
(1996) 07 MAD CK 0096

In the Madras High Court

Case No : L.P.A. No. 180 of 1995, X.O. 127 of 1995 and C.M.P. No. 9475 of 1995

Hindustan Petroleum Corpn. Ltd.

APPELLANT

Vs

Uma Rani

RESPONDENT

Date of Decision : 17-07-1996

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3), 3, 7, 7(3)

Citation : (1996) 2 CTC 543 : (1996) 2 LW 568

Hon'ble Judges : K.A. Swami, C.J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : R. Santhanakrishnan, for the Appellant; S. Thangavel, for the Respondent

Judgement

K.A. Swami, C.J.—This Letters Patent Appeal under Clause 15 of the Letters Patent is preferred against the judgment dated 29.11.1994 passed by the learned single Judge in A.S.No.82 of 1983 and also C.M.P. Nos. 2850 and 4344 of 1994.

2. Learned single Judge allowing the C.M.Ps., has also allowed the appeal and remitted the case to the Trial Court for fresh disposal in the following terms:-

"In the result, C.M.P.Nos.2850 and 4344 of 1994 are allowed. The appeal is allowed setting aside the judgment and decree of the trial court and the matter is remitted to the trial Court for fresh disposal according to law, after the plaint is amended as prayed for in CMP No. 2850 of 1994. The plaintiff is directed to carry out the amendment in the trial Court. The trial Court shall give an opportunity to the defendant to file additional written statement in the light of the amendment made in the plaint and decide the suit afresh within 3 months from the date of receipt of this order after framing appropriate issue and giving an opportunity to both sides to let in further evidence in respect of their respective claims. In the circumstances, there is no order as to costs. Court-fees paid on the memorandum of appeal shall be refunded to the appellant."

3. The respondent in the L.P.A. who is the plaintiff in the suit O.S.No.1304 of 1979 on the file of the Subordinate Judge, Coimbatore, sought for the following reliefs :-

"(a) setting aside the document of lease dated 8.8.74 entered into between the plaintiffs mother L. Kamalam and Caltex India Ltd.

"(a) (i) declaring that the defendant is not entitled to ask for a renewal of the lease term for any period as contemplated u/s 7(3) of Control Act 17 of 1977 (amended as per order in I.A.No.559 of 1981 dated 16.7.91)

(b) directing the defendant to hand over vacant possession of the suit properties to the plaintiff;

(c) directing the defendant to pay plaintiff future mesne profits or damages for use and occupation at a rate to be determined by this Hon"ble Court from July, 1979 till delivery of possession;

(d) directing the defendant to pay the plaintiff the costs of this suit; and

(e) granting plaintiff such further or other reliefs as this Hon"ble Court may deem fit and proper in the circumstances of the case."

Various defences were put forth by the Hindustan Petroleum Corporation Limited - the defendant. The Trial Court raised the following issues

1. Whether the lease deed dated 8.8.1974 is not binding on the plaintiff as alleged in the plaint?

2. Whether the relief of setting aside the lease deed dated 8.8.1974 is barred by limitation?

3. Whether the plaintiff is entitled to the relief of setting aside the lease deed dated 8.8.1974 as prayed for in para 14a of the plaint?

4. Whether the defendant is entitled to have the lease renewed for a further period on the same terms u/s 7,3 of Central Act XVII of 1977 and is so for what period and whether such a statutory right without taking any steps by the defendant to register a lease deed can be put as a defence to the plaintiffs action for possession?

5. Whether the plaintiff is entitled to the relief of possession as prayed for in para 14b of the plaint?

6. Whether the plaintiff is entitled to future mesne profits from July, 1979 till delivery of possession and if so at what rate?

7. To what relief if any the plaintiff is entitled,

Additional Issues framed on 1.9.1981.

1. Whether the plaintiff is entitled to the relief of declaration as prayed for in

para -14a(i) of the plaint?

2. Whether the defendant had not complied with the requirements of Section 7 (3) of Central Act 17 of 1977 and whether the defendant had no vested right and option to have the lease renewed as alleged in the plaint?

Additional Issue framed, on 28.1.1982

1. Whether the defendant is entitled to the benefits of Tamil Nadu City Tenants Protection Act 3 of 1922?" Ultimately, in the light of the findings recorded in the several issues, the Trial Court dismissed the suit

4. Hence, the plaintiff preferred A.S.No.82 of 1983 before this Court. During the pendency of the appeal, C.M.P.Nos.2850 and 4344 of 1994 were filed seeking amendments to the plaint. Learned single Judge has allowed both the applications, as a result thereof, remitted the matter to the Trial Court as indicated already.

5. In the light of the contentions urged before us, the points that arise for consideration are as follows:-

(i). Whether the right to remain in possession of the demised property subsists with the defendant in the suit after 30th June, 1984 of the schedule property?

(ii). If point (i) is answered in the negative, whether the remand is justified?

(iii). If point (ii) is answered in the negative, what is the nature of the decree/order to be passed?

6. Point (i): Facts necessary to decide point (i) are no more in dispute. The defendant obtained lease of the suit property from the mother of the plaintiff on 1.7.1969. It was an open site. Lease was for a period of 5 years with a clause conferring on the defendant to seek renewal for a further period of 5 years. In exercise of that right, the defendant got the lease renewed for another period of 5 years from 1.7.1974 to 30th June, 1979. In the meanwhile, Central Act 17 of 1977 came into force, which gave the statutory right to the lessee to seek further renewal of 5 years. Accordingly, the defendant exercised that statutory option and got the lease renewed for a further period of 5 years, which expired on 30.6.1984. Meanwhile, the suit came to be filed on 5.10.1979 for recovery of possession and for the other reliefs as already pointed out. These facts are not disputed.

7. In addition to that, the other facts which are also not disputed by the parties, are that after the expiry of the lease period on 30th June, 1984, the defendant also tried to invoke the provisions of the City Tenants' Protection Act before the Competent Authority. That plea was also negatived. Specific applications filed seeking benefit under the City Tenants' Protection Act were dismissed. Those orders are not carried in appeal or revision and it is not disputed that the right, if any, of the defendant to invoke the City Tenants' Protection Act, has been closed. It is also not, disputed by the parties that the defendant is not entitled to

any benefit under the Tamil Nadu Buildings (Lease and Rent Control) Act. Thus, it is clear that the right of the defendant to remain in possession not being protected by any statute, came to an end on the expiry of the lease period, on 30th June, 1984. As such, it cannot remain in possession lawfully, nor it can resist the suit for recovery of possession filed by the owner of the suit property. No doubt, the suit had been filed before the expiry of the lease period, but, nevertheless, when during the pendency of the suit to eject the lessee and to recover possession from the lessee of the demised property the right of the lessee or remain in possession comes to an end by efflux of time, it is not necessary for the plaintiff to file another suit for recovery of possession and it would be open to the Court to mould the relief and grant a decree for possession in the same suit. The Court can take into account developments taking place subsequent to the filing of the suit and mould and relief.

8. This position is settled by the Supreme Court in *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, . The relevant portions of the judgment are as follows:-

"We feel the submissions devoid of substance. First about the jurisdiction and property vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and as a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy.

Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice - subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions the High Court, in revision, correctly took this view. The later recovery of another accommodation by the landlord, during the pendency of the case, has as the High Court twice pointed out, a material bearing on the right to evict, in view of the inhibition written into Section 10(3)(iii) itself. We are not disposed to disturb this approach in law or finding of fact.

The law we have set out is of ancient vintage. We will merely refer to AIR 1941 5

(Federal Court) which is a leading case on the point. Gwyer C.J., in the above case referred to the rule adopted by the Supreme Court of the United States in *Patterson v. State of Alabama*, 1934 (294) US 600 :

"We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct in the judgment under review but to make disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered."

and said that view of the Court's powers was reaffirmed once again in the then recent case of *Minnesota v. National Tea Co.* 1939 309 US 551. Sulaiman, J. in the same case AIR 1941 5 (Federal Court) relied on English cases and took the view that an appeal is by way of a re-hearing and the Court may make such order as the Judge of the first instance could have made if the case had been heard by him at the date on which the appeal was heard emphasis, ours. Varadachariar, J., dealt with the same point a little more comprehensively. We may content ourselves with excerpting on passage which brings out the point luminously, at p.103 of 1940 FCR : at p.13 of AIR:

"It is also on the theory of an appeal being in the nature of a re-hearing that the Courts in this country have in numerous cases recognized that in moulding the relief to be granted in a case on appeal, the Court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against."

The High Court, in this case, in the concluding stages slightly self-contradicted itself and observed: "the civil revision petition cannot be entertained" and proceeded further to state: "it will not be desirable that I should exercise my discretion in directing an amendment of the petition," In conclusion, the Court did interfere in revision by setting aside the order of remittal to the Rent Controller and dismissing the eviction petition, leaving the near decade-old litigation to be reopened in a fresh unending chapter of forensic fight. The learned Judge gave little comfort to the litigant who had come with a proved case of bona fide requirement to start his own business by his obscure observation: "If so advised the petitioner may seek to obtain such relief as may be open to him by filing a fresh petition under the appropriate provision of the Act, in view of the subsequent event of his having come into possession of a portion of the building." We think it unfair to drive parties to a new litigation of unknown duration but direct, in the special circumstances of the case, which was peculiar, that (a) the revision before the High Court shall stand dismissed; (b) the Rent Controller will take note of the subsequent development disabling the landlord from seeking eviction, on which there is already an adverse finding by the High Court; (c) the landlord be allowed to amend his petition if he has a case for eviction on any other legally permissible ground; and (d) the parties be given fair and full opportunity to file additional pleadings and lead evidence thereon. But we make it clear that the subsequent event that the petitioner had come by a

non-residential accommodation of his own in the same town having been found by the High Court, cannot be canvassed over again. That finding of legal disability cannot be reopened. We keep open for enquiry only grounds, if any, which may reasonably be permitted by amendment if they are of any relevance or use for eviction."

That being the position, there is no difficulty in coming to a conclusion that the defendant has no right to remain in possession. Therefore, the plaintiff is entitled to have a decree for possession.

9. Accordingly, point (i) is answered in the negative.

10. Point (ii):- In view of the fact that the defendant has no right to resist the suit for recovery of possession, as its right to remain in possession had come to an end by efflux of time on 30th June, 1984, we are of the view that the entire suit should not have been remanded as there was no difficulty whatsoever to pass a decree for possession. Of course, as far as the other prayers in the plaint relating to validity of the lease deed dated 8.8.1974 and determination of mesne profits or damages with effect from 8.8.1974, the suit could have been remanded. We have mentioned the date 8.8.1974 specifically, because during the course of the arguments before us, learned counsel for the appellant has given up the amendments sought for in the C.M.Ps. Therefore, we hold that the decree for possession ought to have been passed and the suit should have been remitted for determination of the validity of the lease dated 8.8.1974 and the mesne profits from 8.8.1974, keeping open all the contentions of the parties on the aforesaid issues. Point (ii) is answered accordingly.

11. Point (iii): In the light of findings recorded on points (i) and (ii), we allow the appeal and cross-objection and pass a decree in the following terms:-

The L.P.A. and X Objection are allowed. The judgment and decree passed by the learned single Judge in A.S.No.82 of 1983 are set aside. A.S.No.82 of 1983 is allowed the judgments and decrees of the courts below are notified in the following terms:-

- (a). The relief relating to possession of the, suit schedule property is decreed;
- (b). In respect of the other reliefs sought for in the suit relating to the validity of the lease deed dated 8.8.1974 and mesne profits/damages from 8.8.1974 onwards, the case is remitted to the trial Court.
- (c) The Trial Court is directed to decide the issues relating the validity of the lease deed dated 8.8.1974 and the mesne profits/damages arising therefrom till the delivery of possession, with costs throughout.

The C.M.P. is also disposed of.