

(1964) 03 MAD CK 0011
In the Madras High Court
Case No : Appeal No. 527 of 1961

D. Kuppuswami Chettiar and Others	APPELLANT
Vs	
Ar. C.B. Balagurumurthy Chettiar and Others	RESPONDENT

Date of Decision : 05-03-1964

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 2(1)

Citation : (1964) ILR (Mad) 222

Hon'ble Judges : S. Ramachandra Ayyar, C.J.; Venkatadri, J

Bench : Division Bench

Advocate : K. Sarvabhauman, for the Appellant; E. Gopalaswami Ayyangar and G. Venkatarama Ayyar, for the Respondent

Final Decision : Dismissed

Judgement

S. Ramachandra Ayyar, C.J.—This is an appeal against the final decree in a partition suit instituted under the following circumstances. The deceased first Defendant, Dasappa and his son, Kuppuswami owned among other properties four shops in Coimbatore town. On 14th May 1944, Dasappa sold his undivided half share in the buildings to the Plaintiffs in the suit. Soon after the sale Dasappa who was carrying on business in the premises sold obtained a lease from his vendee of the undivided share conveyed to him. Subsequently the vendee filed a suit, Original Suit No. 43 of 1959, for partition and delivery of separate possession of his share in the properties. There was a preliminary decree in the suit. When the Plaintiffs applied for the passing of the final decree, Kuppuswami (second Defendant) (Dasappa having died) inter alia contended that inasmuch as he was in possession as a tenant of the premises under the Plaintiffs, he would be entitled to protection afforded by the Madras Buildings (Lease

and Rent Control) Act and that, therefore, no effective decree for delivery of possession could be passed in the case. The learned Subordinate

Judge dealt with the contention in the way it deserved; but at the same time he observed "that the second Defendant could resist pleading his rights

at the stage of delivery of possession. The second Defendant was not satisfied with this provision and he has come up in appeal. The Plaintiff has

filed a memo, of cross-objections stating that there could be no relationship of landlord and tenant between the parties.

2. We are afraid that the learned Subordinate Judge has done less than justice to the Plaintiffs. The lease, as we said, was of an undivided moiety

of the buildings. By reason of the sale deed executed by Dasappa in favour of the Plaintiffs, the vendor and the vendees became thereafter co-

tenants of the property. The rights of the co-tenants who hold the undivided property between themselves are now well-settled. Each has an

undoubted right to demand and obtain partition by metes and bounds of the joint property but till that is done it cannot be said that any of the

sharers has got an exclusive right to any part of the joint property. In theory each co-tenant is entitled to be in possession and to use every part of

the common property so long as he does not exclude his co-tenant. In the instant case the vendors wishing to have undisturbed possession of the

buildings entered into an arrangement by which compensation for such exclusive possession was agreed to be paid though describing it as rent. We

cannot, therefore, regard the arrangement between the parties as strictly conforming to a case of agreement for lease.

3. But assuming that there was one by way of lease as indeed it purports to be so, the question then is whether the lease was of the building within

the meaning of the Rent Control Act. The term building has been defined in Section 2(1) as any building, hut or part of a building or hut let or to be

let separately for residential or non-residential purposes.

4. In a case of this kind where one co-tenant allows another co-tenant to enjoy his undivided share it cannot be said that he has such exclusive right

of the property as to be capable of being let out. Much less can it be held that any definite part of such a building has been let. No co-tenant can

say that he is the owner of any part or designated part of the building. His interest will be to the extent of the share owned by him in the entirety of

the property. Therefore, if he under an arrangement purports to let out or enters into an arrangement for the enjoyment of the property by the other

that transaction can be regarded only as an arrangement with respect to the undivided share of the entire property and not with reference to any

building or part of the building.

5. We are, therefore, unable to regard the arrangement of the year 1944 as in any way entitling the second Defendant to claim any rights under the

Rent Control Act as there has been no lease of the building within the meaning of the Act. In this view the appeal will have to be dismissed and the

memorandum of cross-objections allowed. The Appellants will pay the costs of the Respondents in the appeal. In view of the fact that the

Appellants are said to be now carrying on business in the building we grant them three months" time to give vacant possession.