
(1965) 10 MAD CK 0031

In the Madras High Court

Case No : C. R. P. No's. 2277 and 2278 of 1962

K.A. Kumaraswami Mudliyr

APPELLANT

Vs

S. Shanmugha Chettiar and another

RESPONDENT

Date of Decision : 29-10-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1965) 10 MAD CK 0031

Hon'ble Judges : Natesan, J

Bench : Single Bench

Advocate : N. Arunachalam and M. Gunasekharan, for the Appellant; A. Seshachari, for the Respondent

Final Decision : Allowed

Judgement

Natesan, J.—These revisions under S. 115 of the C.P. Code arise out of proceedings under the Madras Buildings (Lease and Rent Control) Act, 1960, initiated by the landlord for possession of non-residential building. As the suit premises had been let out to two tenants, the respondent in C. R. P. No. 2277 of 1962 for carrying on yarn business, and the respondent in C. R. P. No. 2278 of 1962 for running a hotel, the landlord had filed two independent petitions. The petitioner claimed possession for purposes of his own business. He also required possession of the premises for purposes of remodelling and reconstruction to suit his business convenience. The Rent Controller rejected the applications and this was confirmed on appeal and in revision therefrom under the provisions of the Act. According to the petitioner's Counsel, a perusal of the facts established and the findings show that the petitioner would be entitled to an order for eviction. But then the question is whether he could get this relief in revision under S. 115, C. P. C. The learned Counsel appearing for the respondents submits that no jurisdictional issue is involved in the matter. It is contended that the revisional power is confined to errors of jurisdiction only, illegal assumption of jurisdiction, failure to exercise jurisdiction and illegality or irregularity in the exercise of

jurisdiction. But learned Counsel for the petitioners submits that on the facts and findings, this is a clear case of refusal or failure to exercise jurisdiction and the matter came clearly within the scope of S. 115 C. P. C. Now to examine the facts and findings in the case :

2. The premises in question in the occupation of the respondents is admittedly a non-residential building. It was purchased by the petitioner about four years prior to his filing the petition. According to the petitioner, he purchased it for running a javuli shop. He has been doing javuli business in the house where he was residing which belonged to his wife. The premises in question was in a street where javuli shops are situate. It may be stated that for remodelling, he had also got a sanctioned plan. The plan shows that except the main walls the entire roofing would get dismantled and a terrace put up. It has been elicited from him in cross-examination that he purchases sarees and sells them at Madras and Andhra. The tenant who is running the hotel in the premises admits in his cross-examination that the building was an old one, that in the area all are javuli shops and that the petitioner himself had no shop. It is admitted that he sells silk sarees outside. He did not know where the petitioner stocked his goods. The tenant who runs yarn business admits that the petitioner had javuli and he sells them in other parts. According to him, the petitioner purchases stocks and sells them at once elsewhere and that he had no shop. On this evidence, it emerges clearly that the petitioner has been carrying on javuli business and that he has no non-residential building of his own other than the suit premises in the occupation of the respondents. He asked for possession of the premises for the purpose of the business which he is carrying on. S. 10 (3) (a) (iii) of the Madras Buildings (Lease and Rent Control) Act 1960 enables the landlord to apply for being put in possession of a non-residential building if the landlord is not occupying for the purpose of a business which he is carrying on a non-residential building in a town, which is his own. The Rent Controller after remarking that the petitioner had no permanent place of business at Conjeevaram and that he purchased javuli and took them to Andhra and Mysore and sold them there, concluded against the petitioner on this part of the case as follows:

The Act contemplates that a non-residential premises can be claimed by the landlord only if he carries on a business in a rented premises from which he is sought to be evicted. The evidence discloses clearly that the petitioner has no business at Kancheepuram for which he requires the use of this premises

3. The Appellate authority observes on this part of the case:

It is clear that the appellant is living in his wife's house and is doing a business of purchasing javuli at Kancheepuram and selling it in Andhra and Mysore States. He has merely to stock the javuli at Kancheepuram. He is not having local sales. In the circumstances, a big premises like the one occupied by the respondents would not be necessary for the appellant. It is nowhere stated that he is going to have local sales and therefore he requires this premises.

4. In the last observation, the appellate Judge is clearly in error as the petitioner has stated in his evidence that he wanted to run a javuli shop. Mysore in the judgement is a mistake for Madras for that is what the witness says. That he is carrying on a javuli business there is no dispute. The appellate authority is of the view that as he has merely to stock the goods of his business at Kancheepuram, he need not have the premises in question. The appellate authority overlooks that carrying on of a business takes in many acts and anyone of the acts and functions in the series in my view would amount to carrying on of a business for the purposes of the Act. The authorities have clearly erred in their view that he must have local sales at Kancheepuram to entitle him to relief. Even assuming that the expansion of the business to local sales is not contemplated in this case, the stocking of the javuli purchased for sales outside would itself be carrying on of the business in the context of the provisions of the Act and some accommodation would be required. Stocking is certainly a part of and a vital part of the trade he is carrying on. All that is required by the Act is that the landlord should not be occupying " for purposes of a business " which he is carrying on a non-residential building. The appellate authority finds that he is doing the business of purchasing at Kancheepuram and selling outside. Stocking and having a show room would certainly be purposes of the business. The view of the appellate authority that the petitioner may not require the big premises in question apart from overlooking that the space in fact is not extensive, ignores that it is not for the authorities under the Act to set up standards of accommodation required for business purposes though it may have relevancy when considering the question of bona fides. The mere fact that he has been able to manage all the time in his residential premises is not a matter for consideration when what is sought is a non-residential building. In *Kota Ananda Krishna Chetti v. M. K. and Co.* CMP 946 of 1949=1949 1 M.L.J.(SN) 72, a Division Bench of this court observed with reference to the corresponding provisions of the Madras Act XV of 1946:

The fact that a landlord is in occupation of a residential building in which he is carrying on his business is not sufficient to prevent him from obtaining possession of a non-residential building of his own for carrying on his own business under S. 7 (3) (a) (ii) of Madras Act XV of 1946. The essential conditions laid down in that section before he can be denied his right to get back such possession is that he was occupying for the purpose of a business which he is carrying on a non-residential building which is his own or to the possession of which he is entitled.

5. It is nobody's contention that the petitioner has any other non-residential building of his own, leave alone a residential building. Such being the case, I fail to see under what provision of law he could be precluded from obtaining possession of the non-residential building. The revisional authority under the Act, the District Judge, whose jurisdiction entitles him to go also into the question of propriety of the order of the Tribunals below while confirming the dismissal of the application observes:

The petitioner is admittedly a wholesale dealer who sells Kancheepuram sarees in Andhra and Mysore. Admittedly he has been able to manage his business apparently without any difficulty all these years. It has not been made out that a show room is an indispensable necessity for the petitioner.

6. The remarks I made above with reference to a similar observation of the appellate authority apply equally to these observations. The entire approach of the learned District Judge is erroneous. It is not the law that if the landlord had been able to carry on his business in a residential building which he was occupying, his petition for recovery of a non-residential building could not be maintained nor does the Act in question restrain a businessman from expanding his business. The petitioner is a javuli merchant. Usually he purchases javulis, stocks them and goes out for sale of the same outside. But there is nothing to prevent him from entertaining customers at the place where he stocks his goods nor is it stated that there is some embargo against his doing javuli business locally condemning him for ever to be an interstate peripatetic hawker. In fact, the petitioner's own case is that he does javuli business in his own house and stocks it. There can be no question of absence of bona fides in the claim of the petitioner. R. W. 1 distinctly admits that the petitioner did not want enhanced rent. The learned District Judge in revision has observed that in this case the bona fides of the petitioner was beside the point and the only question to be considered was whether the petitioner required his own building for the purposes of his occupation.

7. I shall now take up for consideration the question whether a revision could be entertained in the circumstances, as there can be no doubt that on the facts as found by the authorities below, the petitioner would be entitled to an order for eviction under Madras Act XVIII of 1960. In *Joychand v. Kamalaksha* AIR 1943 P. C. 239, in a mortgage suit on an application under the Bengal Money Lenders Act for relief under Ss. 30 and 36 of the Act, the Subordinate Court held that the loan in question was a commercial loan and therefore did not come within the terms of the Act. Dismissing the application in that view, the Court proceeded to consider whether the suit in which the application was made was a suit to which the Act applied and held that it was such a suit. On interference by the High Court in revision under S. 115 C. P. C. holding that the loan was not a commercial loan, when the question of the jurisdiction of the High Court to so interfere was raised, Sir John Beaumont observed at page 242:

.....but the learned Subordinate Judge, having held that this was a commercial loan, was bound to go on to consider what effect that decision had upon the respondents' application, and since the Act in terms does not apply to commercial loans the learned Judge was bound, upon his finding, to dismiss the application without determining whether or not the respondents brought themselves within Ss. 30 and 36 of the Act as they claimed to do. In so doing, on the assumption that his decision that the loan was a commercial loan was erroneous, he refused to exercise a jurisdiction vested in him by law, and it was

open to the High Court to act in revision under Sub-S. (b) of S. 115.

8. Thereafter comes a passage which has been referred to by the Supreme Court in more than one case. Sir John Beaumont observed :

There has been a very large number of decisions of Indian High Courts on S. 115 to many of which their Lordships have referred. Some of such decisions prompt the observations that High Courts have not always appreciated that although error in a decision of a Subordinate Court does not by itself involve that the Subordinate Court has acted illegally or with material irregularity so as to justify interference in revision under Sub-S. (c) nevertheless if the erroneous decision results in the Subordinate Courts, exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises under Sub-S. (a) or Sub-S. (b) and Sub-S. (c) can be ignored.

9. It seems to me that if a point of law arising in the case is materially related to a question of jurisdiction and there is error in the law, then S. 115 could be invoked.

10. In D.S. Chellammal Anni Vs. Nasanan Samban, a case arising under the Madras Cultivating Tenants Protection Act, the Supreme Court had to consider the jurisdiction of the High Court to interfere under S. 115 C. P. C., when the Revenue Divisional Officer failed to exercise his discretion and grant time to the tenant to pay the arrears having regard to the relative circumstances of the landlord and the cultivating tenant under S. 3 (4) (b) of the said Act. The Revenue Divisional Officer in that case took the view that he should not exercise the discretion in favour of the tenant because he had not deposited the amount under S. 3 of the Act in Court. This view the Supreme Court held was patently incorrect. When it was urged before the Supreme Court that even if the Revenue Divisional Officer had misunderstood S. 3 (4) (b), the High Court should not interfere with the discretion by the Revenue Divisional Officer under S. 115 C. P. C. Wanchoo, J speaking for the Court observed :

Secondly by taking the view that he cannot and should not exercise his discretion where a tenant has failed to take action under S. 3 (3) of the Protection Act, the Revenue Divisional Officer had failed to exercise jurisdiction vested in him under the law and the High Court would be justified in interfering with its order under S. 115 C. P. Code.

11. In my view the principle of the above decision applies to this case. On the facts established the landlord was entitled to an order for eviction. The claim was directly within the provisions of S. 10 (3) (a) (iii) of Madras Act XVIII of 1960. Rejecting the application in such circumstances would be a clear case of refusal to exercise jurisdiction. While placing an embargo on unreasonable eviction of tenants, the Rent Controller was empowered in certain circumstances provided in the Act to put the landlord in possession. Once these circumstances are established the Rent Controller was bound in the exercise of his jurisdiction to order eviction and put the tenant in possession of the premises. This is not a

case where the existence of the circumstances have been found against as a fact, and as already, pointed out, no question of absence bona fides arose on the facts for consideration. In the result, the revisions have to succeed and the petitions for eviction allowed. Taking into consideration the fact that the respondents have been carrying on their business for several years, this is a fit and proper case where they should be granted some reasonable time. The respondents are given six months" time from this date to put the petitioner in vacant possession of the premises. The parties will bear their respective costs throughout. The revisions are allowed accordingly.