

(1999) 07 MAD CK 0065

In the Madras High Court

Case No : Civil. Rev. Petition No. 3159 of 1998

B.A. Rajan @ B. Antony Raj

APPELLANT

Vs

Rajapalayam Bhoopalapatti Vishwabramha Kulathavarkalin
Uravinmurai Pothunala Fund

RESPONDENT

Date of Decision : 19-07-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2
Evidence Act, 1872 — Section 13
Specific Relief Act, 1963 — Section 38
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 18, 25

Citation : (1999) 3 CTC 180 : (1999) 3 MLJ 315

Hon'ble Judges : S. S. Subramani, J

Bench : Single Bench

Advocate : Mr. K.V. Subramaniam, for the Appellant; Mr. Alagar, for Mr. A. Agni, for the Respondent

Judgement

S. S. Subramani, J.—Tenant in R.C.O.P.No. 18 of 1995, on the file of Rent Controller (Principal District Munsif, Srivilliputtur, is the

revision petitioner. Eviction was sought on various grounds against the revision petitioner. Rent Controller dismissed the petition on the ground that

the landlord and tenant relationship has not been proved. But, when the matter was taken in appeal, in R.C.A.No.8 of 1997, on the file of

Appellate Authority (Sub Court, Srivilliputtur), it came to a different conclusion. It held that as between the parties, there is landlord and tenant

relationship, and grounds of eviction have been proved. The decision of the Appellate Authority is challenged in this revision.

2. I do not want to go into the grounds of eviction since the argument centres round a narrow compass, namely, landlord and tenant relationship

between the parties. Once it is found that there is landlord and tenant relationship, it is admitted that ground of eviction has been made out.

3. It is averred in the eviction petition that the building was let out to the tenant, petitioner herein, at the rate of Rs. 30 per month, for the purpose of

running electrical workshop, that the tenant paid an advance of Rs. 4,900 in four instalments, agreeing to pay the rent without any default, and also

agreed that he will not sublet the building to any person without the written consent of the landlord, and also agreed that he will not use the building

for any purpose other than the one for which it was let out. It is further said that the tenant agreed to vacate the premises on the expiry of ten years

from 1975. It is said that the rent till January, 1985 was paid, and thereafter the tenant committed wilful default in paying rent. From 1.9.1998, rent

was enhanced to Rs. 60. Notice was issued to the petitioner herein stating he has committed default in paying rent at the rate of Rs. 60. From

1.9.1992, rent was enhanced to Rs. 100, which was also intimated and acknowledged by the tenant. From 1.9.1972 till November, 1995, rent

has not been paid at the rate of Rs. 100. Petitioner also alleged that there are many buildings on the same row and all these will have to be

demolished for putting up a charitable hospital for which he has obtained necessary plan and licence. It is also alleged that the tenant has ceased to

occupy the building for a continuous period of three years without reasonable cause. A lawyer's notice was issued on 5.5.1995, terminating the

rental arrangement and directing the tenant to vacate.

4. In the counter filed by the revision petitioner, the main contention raised was that the schedule building is situated in a poramboke land and he

has put up the construction. He has taken electricity connection in his name and the telephone connection also stands in his name. Water

connection has also been obtained in the name of the respondent, and long before 1980, he has installed various machineries in the property

exercising his right as owner. It is further averred that when the respondent herein attempted to interfere with his possession, he was compelled to

file a suit as O.S.No. 14 of 1996, on the file of District Munsif's Court, Srivilliputtur, and the same is pending. He has stated that he never agreed

to vacate the premises since the respondent herein has no right over the building. He has also denied the allegation that he has agreed to abide by

the terms of the rental arrangement. It is said that no grounds have been made out for eviction. He prayed for dismissal of the eviction petition.

5. The Rent Controller, as per Order dated 30.9.1997, dismissed the eviction petition. Ex.A.1 to A.12 were marked on the side of petitioner.

Exx.B.1 to B.7 were marked on the side of respondent. Oral evidence was also let in.

6. The Rent Controller was of the view that the various documents produced before him will not prove a rental arrangement, and accounts of the

petitioner which ought to have been produced, have not been produced. He also came to the conclusion that there is nothing on record to show

that the property where the building stands belongs to the landlord, and all the circumstances taken together only prove that there cannot be any

landlord and tenant relationship.

7. Aggrieved by the order, landlord filed R.C.A. No.8 of 1997, on the file of Appellate Authority (Sub Court, Srivilliputtur). Before the Appellate

Authority, additional evidence as also let in Appellate Authority, after considering the evidence already on record, came to the conclusion that the

tenant, petitioner herein, has admitted that he is a tenant under the respondent herein and that such an inference is fortified by the additional

evidence let in.

8. Reliance was placed on Ex.A.2, Ex.A.3, A.10 and A.11 filed on behalf of the landlord which conclusively shows that the petitioner herein has

admitted that he is a tenant of the building under the respondent and that relationship still continues. It was found by the Appellate Authority that the

denial of title is not bona fide. Eviction was ordered. It further went on discussing the evidence and held that grounds have been made out for

ordering eviction.

9. Before going to the merits of the case, one factor requires consideration. After the filing of the eviction petition, tenant moved the civil Court with

a suit as O.S.No. 14 of 1996, to restrain the respondent herein from interfering with his possession. As in the rent control petition, he has averred

therein that he has put up the superstructure and over the same, the respondent herein has no right. Parties joined in issue as to under what capacity

the petitioner herein is in occupation of the building. The Civil Court, after elaborately considering the evidence, came to the conclusion that the

petitioner herein is only a tenant under the respondent, and having brought a suit for injunction, on false allegations, the equitable relief of injunction

should not be granted. The Civil Court also held that the respondent herein is not attempting to forcibly evict the petitioner when it has taken

proceedings under the Rent Control Act, which is in accordance with law.

10. Though the matter was taken in appeal by the tenant as A.S.No. 105 of 1997, the appellate Court, also did not think of disturbing the findings

entered by the trial Court. An argument was also taken before the Appellate Court that the question whether petitioner herein is in possession of

the property as tenant or otherwise is immaterial. It was argued that once possession is admitted, he is entitled to protection of that possession until

he is evicted by due process of law. An argument was advanced that in a suit for injunction, rental arrangement is not relevant for consideration,

and possession alone is to be considered, and when that is admitted, injunction should have been granted.

11. The Appellate Court held that even though the capacity in which the petitioner is in possession may not be material in a suit for injunction, while

granting the relief of injunction, the conduct or falsity of the case is relevant, and for that purpose, in what capacity he came into possession, is a

matter which could be considered. Thereafter, the Appellate Court, after discussing the entire evidence, confirmed the findings of the trial Court

and held that the petitioner is only a tenant of the building and that he has come with a false case which disentitles him from getting any equitable

relief.

12. Against the decision of the Appellate Court petitioner filed S.A.No. 7 of 1999, and the same was dismissed after hearing both sides. The

judgments of the trial Court, appellate Court and second appellate Court have been produced before this Court as additional evidence in this

Revision.

13. Heard learned Counsel for both sides. Learned Counsel for revision petitioner submitted that the judgment of the Appellate Authority is illegal

and perverse and this Court should interfere u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act. Learned counsel also objected to

the manner in which additional evidence was allowed to be let in without giving an opportunity to him to adduce counter evidence. It was argued

that but for the additional evidence, the result would have been different.

14. I do not find any merit in the said submission.

15. u/s 18 of the Tamil Nadu Buildings (Lease and Rent Control) Act, the Appellate Authority is also entitled to take additional evidence, and it

has got all the powers of a Rent Controller. It exercised the discretion in admitting additional evidence. The power of the Appellate Authority to

receive additional evidence cannot be challenged in view of the statutory provision.

16. I do not accept the argument of learned counsel for respondent herein that eviction was ordered only on the basis of the additional evidence.

Exx.A-2, A-3, A-10 and A-11 would conclusively show that the petitioner herein is a tenant. Only because the Rent Controller found fault with

the landlord for not producing the accounts, the same was produced before the Appellate Authority. The Appellate Authority also considered that

from Exx.A-2 to A-8, an inference can be drawn that the respondent herein is the landlord. Demand for payment of tax by the Local Authority,

permission granted by the Local Authority to put up construction payment of property tax, Land Survey Records, all these were taken into

consideration by the Appellate Authority to hold that the revision petitioner can claim only under the respondent herein. The most important

documents are, Ex.A-10 and A.11. Those two documents show that the tenant, after paying the rent of advance, has obtained the receipt, and in

the counterfoils, he has also signed. These two documents are not denied by petitioner herein. It is also found by the Authority that even for taking

electricity connection, written consent of respondent was obtained and only thereafter the tenant obtained the same from the Electricity

Department. At the same time, as against the evidence on the side of respondent, revision petitioner herein has not produced any evidence to show

that he has put up any construction of his own, or that it did not belong to the respondent herein. As rightly found by the Appellate Authority, the

schedule building is only one shop building in the entire property. There are 30 other shops also in the very same locality and accounts are

maintained for all these 30 shops, including the schedule building also. In fact, before the eviction petition was filed, some of the shop owners

vacated the premises, and that was also demolished by the respondent. It is only

to prove the bona fides of the respondent, they produced the account books before the Appellate Authority. The Appellate Authority also found that from various entries therein, it could be seen that the petitioner herein is only a tenant. Even without the additional evidence, the result would have been the same. I do not find that any ground has been made out to challenge the order of the Appellate Authority on the ground that additional evidence has been permitted to be adduced, without giving any opportunity to the petitioner to adduce rebuttal evidence.

17. As I submitted earlier, the respondent herein has produced the judgments between inter parties in the suit filed by the tenant. Before the Rent Controller and Appellate Authority, they could not file the same, because, they had not become final. Now, all the judgments produced before this Court show that the matter has been concluded. It has been unequivocally found in the judgment of the Civil Court that possession of the petitioner is only permissive and that too as a tenant under the respondent. Learned counsel for revision petitioner submitted that he has filed an application for review of the judgment in the second appeal. But no material has been placed before me, except that statement. As on date, that judgment has become final.

18. As was argued before the Appellate Authority, learned counsel also argued before this Court that the suit in O.S.No. 14 of 1996 is only a suit for injunction, as character of possession is not relevant point to be decided and, therefore, the findings therein cannot be said as res judicata. I do not find any force in the said contention. Even though the suit was only for injunction, when the parties have joined in issue and wanted a decision as to the character of their possession, the finding therein cannot be brushed aside as unnecessary. Both the parties have consciously adduced evidence and a finding was entered against the petitioner.

19. Even though in a suit for injunction, possession alone is material, and not the character of possession, while granting an equitable relief, the question whether the plaintiff or petitioner herein has come to Court with clean hands will have to be considered by the Civil Court. While considering the same, whether the petitioner herein has brought a false case, is of relevant consideration. For the said purpose, the character of possession is also material. Once the Court holds that the petitioner has come

with a false case, the equitable relief is not to be granted even though he may be in possession. Why the Court refused the relief of injunction in spite of the fact that the petitioner is in possession, and also the falsity of the case that he is not a tenant were rightly considered by the Courts below. Even assuming that the point is not res judicata, it cannot be said that the judgment of the Civil Court is irrelevant. Both the parties have adduced evidence regarding their respective status and a finding was entered, recognising the assertion made by the respondent herein. It is a relevant piece of evidence u/s 13 of the Evidence Act. In either way, the judgment of the Civil Court cannot be ignored by the revision petitioner (tenant).

20. As I have said earlier, there is no serious disputer regarding the grounds of eviction. Admittedly, from 1985, tenant has not paid any rent, and he has also denied the title of the landlord without any bona fides. These two grounds alone are sufficient to order eviction.

21. I do not find any merit in the Revision, and consequently the same is dismissed with costs.

C.R.P. No. 3159 of 1998 and connected C.M.P.

After pronouncement of this order learned counsel for the petitioners represented that time may be granted to his client to vacate the premises.

After hearing learned counsel for the respondent. I feel that time may be granted to the petitioner to vacate the premises, only on certain conditions.

It is seen that the tenant has not paid the monthly rent right from January, 1985. If the Petitioner/tenant pays all the arrears of rent as on to day to

the landlord within a period of fifteen days from today, he will be granted three months" time to vacate the premises. In case the arrears of rent are

not paid by the petitioner/tenant to the landlord within the stipulated time, the landlord will be entitled to get possession of the premises, as in no

time is granted.