
(1970) 11 MAD CK 0015

In the Madras High Court

Case No : Second Appeal No. 14 of 1967

Lodd Balamukundas

APPELLANT

Vs

K. Kothandapani and Others

RESPONDENT

Date of Decision : 16-11-1970

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(1), 26

Citation : AIR 1971 Mad 422 : (1971) 84 LW 172

Hon'ble Judges : Ismail, J

Bench : Single Bench

Judgement

1. The first defendant in O.S. No. 3295 of 1962 on the file of the VIII Assistant Judge, City Civil Court, Madras, is the appellant before this court.

That suit was instituted by the first respondent herein under the following circumstances.

The suit property belonged to one Lodd Mohanakrishna and the first respondent herein took the same on lease from him. In a partition entered

into in the family the suit property was allotted to the appellant herein and after such allotment, the first respondent was paying rent to the appellant,

herein. One of the clauses in the lease deed executed by the first respondent in favour of Lodd Mohanakrishna provided that if there had been

default on the part of the tenant to pay the rent, the landlord was entitled to determine the tenancy and re-enter on the demised premises. Alleging

that the first respondent herein had defaulted in the payment of rent, on 2-11-1962, the appellant issued notice terminating the tenancy and

proposing to exercise his rights to re-enter upon the property in terms of the lease deed. Thereupon, the appellant appears to have directly entered

into tenancy arrangement with the sub-tenants who were let into possession by

the first respondent herein. It was under these circumstances that the first respondent instituted the suit praying for an injunction restraining the appellant herein, his agents, employees or workmen from taking possession of the suit property or in any other manner interfering with the possession of the plaintiff (the first respondent herein) to the suit property except by due process of law. The cause of action and the ground for the relief asked for, as stated in the plaint, was that what was originally leased out was only a vacant piece of land and the first respondent herein had acquired indefeasible interest in the suit property as provided for in the Madras City Tenants Protection Act and, in any event, the first respondent contended that the appellant had no manner of right to dispossess the plaintiff, the first respondent, or to disturb the possession of the first respondent without resort to court and by due process of law.

2. The suit was resisted by the appellant herein on several grounds, one of them being that what was leased out to the first respondent was not a vacant site and all the superstructures standing on the land belonged to the appellant herein and the first respondent himself was not in possession of any part of the property and the entire demised premises had been sub-let by the first respondent to the various sub-tenants from whom the appellant had obtained independent tenancy agreements.

3. The learned VIII Assistant Judge, City Civil Court, Madras by judgment and decree dated 25th September, 1965, dismissed the suit. As against this judgment and decree, the first respondent herein preferred an appeal to the learned Principal Judge, City Civil Court Madras, who on 29th November, 1966, allowed the appeal. Hence, the present second appeal by the first defendant in the suit.

4. The learned Principal Judge, City Civil Court, agreed with the conclusion of the learned VIII Assistant Judge, that what was leased out was not a vacant site alone but was the site with the superstructures thereon. He also agreed with the other conclusion of the learned VIII Assistant Judge that the entire property had been let out to the sub-tenants and the first respondent himself was not in occupation of any portion of the property and he was carrying on his painting business in another place on the same road. Therefore, he came to the conclusion just as the learned VIII Assistant Judge that the first respondent herein was not entitled to any

protection under the Madras City Tenants Protection Act. However, the learned Principal Judge was of the view that the first respondent herein would be entitled to the protection under the Madras Buildings (Lease and Rent Control) Act, 1960 and, therefore, without having recourse to the provisions contained therein for evicting the first respondent herein, the appellant had no right to take tenancy agreements from the various sub-tenants of the first respondent and that, the first, respondent was entitled to an injunction in this behalf and consequently decreed the suit. It is the correctness of this conclusion of the learned Principal Judge that is contested by the learned counsel for the appellant on three independent and different grounds.

5. The first contention is that the first respondent herein having come to the court with the specific and positive case of protection under the Madras City Tenants Protection Act on the basis of the subject matter of the lease being only a vacant site, once it was found by the courts below that the subject matter of the lease was not the vacant site but the superstructure itself, the suit must have been straightway dismissed and the learned Principal Judge was not entitled to reconstruct a new case on behalf of the first respondent not put forward by him and grant him relief on that basis. The second contention is that in any event under the provisions of the Madras Buildings (Lease and Rent Control) Act, the first respondent herein would not be entitled to object to the action which the appellant had taken because what is prohibited u/s 10(1) of Madras Act XVIII of 1960 is eviction from the property and what the appellant wanted was not any such eviction of either the first respondent or the sub-tenants from the premises but merely a right to collect the rent from the sub-tenants by entering into independent agreements with them. The third contention is that on the issue of notice terminating the tenancy and on entering into independent lease agreements with the sub-tenants, there had been a disruption of the entire holding as far as the first respondent is concerned and, therefore, the first respondent would not be entitled to any protection under the provisions of Madras Act XVIII of 1960.

6. I may straightway point out that the appellant herein will be entitled to succeed on any one of those grounds and since I am accepting the contention of the learned counsel for the appellant on the first two grounds it is

unnecessary to go into the third of the grounds.

7. As far as the first ground is concerned, I have already referred to the fact that in the plaint, the first respondent had expressly and specifically

stated that what was leased out to him was only a vacant land and, therefore, he had acquired an indefeasible interest under the provisions of the

Madras City Tenants Protection Act and consequently the appellant herein had no right to interfere with that enjoyment by entering into

independent lease agreements with the various sub-tenants of his. Both the courts have come to the conclusion that what was leased out was not

the vacant site only but the superstructures standing thereon and, therefore, the question of the first respondent claiming any protection under the

Madras City Tenants Protection Act did not arise. On this finding of the courts below, the suit should have been dismissed and there was

absolutely no scope for going into any other consideration. In view of this, I am definitely of the opinion that the learned Principal Judge erred in

going into the question whether the first respondent herein would be entitled to any protection under the Madras Buildings (Lease and Rent

Control) Act, namely, Madras Act XVIII of 1960, and in view of that protection available to the first respondent whether he is entitled to any

injunction in the suit or not.

8. It is not open to a plaintiff who came to the Court with a specific case and with a specific ground of relief to go back on them and abandon the

same and seek to claim the same relief on the facts alleged by the defendant, as held by Anantaanarayanan, C. J. in *Kandasami Udayar v.*

Karuppudayar C.R.P. No. 1354 of 1967--judgment D/- 29-11-1968 (Mad). In that judgment, the learned judge has pointed out thus:--

Long ago, the learned Judges of the Calcutta High Court pointed out in *Ramdoyal v. Junmonjoy Coondoo*, ILR (1887) Cal 791 that it would

certainly be very much unusual to permit the plaintiff, who has alleged one state of facts as against the defendant, who has denied that case and

alleged another state of facts, to turn round and ask to be allowed to carry on the suit and claim relief on the state of facts alleged by the defendant,

abandoning his own case. This was pointed out by Rajagopala Ayyangar, J. in *T.S. Govindaraj Vs. A.B. Kandaswami Goundar and Another*, and

the learned Judge stressed that a plaintiff cannot be allowed to abandon his case

and adopt that of the defendant and to claim relief on that footing.

This decision was relied on and followed by Somasundaram, J. in Subramania Mudaliar Vs. Ammapet Co-operative Weavers Production and

Sales Society Ltd., .

Consequently, on the findings of the courts below that the subject matter of the lease was not a vacant site, and therefore, the first respondent

herein was not entitled to the protection under the Madras City Tenants Protection Act, the suit of the first respondent must have been dismissed.

9. As far as the second point is concerned, here again, the submission of the learned counsel for the appellant is well founded. Section 10(1) of the

Madras Buildings (Lease and Rent Control) Act states that a tenant shall not be evicted whether in execution of a decree or otherwise except in

accordance with the provisions of that section or Sections 14 to 16. One of the grounds on which a tenant can be evicted as mentioned in sub-

section (2) of that section is that the tenant has after the 23rd October, 1945, without the written consent of the landlord transferred his right under

the lease or sub-let the entire building or any portion thereof, if the lease does not confer on him any right to do so. Section 26 of the Act states:--

Any order for the eviction of a tenant passed under this Act shall be binding on all sub-tenants who were made parties in the application for

eviction but any person who became a sub-tenant after the date of the application for eviction shall be bound by the order of eviction and be

evicted as if he were a party to the proceedings, provided that such order was not obtained by fraud or collusion.

10. Against the background of these provisions, the question for consideration is what exactly is the meaning of the word "evicted" as occurs in

Section 10(1) of the Act. A Bench of this court in Theruvath Vittil Muhammadunni v. Melapurakkal Unniri, AIR 1949 Mad 765 had to consider

the meaning of this expression occurring in Clause 8 of the Madras Non-Residential Buildings Rent Control Order, 1942. That clause was that a

tenant in possession of a non-residential building shall not be evicted therefrom whether in execution of a decree, or otherwise and whether before

or after the termination of the tenancy, except in accordance with the provisions of this clause. Dealing with the meaning of the expression "evicted"

occurring in that clause the learned Judges pointed out--

Sub-clause (1) lays down that a tenant shall not be evicted from a non-residential building of which he is in possession. "Evict" literally means

"expel by legal process." Eviction consists in the physical act of throwing out the tenant from the building which he is occupying. This sub-clause

therefore prevents the tenant from being thrown out.

11. Thus, the meaning of "eviction" here is, physically throwing out a person in occupation of a premises. That is made clear by the use of the

expression that "'a tenant shall not be evicted whether in execution of a decree or otherwise.'" The question of evicting a person in execution of a

decree can only mean, physically throwing out a person pursuant to a decree already passed directing delivery of possession of the property. This

conclusion of mine derives further support from Section 26 of the Act wherein the sub-tenants, who alone will be in physical possession of the

property in the case where a chief tenant has let out the entire building, can be evicted pursuant to an order of eviction obtained against the chief

tenant in case those sub-tenants have been made parties to the application. In the case above referred to, the Bench also pointed out that there is

nothing in the clause which they were considering or in any other clauses of the Order, expressly prohibiting the institution of a suit for possession,

or prohibiting a civil court from passing a decree for possession. This conclusion was arrived at only on the basis that there is difference between

instituting a suit for possession and obtaining a decree thereon and actually evicting a person in occupation of the premises. In the present case, the

appellant herein did not want to throw out anybody from the premises in question. All that he wanted was to recognise the sub-tenants of the first

respondent as his own tenants and to recover the rent from them. From this point of view, there is no scope whatever for applying the provisions of

Section 10(1) of the Act to the case in question because the appellant never wanted to evict either the first respondent or his sub-tenants from the

premises in question. Consequently, the conclusion of the learned Principal Judge on this ground also is erroneous. Under these circumstances the

second appeal succeeds and is allowed. The judgment and decree of the learned Principal Judge City Civil Court, Madras, are set aside and those

of the learned VIII Assistant Judge, City Civil Court, Madras are restored. The parties will bear their respective costs throughout. No leave.

12. Appeal allowed.