evidence of ouster or exclusion. As laid down in

the leading case of *Corea v. Appusamy* L.R. (1912) A.C. 230 the possession of the 1st defendant was in law the possession of the co-owner the

plaintiff. Possession is never considered adverse if it can be referred to a lawful title. Mere non-participation in the profits of the property by one

co-owner and exclusive possession by the others will not be sufficient to constitute adverse possession by the latter. To constitute ouster by a co-

owner there must be open and unequivocal denial of the title of the other coparceners to the knowledge of the latter. Uninterrupted sole occupation

of common property without more must be referred to the lawful title possessed by the joint holder to use the joint estate and cannot be regarded

as an assertion of right to hold it as separate.

Further, the contention of Mr. M.R. Narayanaswamy that the plaintiff who was also a party defendant in O.S. 37 of 1966 could have filed an

application for determining his share by paying court-fee in that suit itself cannot be dismissed without substance as I find much force in that

contention. The cases cited by the Learned Counsel are all distinguishable on facts and, therefore, I have not extracted, the passages in detail and I

feel that it is not necessary to refer to them also in detail particularly in view of the argument of Mr. M.R. Narayanaswamy, the Learned Counsel

for the appellant, that he has no quarrel with the propositions laid down in the cases cited by the Learned Counsel for the contesting respondent.

As pointed out earlier, the one factor, namely, the judgment and decree in O.S. 37 of 1966, as confirmed by the appellate courts, in my view,

heavily support the contentions raised on behalf of the appellant. This has not been duly noticed and appreciated by the courts below. The

argument advanced by the Learned Counsel for the contesting 15th defendant based on Section 6 and 7 of the Limitation Act need not also be

considered in view of the findings in the earlier suit (O.S. 37 of 1966) confirmed by the appellate courts, which are binding on the contesting 15th

defendant. I hold the suit is not barred by limitation.

5. It is not disputed that if the suit is not barred by limitation, the plaintiff is entitled to the share as claimed in the plaint.

6. In the result, the second appeal is allowed s and the judgments and decrees of the courts below are set aside. There will be a preliminary decree

for partition and separate possession of the plaintiff's 1/12th share in the A Schedule properties excluding the items in the B Schedule. Regarding

the mesne profits, the same is relegated to separate proceedings under Order 20, Rule 12 of the C.P.C. No costs.

This Second Appeal having been posted this day for being mentioned, on the letters of the counsel for the Appellant, dated 12th February, 1986,

the Court delivered the following judgment:

This Second Appeal is posted at the instance of the Learned Counsel for the appellant. Both the Learned Counsel agree that the decree can be

drafted without making any reference to the plans mentioned in B Schedule in the plaint, as no such plans have been filed in this suit.