

**(1964) 01 MAD CK 0016**  
**In the Madras High Court**  
**Case No : A.A.A.O. No. 135 of 1961**

K. Mohamed Sheriff

APPELLANT

Vs

P.S. Mohamed Thasim Sahib

RESPONDENT

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**Date of Decision :** 06-01-1964

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 9

**Citation :** AIR 1964 Mad 453 : (1964) ILR (Mad) 953 : (1964) 77 LW 172

**Hon'ble Judges :** Venkatadri, J

**Bench :** Single Bench

**Advocate :** A. Subramania Iyer, for the Appellant; T.R. Ramachandran and T. Martin, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Venkatadri, J.—This matter arises out of execution proceedings in O. S. No. 114 of 1959 on the file of the District Munsif of Nagarcoil.

The defendant is the appellant in this appeal. The respondent filed the above suit for recovery of possession of the suit property. As the appellant

remained absent, he was set ex parte, and a decree, as prayed by the respondent, was passed. Subsequently the appellant filed an application for

setting aside the ex parte decree and that application was dismissed. The decree-holder thereafter executed his decree and obtained delivery of

possession. Subsequently, the appellant, in E. A. No. 413 of 1961, applied for setting aside the ex parte order of delivery and for re-delivery of

the suit property to him on the ground that the learned District Munsif had no jurisdiction to pass a decree for eviction, as the only forum, according

to the then, prevailing statute, was the Rent Controller. The learned District Munsif agreed with this contention., allowed the petition and ordered

re-delivery of the suit property to the appellant. Against this order of the learned District Munsif, the respondent preferred an appeal, C. M. A.

No. 16 of 1961, to the District Judge of Kanyakumari at Nagarcoil, who allowed the appeal, and set aside the order of the District Munsif,

Nagarcoil, observing that the provisions of the Buildings (Lease and Rent Control) Act, will come into play only when there is a structure on the

property. It is against this order of the learned District Munsif that the appellant has filed this Civil Miscellaneous Second Appeal.

2. On behalf of the appellant it is seriously contended that when the respondent filed a suit for possession of the suit property, the only forum with

whom he" should have filed an application was the Rent Controller Nagarcoil. But, when the matter came up before the appellate Court, the

respondent rightly raised an objection that the provisions of the Buildings (Lease and Rent Control) Act would not be applicable, as the structure

on the property had fallen down and as the suit property was only a vacant site. I am inclined to agree with the learned District Judge that the

provisions of the Buildings (Lease and Rent Control) Act will come into play only when there is a structure on the property.

To support this proposition of law, reference may be made to *Ellis and Sons Amalgamated Properties Ltd. v. Sisman*, 1948 1 K B 653. The facts

in that case are that a house within the Rent Restriction Act was so extensively damaged by enemy action in 1941, that it was demolished by the

local authority. Subsequently the landlord, in its place, constructed a new house. The old tenant filed an application contending that he has got a

right to occupy the new house as he has not ceased to"" be a tenant. It is in that connection that Tucker L. J. observed-

..... the original house having ceased to exist, and the tenant not being entitled to claim that the protection of the Acts had throughout attached

to the plot of land, he has also failed in his contention that the building in the course of erection on these premises<sup>1</sup> was at the material date a

dwelling-house let as a separate dwelling. That being so, it seems to me that, however unfortunate it may be for him, he has no claim to occupy

these premises now or at any future time. If this is a matter which calls for remedy in view of the unfortunate position of tenants, whose houses have

been destroyed, the remedy must be provided by the Legislature. It is not for these courts, in an attempt to do what may appear to be justice to

tenants, to put a strained and unnatural interpretation upon the language of these Acts of Parliament.

This case has been referred and explained in *Morleys Ltd. v. Slater*, 1950 1 All ER 331. In this case the premises were damaged by enemy action

and became uninhabitable, but the tenant was able, and continued, to use them for the purpose of his business. The landlords gave the tenant a

notice in writing to quit the premises and claimed possession. It was held by the Court of Appeal that the premises were originally let as a dwelling-

house within the Rent Acts; they remained the same identifiable premises; the fact that owing to the damage the tenant was prevented from living in

the premises did not change the character of the letting. What they pointed out is that the premises are still identifiable and still habitable and the

tenant has got the right to live in the premises.

3. Megarry in his book on ""The Rent Acts"" 4th Edn. at page 83, says that the restriction of the Acts do not inhere in the land after the demolition of

the dwelling house, but remains only so long as it is there. All these principles have been explained in ""Principles of Rent Control"" by Andhyarujina

at page 19 thus :-

A statutory tenancy also ceases when the house ceases to exist either due to a change of identity or the destruction of the premises; but it is a

question of fact whether the identity is destroyed or not. But in the case of a contractual tenant even in spite of destruction of the house, the tenant

remains a contractual tenant of the site, and if a new house is constructed on the site, he becomes a tenant of the) new house. But if his tenancy is

determined after the destruction of the house, but before the new house becomes habitable, no statutory tenancy would arise, for the essence of

the statutory tenant's right is that he must be in possession at the date of the determination of his contractual tenancy.

4. Learned counsel also cited *Board of Commissioners for the Hindu Religious Endowments and Others Vs. Sreemathi Rukmini alias Kunhikavu*

alias Kuthiravattath Kongasseri Puthukulangara Amma Neethiyar and Another, . In that case the Bench consisting of Beasley C. J. and Cornish J.

had to consider whether the Madras Hindu Religious Endowments Act would be applicable, though there is no temple in existence. It is in that

connection that their Lordships observed-

In my view, that section does not assist the appellants because the proper construction of it seems to me to be that it is to enable the Board to

deal with religious endowments, the original purposes of which subsequent to the Act become impossible of realisation, {hat is to say, by the

temple ceasing to exist, or religious endowments which come into existence after the passing Of the Act and the purposes of which are never

realised.

The learned Judges observed that the Act is not at ail applicable because there was no existence of the temple. I feel that the conclusion arrived at

by the learned District Judge seems to be correct. This appeal is dismissed, but in the circumstances without costs.