

(1996) 02 MAD CK 0014
In the Madras High Court
Case No : C.R.P. No. 3122 of 1995

K.L. Ramesh

APPELLANT

Vs

K.G. Nagaraja Gupta

RESPONDENT

Date of Decision : 26-02-1996

Acts Referred:

Hindu Succession Act, 1956 — Section 2(6)(A)

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 2(6)(A)

Citation : (1996) 2 CTC 220 : (1996) 2 LW 228

Hon'ble Judges : S.M. Ali Mohamed, J

Bench : Single Bench

Advocate : V. Krisnan, for the Appellant; M.V. Krishnan, for the Respondent

Judgement

S.M. Ali Mohamed, J.—This revision petition is directed against the order of the learned Subordinate Judge, Krishnagiri (appellate

authority), dated 13.10.1995 made in R.C.A.No.2 of 1991 confirming the order of the learned District Munsif, Hosur (Rent Controller), dated

19.7.1991 made in H.R.C.O.P.No.5 of 1988.

2. The petitioner herein is the tenant. The respondent- landlord filed H.R. CO.P.No.5 of 1988 on the file of the learned District Munsif (Rent

Controller) for eviction of the tenant, u/s 14(l)(b) for demolition and construction of the building and u/s 10(3)(a)(i) for requirement of the building

for the landlord's own occupation and for the occupation of any other member of his family, under the Tamil Nadu Buildings (Lease and Rent

Control) Act, 1960. The Rent Controller negated the contention of the landlord with regard to demolition and construction of the building, u/s

14(l)(b), but, however held that the landlord was entitled for a relief u/s 10(3)(a) (i) of the Tamil Nadu Buildings. (Lease and Rent Control) Act,

1960. Aggrieved by the name, the tenant preferred an appeal in R.C.A.No.2 of 1991 before the Subordinate Judge of Krishnagiri and the same

was dismissed. Aggrieved by the same, the petitioner has preferred this revision petition.

3. Learned counsel for the petitioner contended that there is an infirmity in the impugned order. Learned counsel for the petitioner referred to the

definition of the words, "member of his family" given u/s 2(6-A) of the Act which reads as follows:-

"member of his family" in relation to a landlord means his spouse, son, daughter, grand-child or dependent parent;

Learned counsel for the petitioner contends that as the respondent/landlord filed as application, u/s 10(3)(a)(i) for his own occupation and for the

occupation of one of the members of the family, viz., for his sister, in the definition of "members of the family", there is no mention about the sister.

Section 2(6-A) defines that the member of his family in relation to a landlord means his spouse, son, daughter, grand-child or dependant parent.

The learned counsel for the petitioner, therefore contends that there is an infirmity in the impugned order.

4. Learned counsel for the respondent/landlord has submitted that the term, "landlord" given in Section 2(6) of the Act includes the person who is

receiving the rent on his behalf or on behalf of another and submitted that the property in question is a joint family property and the respondent was

receiving rent on behalf of the joint family. The learned counsel further submitted that in a Hindu joint family, the daughter is also a member of the

family and even though the respondent/landlord refers to sister in his petition, it has to be construed as a daughter, within the meaning of Section

2(6-A) of the Rent Control Act. In this connection, the learned counsel for the respondent/landlord cited a ruling of a learned Single Judge of this

Court in the case Kanyalal Chandammal v. T. Raghavalu Naidu, 96 L.W 686, wherein Ratnam, J., interpreting Section 2(6-A) of the Act has

observed as follows:-

Though the word, "daughter" is a familiar one it connotes a female in relation to her parent and such relationship resulting from her birth cannot be,

in any manner, negated even by marriage. Marriage would, no doubt, result in the daughter living with her husband, in some cases away from her

parents or in some cases even along with her parents. But even so, a daughter does not cease to be the daughter, of a parent merely because she is married and, as stated earlier, the definition in Section 2(6-A) of the Act does not exclude a married daughter. In its absence, the word, "daughter" occurring in Section 2(6-A) of the Act has got to be given the widest amplitude to include unmarried daughter, married daughter and even a widowed daughter. Since dependency is not one of the criteria, u/s 2(6-A) of the Act, in so far as a daughter is concerned, that would again indicate that irrespective of the status of such a daughter, she would nevertheless be a daughter, within the meaning of the expression, "member of the family". It is not an uncommon feature that a married daughter, along with her husband and children, lives with her father in a premises which is not the father's own. It may be that the father is old and he needs to be looked after by the married daughter. In such cases, the dependency is of the parent on the daughter and if the father requires a premises of his own for living with his married daughter and other members of her family so that he can be either looked after or better taken care of, there is nothing in the provisions of the Act, which compels that the landlord/parent cannot recover possession of a building in the occupation of a tenant. Indeed, it might even be a case which falls u/s 10(3)(a)(i) of the Act as the requirement of the landlord himself. The aforesaid considerations, in my view, would certainly enable a landlord/parent to recover possession of a house in the occupation of a tenant on the ground that he requires the premises bonafide for the occupation of his daughter who is a member of the family, u/s 2(6-A) of the Act.

The learned counsel for the respondent contended that the term, "daughter" given in Section 2(6-A) of the Act should be construed widely and in the context of a Hindu joint family, the sister of the petitioner squarely comes under the wider definition of daughter given in Section 2(6-A) of the Act. In this connection, the learned counsel referred to the finding of the learned Rent Controller, wherein the Rent Controller held that the tenant has admitted that the property is a joint family property.

5. I have considered the contentions of the learned counsel for the petitioner and the respondent. It is clear from the facts of the instant case that the petitioner is not the absolute owner of the property and he has filed the

application on behalf of the joint family as a landlord. The definition of the term, "landlord" contained in Section 2(6) reads as follows:-

"landlord" includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another

or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be

entitled to receive the rent if the building were let to a tenant.

It is clear that the definition of the term, "landlord" given u/s 2(6) of the Act includes a person who is receiving or is entitled to receive the rent of a

building, whether on his own account or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian etc. In

this case, the petitioner has filed the application with regard to property representing the Hindu Joint Family and in the context of the case,

"daughter" is also member of the Hindu joint family. After the enactment of Hindu Succession Act, 1956, a daughter has a share in the

coparcenary property of her father after his death under proviso and Explanation-1 of Section 6 of the Hindu Succession Act, 1956 which

introduced the concept of a notional partition immediately before the death of the father and carving out a share in the coparcenary property among

the Class-I heirs of the schedule to the Act which includes a daughter, As per Tamil Nadu Amendment Act (Act 1 of 1990) which inserted Section

29-A in the Hindu Succession Act, 1956, notwithstanding anything contained in Section 6 of the Hindu Succession Act, 1956 in a Joint hindu

family governed by Mitakkshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a

son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by

survivorship and shall be subject to the same liabilities and disabilities in respect thereto as the son, with effect from 25th March, 1989.

6. I am of the view that the definition of the term, "daughter" given in Section 2(6-A) has to be construed widely to include a female member of a

Hindu joint family who in relation to the petitioner is a sister and as such in the context of a Hindu Joint Family, the sister of the petitioner squarely

comes under the wider definition of "member of his family" in relation to a landlord, I am in agreement with the view expressed by Ratnam,J., in

Kanyalal Chandammal v. T. Raghavalu Naidu 96 L.W 686 that the definition, "member of his family" contained in Section 2(6-A) of the Act should be widely construed.

7. The sister who was examined as R.W.2 before the Rent Controller categorically said that she has no place of residence in Hosur and it was required for her own occupation. In view of the above, there are no merits in the civil revision petition and the same is dismissed. No order as to costs.

8. The learned counsel for the petitioner requests six months" time for vacating the same and the learned counsel for the respondent has no objection for the same. Accordingly, the petitioner is granted six months" time from today to vacate the premises. The petitioner shall file an affidavit of undertaking before this Court, within two weeks from the date of receipt of copy of the order to the effect that he will vacate the premises, within six months from today.