

(1977) 06 MAD CK 0009
In the Madras High Court

M.A.B. Mohd. Sultan Mohideen and Others

APPELLANT

Vs

Official Trustee and Another

RESPONDENT

Date of Decision : 21-06-1977

Acts Referred:

Citation : (1978) 91 LW 170 : (1978) 1 MLJ 190

Hon'ble Judges : Ramaprasada Rao, J

Bench : Division Bench

Judgement

Ramaprasada Rao, J.—These two appeals are somewhat connected. L.P.A. No. 12 of 1976 is directed against the Judgment of N.S.

Ramaswami, J., in Appeal No. 19 of 1972 and O.S.A. No. 3 of 1976 is against an order of S. Mohan, J., in Application No. 3234 of 1975 in

O.S. No. 158 of 1920. We shall first deal with L.P.A. No. 12 of 1976.

2. M.A. Mohamed Burhanuddin Sahib entered into an arrangement with the Official Trustee, Madras, under Exhibits A-1 and A-2 dated 12th

May, 1961 and 4th January, 1963, which were styled as lease deeds, in and by which Mohamed Burhanuddin Sahib (here in after referred to as

the original tenant) obtained a right to collect the rents from a market called Connemara Market in Pudupet, Madras. There are a number of stalls

in the said market which is used as a daily market. Apparently for administrative convenience, the Official Trustee enabled Mr. Sahib to collect the

rents from the various stalls in the market and pay him a monthly rent of Rs. 970 and the tenant was obliged to perform various other obligations

which he undertook under the lease deed. For the purpose of this appeal, it is unnecessary to state in detail the terms and conditions under which

the arrangement was entered into between the Official Trustee and late Mr.

Sahib. The lessee, as Mr. Sahib was called, was to meet all the commitments as regards electricity, costs of minor repairs and pay the water supply charges as also the charges to the Corporation of Madras for running the market in accordance with the rules of the Corporation of Madras, and the lessor, viz., the Official Trustee, was to pay the property-tax on the premises and continue the arrangement as above for a period of five years from 1st March, 1961, with option to Sahib to renew the so-called lease for a further period of three years on the same terms and conditions enumerated in what is known as the lease deed. Under Exhibit A-4 the Official Trustee determined the lease with effect from 31st March, 1969 and called upon Sahib, who was the first defendant in the main suit instituted by the Official Trustee, to surrender possession. The first defendant failed to do so. Hence the suit for possession was filed by the Official Trustee impleading the said Mohamed Burhanuddin Sahib as the first defendant and the second defendant who is said to have purchased a share in the property in ancillary proceedings. The Official Trustee impleaded the above second defendant only by way of abundant caution and never sought relief against him. The first defendant's contentions were three-fold. Firstly, his contention was that the Madras Buildings (Lease and Rent Control) Act XVIII of 1960 (here in after referred to as the Act) was applicable to the building and therefore, a bare suit for eviction in a civil Court and for consequential possession does not lie. He questioned the jurisdiction of the civil Court to entertain the suit for possession. Secondly, he would say that the notice of determination of the tenancy was not in order and therefore, the suit has to fail. He also contended that the Official Trustee did not represent all the interests of the shareholders and that therefore, the suit as such and as framed is not maintainable. The suit was originally tried in the City Civil Court and it resulted in a decree in favour of the Official Trustee. The first defendant filed an appeal to this Court, but he died pending appeal on 11th May, 1972. Thereupon, the present appellants including the second defendant were brought on record as the deceased first defendant's local representatives. N.S. Ramaswami, J., once again considered the objections of the appellants and would not agree with him. In particular, he would not countenance the contention that in view of the amendment of Section 2(8) of Act XVIII of 1960 by Act

XXIII of 1973, the present proceeding for possession against them is incompetent as they have secured a statutory right to continue in the premises under the provisions of Act XVIII of 1960 and that therefore, the suit for possession in a civil Court ignoring the provisions of the Special Enactment, viz., Act XVIII of 1960, is not in order. He would also not agree with the learned Counsel for the appellants that the mere fact that the Official Trustee accepted the rents from the appellants after the death of the first defendant would by itself establish that a fresh tenancy is created and therefore, the suit as framed cannot be proceeded with. The last contention that the Official Trustee represented only some of the estate did not gain favour with the learned Judge. On the question whether the notice of determination of tenancy was valid and proper, he would observe that validity of the notice as per the original of Exhibit A-1 had not been questioned in any other respect except that the same had not been issued by a person who represented the entire estate. The learned Judge discountenanced this contention observing that the Official Trustees was not representing the entire estate, but only the other beneficiaries barring the second defendant who has also become a legal representative of the first defendant after his death. Ultimately, he dismissed the appeal. Hence, the Letters Patent Appeal. The same contentions are pursued before us by the learned Counsel for the appellants.

3. The Madras Buildings (Lease and Rent Control) Act, being a beneficial legislation, is intended to serve certain definite objective of the Legislature. Under the old Act, XVIII of 1960, the tenant has been defined as meaning a person by whom or on whose account rent is payable for a building and includes the surviving spouse or any son or daughter or the legal representative of a deceased tenant who had been living with the tenant in the building as a member of the tenant's family upto the death of the tenant and a person continuing in possession after the termination of the tenancy in his favour etc., etc. Hence under the old Act, there was no express reference to a non-residential premises, but on a fair reading of the said definition, the benefits of statutory tenancy provided for in this Sub-clause could be availed of by the heirs and legal representatives of a deceased tenant provided they were also living with the deceased in the building as members of the tenant's family upto the death of the tenant.

This requirement to get the statutory entitlement reflects the purpose of the Legislature. We are of the view that even under the old definition, the

Legislature made it clear that unless the heir or the legal representatives, who project a claim to be continued as statutory tenant, establishes as a

fact, that he or they was or were living with the deceased tenant vis., his or their predecessor-in-interest, he or they cannot obtain the statutory

benefits under the provisions of Act XVIII of 1960. When the definition was amended as per Act XXIII of 1973, the following clause was

substituted in the place of the erstwhile Clause (8) of Section 2. Clause (8) of Section 2 of the Act reads as follows:

"Tenant" means any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son or daughter,

or the legal representatives of a deceased tenant who....

(i) in the case of a residential building, had been living with the tenant in the building as a member of the tenant's family up to the death of the

tenant, and

(ii) in the case of a non-residential building, had been in continuous association with the tenant for the purpose of carrying on the business of the

tenant upto the death of the tenant and continues to carry on such business thereafter, and a person continuing in possession after the termination of

the tenancy in his favour etc., etc....

4. Due to such an amendment, the Legislature, according to us, again declared its intention by clarifying the position and by laying an emphasis

upon such association of the heirs and legal representatives with the deceased tenant. On an examination of the two limbs of the definition of

"tenant" in Section 2(8) as amended in 1973, one gains the impression that in order to secure continuity in the tenancy the heirs should prove, as a

fact, that they were, in the case of a residential building, residing with the deceased tenant as members of his family till his death and equally

prove, in the case of a non-residential building, that they were in continuous association with the tenant for the purpose of carrying on the business

of the tenant upto the death of the tenant and continue to carry on such business thereafter. It is therefore fairly clear that such a commercial

association with the deceased tenant in the business or non-residential activity which was carried on by the deceased tenant in the premises is an

essential sine qua non to claim the benefits u/s 2(8)(ii) of the Act. It appears to us that even after the amendment of "tenant" in

Section 2(8), the legislature maintained its legislative intent to ensure that only heirs and legal representatives who were living with or associated

with the deceased tenant in the case of residential or non-residential buildings as the case may be, can claim the benefits of continuing as statutory

tenants. This primordial requirement has to be complied with and if there is no proof of nexus in the matter of living or in the matter of the continued

association in the quantum of mercantile activity of the deceased tenant, then the heirs or legal representatives, in each of those cases, would not be

entitled to the benefits of Act XVIII of 1960. If, therefore, the halo of the above legislative intent pervaded the entire fabric of the particular

legislation and if what has been achieved by the amendment is to declare and clarify such a pre-existing intent, then the question whether the

amendment which is clarificatory in nature is retrospective in operation does not arise at all. Strong reliance was placed upon a decision of a

Division Bench of this Court in *M/s. Killick Nixon Ltd., Bombay v. V.R. Narayana Rao* Appeal No. 518 of 1973, to which Ramanujam and V.

Ramaswami, JJ. were parties. That was also a case for recovery of possession. The question which came up for consideration before the Bench

was whether the decision rendered by the trial Court became null and void in view of the amending Act XXIII of 1973. Directly the question did

not arise as to what is the effect of the amending provision in Section 2(8) of the Act. The learned Judges, however, noticed the fundamental

principle that a legal proceeding has to be dealt with in accordance with the law prevailing on the date of its disposal. In a case like this, where

Section 2(8) of the Act is, as we said, merely clarificatory and declaratory of the pre-existing intent of the Legislature, this Court is bound to apply

the law as on the date when the suit or the appeal was disposed of. In this sense, therefore, N.S. Ramaswami, J., was right. Two decisions have

been referred to by the learned Judges of the Division Bench referred to above. One is that of the Federal Court in AIR 1941 5 (Federal Court)

and the other, of our own Court in *Lakshmi Ammal and Others Vs. Narayanaswami Naicker and Others*, . In those cases, the proposition is well-

settled that the rights of parties have to be determined as on the date of the disposal of the appeal by this Court, and that therefore, this Court has

to take into account the statutory provisions as amended, in deciding the rights of parties before it as on the date of disposal. It follows, therefore,

that the appellants who were admittedly not associated with the deceased tenant, nor were in continuous association with the tenant for the

purpose of carrying on the business of the tenant upto his death, nor did continue to carry on any such business thereafter, would not be entitled to

the special privileges as statutory tenants under Act XVIII of 1960.

5. The next question is whether Exhibits A-1 and A-2 are really leases at all. Though this question was not mooted in its true perspective, yet it has

become necessary for us to adjudicate upon the real nature of the transaction entered into between the Official Trustee and the late Sahib, the

predecessor-in-interest of the appellants. learned Counsel for the appellants vehemently contends that the exhibits created a jural relationship of

landlord and tenant within the meaning of the Act. It is common ground that at no time Sahib occupied the non-residential premises and did any

business there. He never carried on any business which the appellants can proclaim to have continued. Courts ought not to be guided merely by the

nomenclature and the description given to a particular document by the parties. If, on a general reading of the document concerned, a different

legal or jural relationship could be carved out in the peculiar facts and circumstances of a given case, then the mere description given to a document

by the parties may not have the weightage it would normally demand. In this case, the document is described as a lease. A lease implies a transfer

of interest in immovable property for the purpose of enjoying it. Here, the transferee, viz., the predecessor-in-interest of the appellants, did never

enjoy the property at all, nor did he carry on any business in it. In effect, the right to collect the rents from the market was farmed out to the

transferee who is called the lessee, and he was apparently making a profit out of it. The transferee or lessee undertook certain obligations in the so-

called lease, but that would not make any difference. The purport of Exhibits A-1 and A-2 appears to us to be to enable the transferee called the

lessee to act as the agent of the Official Trustee with an interest coupled with such an agency to appropriate towards his services the excess

collections to himself and pay an agreed sum called rent to the Official Trustee. If the transferee was in occupation of a portion of the premises, it

might be contended by the legal representatives that in so far as that portion of the non-residential building occupied by the deceased tenant is

concerned, they could claim the statutory right by reason of succession. But, they should satisfy the primary requirements laid down in Section 2(8)

of the Act. They are unable to do so in this case. In our view, therefore, Exhibits A-1 and A-2 cannot rightly be accepted as lease deeds, but they

are instruments which vested a right in Sahib to collect rents from the Connemara Market. But he had an interest in the said collections. Thus, the

very foundation of the contention of the learned Counsel for the appellants fails and the suit for possession, in such circumstances, filed by the

Official Trustee was in order. The Act, in our view, could not apply, nor could it be invoked by either party, as Exhibits A-1 and A-2 do not forge

the legal relationship of landlord and tenant as between the Official Trustee and the deceased Sahib.

6. We also agree with the learned Judge that merely because the Official Trustee accepted the so-called rents from the appellants after the demise

of the original transferee, it would not mean that a fresh tenancy has been created. It depends upon the proof of the intention of the parties. In fact,

the Official Trustee, when he filed O.S. No. 5584 of 1974 for recovery of the various amounts which the appellants failed to pay by then,

characterised the said sums as damages for use and occupation of the building. The claim would not be based as such if the relationship was that of

a landlord and tenant. This contention also fails.

7. Regarding the notice of determination of tenancy, we are in entire agreement with N.S. Ramaswami, J., and his observations regarding the same

and it is unnecessary for us to consider this contention any more.

8. As regards the last contention that the Official Trustee represented only a small proportion of the sharers, this is not open for challenge by the

other sharers, for the Official Trustee asks for possession and if there are any sharers interested in sharing the rents and profits of the market, it is

open to them to work out their rights as against the Official Trustee.

9. For the reason that there was no jural relationship of landlord and tenant as between the Official Trustee and the late Sahib and also because the

notice of determination of tenancy was in order, and as Section 2(8) of Act XVIII of 1960 is declaratory of a pre-existing legislative intent, we are

unable to agree with the learned Counsel for the appellants that the Judgment of N.S. Ramaswami, J., needs interference. The appeal fails and it is dismissed.

10. Now, coming to I.S. No. 3 of 1976, S. Mohan, J., passed the following order:

I see no reason to set aside my order because all that the applicant says is that he is in constructive possession. The earlier order of mine was to

give effect to the judgment of N.S. Ramaswami, J., rendered in A.S. No. 19 of 1972. In this view, I see no merit in those applications. Hence they

will stand dismissed. Counsel's fee Rs. 150 in all the three applications.

The learned Judge referred to the judgment in A.S. No. 19 of 1972 and confirmed that the Official Trustee was entitled to take possession of the

market. What was, however, urged before him was that a regular execution petition ought to have been taken by the Official Trustee to obtain

possession and that the Official Trustee ought not to have approached the Original Side Judge for directions in the matter of collecting the rents

from the actual occupants of the stalls in the market. Such a direction was made by S. Mohan, J., having regard to the judgment of N.S.

Ramaswami, J., in A.S. No. 19 of 1972 which we have confirmed in L.P.A. No. 12 of 1976. Having found that such administrative directions

were given by S. Mohan, J., the applicants who were the appellants in L.P.A. No. 12 1976, filed Application No. 3234 of 1975 seeking to set

aside the order made by S. Mohan, J., earlier enabling the Official Trustee to constructively take delivery of the property which would enable him

to collect the rents from the stall-holders direct. The learned Judge, again, referred to the judgment of N.S. Ramaswami, J., and reiterated that the

Official Trustee had the requisite authority to seek for such constructive possession . We see no reason to interfere. O.S.A. No. 3 of 1976 also

fails and it is dismissed. There will be no order as to costs in both the appeals.