

(1977) 08 MAD CK 0013

In the Madras High Court

Case No : C.R.P. No"s. 2102, 2123, 2125 and 2199 of 1976

K. Ramanujam Chettiar

APPELLANT

Vs

Arunachaleswarar Devastanam and Another

RESPONDENT

Date of Decision : 16-08-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Presidency Small Cause Courts Act, 1882 — Section 41

Citation : AIR 1978 Mad 395

Hon'ble Judges : Varadarajan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Varadarajan, J.—These civil revision petitions arise out of the judgments and decrees of the Second Judge, Court of Small Causes, Madras

passed on 25-8-1976 in Ejectment suits Nos. 285, 280, 284 and 286 of 1975.

2. The trial court ordered eviction of the petitioners in these civil revision petitions holding that their old tenancy had been terminated and no new

tenancy has come into existence thereafter, that there is no waiver of notice of the termination of tenancy by acceptance of any rent and that G. O.

No. M. S. 1998 Home Department, dated 12-8-1974, exempting properties belonging to temples from the provisions of the Tamil Nadu Buildings

(Lease and Rent Control) Act of 1960 applies to the respondent-devastanams.

3. The learned counsel for the petitioners canvassed before me only the question of the jurisdiction of the Small Cause Court, Madras, to entertain

the ejectment suits u/s 41 of the Presidency Small Cause Courts Act, 1882. It may be stated at this stage that no plea of want of jurisdiction of the

Small Cause Court to entertain the suits had been taken in the written pleas filed

by the petitioners in the ejectment suits and that the plea of want of jurisdiction of the lower Court was taken by the petitioners in the C. R. Ps. 2102, 2123 and 2125 of 1976 for the first time only in the memorandum of grounds of the civil revision petitions. The petitioner in C. R. P. No. 2199 of 1976 had not raised the plea of want of jurisdiction of the lower Court to entertain the suit even in the Memorandum of grounds of civil revision petition. But he has been allowed to raise that plea by an additional ground as per order in C. M. P. No. 4657 of 1977 by this court. The result is that the plea of want of jurisdiction of the lower Court to entertain the suits u/s 41 of the Act has been taken for the first time only before this court in these civil revision petitions. The suits are really applications for issue of summons to show cause why the persons concerned should not be compelled to deliver up the properties.

4. The learned counsel for the respondent-devastanam contended before me that the plea of want of jurisdiction not having been taken before the lower Court should not be allowed to be raised for the first time before this court in the revision petitions. But the objection does not appear, in my opinion, to be well founded. Pandrang Row J. has observed in *Kuppuswamy Chetty Vs. Ayyammai Ammal*, , that in the matter of pecuniary jurisdiction the waiver of a party is not sufficient to clothe the court with jurisdiction which it does not otherwise possess. A Bench of the Patna High Court has gone a step further in *National Coal Co. Ltd. Vs. L.P. Dave and Others*, . The facts of that case disclose that the petitioner before the learned Judges submitted to the jurisdiction of the Tribunal below It was therefore, urged on behalf of the opposite party that the opposite party cannot raise the question of want of jurisdiction. On the other hand, it was contended on behalf of the petitioner before the learned Judges that the consent of parties cannot give jurisdiction to a court or tribunal if it had none. The learned Judges have observed that the proposition was undoubtedly true, when there was inherent lack of jurisdiction in the court or Tribunal. They have further observed that where the want of jurisdiction had to depend upon proof of certain facts and those facts had not been raised and proved, a party cannot be permitted to raise a plea of want of jurisdiction so as to render its decision void and ineffective. A Bench of the Calcutta High Court has observed in *Rajalakshmee Dassee*

v. Katyayani Dassee, ILR(1911) Cal 639 thus-

It is an elementary principle of law that, if a court has no jurisdiction over the subject-matter, its judgments and orders are mere nullities, and may

not only be set aside at any time by the court in which they are rendered, but be declared void by every court in which they are presented. If a

court has no jurisdiction, its judgment is not merely voidable, but void, and it is wholly unimportant how precisely certain and technically correct its

proceedings and decisions may have been; if it has no power to hear and determine the cause, its authority is wholly usurped and its judgment and

orders are the exercise of arbitrary power under the forms, but without the sanction of the law. These principles apply, not only to original courts,

but also to courts of appeal. Jurisdiction over the subject-matter, whether in the court of first instance or in the Appellate Court, is given only by

law, and cannot be conferred by consent of parties. Accordingly where an appellate court does not possess jurisdiction to review the action of the

court below, jurisdiction cannot be conferred upon it by consent of the parties; and any waiver on their part cannot make up for the lack or defect

of jurisdiction These cases lay down the doctrine that, where no jurisdiction exists no action on the part of the plaintiff, no inaction on the part

of the defendant, can invest the court with any of the elements of power or of vitality, so as to convert the proceeding before it into a proper

judicial process. If a court assumes to act where it has no jurisdiction, its adjudications are all utterly void and have no effect either as an estoppel

or otherwise".

Shah J. of the Bombay High Court has observed in the The Digamber Parshwanath Jain Mandir Vs. Valubai, , that even on general principles the

point of jurisdiction, which goes to the root of the matter, can well be taken even in the highest court of the land because it is the duty of the higher

courts to see that none of the subordinate courts exercises jurisdiction which the Legislature has not thought fit to confer upon it.

5. The learned counsel for the petitioners submits that it is unnecessary to adduce any evidence for considering the question of want of jurisdiction

of the trial court to entertain the suits u/s 41 of the Presidency Small Cause Courts Act, and that a perusal of the claims in the ejectment suits alone

would establish that the trial court had no jurisdiction. In this connection reliance

was placed on the decision of Kulwant Sahay, J. in Ganpat Pujari

v. Kanaiyalal Marwari AIR 1933 Pat 246, where the learned Judge has observed that in order to determine the jurisdiction of the court, the plaint

and not the written statement should be looked into. In these circumstances, I agree with the counsel for the petitioners that the question of the

jurisdiction of the court goes to the root of the matter and that it is open to the petitioners to raise that question for the first time before this court in

these civil revision petitions.

6. The extent of property involved in C. R. P. 2123 of 1976. (Ejectment suit No. 280 of 1976) is 250 sq. ft. of land which had been admittedly let

for a rent of Rs. 15 per mensem which works out to Rs. 180 per annum. The property involved in C. R. P. 2125 of 1976 (Ejectment suit No. 284

of 1976) is 600 sq. ft. of land which had been admittedly let on a rent of Rs. 30 per mensem which works out to Rs. 360 per annum. The pro

perty involved in C. R. P. No. 2102 of 1976 (Ejectment suit No. 285 of 1975) is about 4370 sq. ft. of land which has been admittedly let for a

rent of Rs. 100 per mensem which works out to Rs. 1200 per annum. The property involved in C. R. P. No. 2199 of 1976 (Ejectment suit No.

286 of 1975) is about 800 sq. ft. of land which had been admittedly let out on a rent of Rs. 70 per mensem which works out to Rs. 840 per

annum.

7. The respondent has alleged in the plaints in all the four ejectment suits that the rent in the locality is never less than Re. 1 per square foot. On the

basis of this allegation in the plaints it was contended by the learned counsel for the petitioners that the rack-rent of the aforesaid properties would

be Rs. 3000, Rs. 7200, Rs. 52440 and Rs. 9600 per annum respectively. Section 41 of the Presidency Small Cause Courts Act under which the

Ejectment suits have been filed, reads thus-

When any person has had possession of any Immovable property situate within the local limits of the Small Cause Court's jurisdiction and of

which the annual value at a rack-rent does not exceed two thousand rupees, as the tenant, or by permission of another person, or of some person

through whom such other person claims, and such tenancy or permission has determined or been withdrawn, and such tenant or occupier or any

person holding under or by assignment from him (hereinafter called the

occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person, such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

The learned counsel for the petitioners, therefore, contended that on the respondent's own showing in the plaints, the rack-rent for the properties exceeds Rs. 2000 per annum and that the lower Court, therefore, had no jurisdiction to entertain the suits u/s 41 of the Act.

8. In Stroud's Judicial Dictionary, 3rd Edn. "Back-rent" is defined thus :

"Rack-rent" under Schedule I, Pt. II (first Scale) of the General Order under Solicitors Remuneration Act, 1881, means a rent which represents the full annual value of the holding" .

Below that definition there is the passage reading thus-

When deciding whether a person receives a rack-rent u/s 9(4) of the Housing Act 1936, the effect of the Rent Restrictions Acts must be considered".

In "Words and Phrases Legally Defined", 2nd Edn. by John B. Saunders it is stated-

A rack-rent in legal language means a rent that represents the full annual value of the holding. The fact that in addition to the rent reserved a substantial premium has been paid by the tenant is clear evidence that the rent is not a rack-rent." Rack-rent has been defined in 2

Blackstone's Commentaries page 43, as "only a rent of the full value of the tenement or near it;" and in a judgment of Holmes L. J. in Ex parte

Connolly to Sheridan and Russel is defined thus -- "a rack-rent in legal language means a rent that represents the full annual value of the holding."

In The Law Lexicon of British India" by P. Ramanathe Aiyar it is stated-

Rack-rent is only a rent of the full value of the tenement, or near it. It is rent of, or approaching to, the full annual value of the property out of which it issues. Rent raised to the uttermost; the full annual value of the property. A term generally used to denote excessive rent".

In "The Shorter Oxford English Dictionary", 3rd Edn. rack-rent is stated to be-

A very high, excessive or extortionate rent; a rent equal or nearly equal to the full annual value of the land. Hence rack-rent (v. trans) to subject a

person to the payment of rack-rent. Rack-renter, one who pays or one who exacts rack-rent"".

9. The meaning of "annual value" or rack-rent came up for consideration before Jain J. of the Bombay High Court in Lakhamshi Hiralal and Co.

Vs. Damji Khimji and Co., , where the learned Judge has extracted the following observations of Lord Justice Romer in Rawlance v. Croydon

Corporation, (1952) 2 QB 803, namely-

In my opinion, the Legislature, in Section 9 (of the Housing Act, 1936) was applying itself to a factual and not to a hypothetical position, If the

standard rent is the greatest rent that is obtainable in respect of any particular premises then it is the full rent of these premises, the rack-rent,

notwithstanding that (and indeed because) the owner is restricted from receiving the higher rent which the premises, if uncontrolled, could

command"", and has proceeded to observe thus-

This will indicate that the annual value at rack-rent is to be based on "rent" even if the rent is controlled by legislature and not on licence fees. The

rack-rent has to be "rent" first before it becomes rack-rent. It can only mean gross rent and not net rent. In this particular case, the gross rent

payable in respect of the premises by the petitioners as tenants to their own landlord who is the owner of the premises, is Rs. 2256 per annum, and

this is the annual value of the premises at a rack-rent. The amount of Rs. 3120 per annum paid by the respondents to the petitioners as licence fees

is neither rent nor rack-rent and cannot be the annual value at a rack-rent. In my opinion, the Bombay Small Cause Court had jurisdiction to

entertain, try and determine the petitioner's application u/s 41 of the Presidency Small Cause Courts Act, in respect of the premises and it has

failed to exercise jurisdiction vested in it.

This decision makes it clear that rack-rent has to be rent first before it will become rack-rent and that it could only mean gross rent and not net

rent. The annual value at the rack-rent in Section 41 of the Presidency Small Cause Courts Act as applicable to Bombay is Rs. 3000, for the

words "three thousand rupees"" have been substituted in that section for the words "two thousand rupees" by Bombay Act XVI of 1958. The

rack-rent in these cases cannot be said to be" Rs. 3000, Rs. 7200, Rs. 52440 and Rs. 9600 respectively merely because the respondents-

devastanams have alleged in the plaints that the rent in the locality is never less than Re. 1 per sq. ft. Rent is a term of contract of the lease. There is

no agreement between the parties to pay rent at Re. 1 per sq. ft. The petitioners cannot ask the court to ignore the actual rent paid by them,

namely Hs. 15, Rs. 30, Rs. 100 and Rs. 70 respectively per mensem and contend that the rack-rent exceeds Rs. 2000 per annum on the basis

merely of the aforesaid allegation in the plaints, for, the gross rent on the basis of the rent which was being actually paid by the petitioners before

the termination of their tenancies, amounted to only Rs. 180, Rs. 360, Rs. 1200 and Rs. 840 respectively per annum. Therefore, I am of the

opinion that the court below had jurisdiction to entertain the ejectment suits.

10. The civil revision petitions are therefore dismissed with costs. Advocate's fee one set in C. R. P. Nos. 2102, 2123 of 1976.