
(1967) 08 MAD CK 0054
In the Madras High Court

Madurai Nayagamma and Others

APPELLANT

Vs

Plantian Merchants Association

RESPONDENT

Date of Decision : 29-08-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35, Order 21 Rule 98

Citation : (1968) ILR (Mad) 376 : (1968) 81 LW 18 : (1968) 1 MLJ 386

Hon'ble Judges : R. Sadasivam, J

Bench : Division Bench

Judgement

R. Sadasivam, J.—The question that has been referred to this Bench by Alagiriswami, J., is

Whether an order of eviction obtained against a chief tenant could be executed by evicting the sub-tenants who were not made parties to the application for eviction.

2. The petitioners obstructed delivery of possession in the execution application filed by the respondent-landlord, who had obtained an order of eviction against the chief tenant before the Rent Controller in H.R.C. No. 544 of 1964. The petitioners were not made parties to the application for eviction by the respondent-landlord filed under the Madras Buildings (Lease and Rent Control) Act XVIII of 1960, hereinafter called the Act.

3. The contention of the learned Advocate for the petitioners is based on Section 26 of the Act which is as follows:

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.

4. The definition of "tenant" in Section 2(8) of the Act does not take in a

subtenant. u/s 12-C of the earlier Madras Buildings (Lease and Rent Control) Act XXV of 1949 any order for the eviction of a tenant passed under the Act shall be binding on all sub-tenants under such tenant, whether they were parties to the proceeding or not, provided that such order was not obtained by fraud or collusion.

5. In his order of reference Alagiriswami, J. has referred to the decisions of this Court which have uniformly held that in spite of the wording of Section 26 of the Act, the eviction order could be executed against sub-tenants though not made parties to the eviction application. He has made this reference on the ground that the change in law, effected by Section 26 of the Act, has not been fully considered in those decisions. The decisions referred to are those of Ramamurti, J. in Ramachandra Chetty v. Mothaliyandan Chettiar (1965) 2 M.L.J. 265 : 78 L.W. 489, and Abdul Jameel v. Simpson and Machonochy Ltd. (1967) 1 M.L.J. 337, which was not reported at the time of reference.

In the earlier decision, Ramamurti, J. has referred to the decision of the Supreme Court in Rup Chand Gupta Vs. Raghuvanshi Private Limited and Another, . At page 1892 of the said decision, in paragraph 13, the Supreme Court has pointed out that where the landlord institutes a Suit against the lessee for possession of the land on the basis of a valid notice to quit served on the lessee and does not implead the sub-lessee as a party to the suit, the object of the landlord is to eject the sub-lessee from the land in execution of the decree and such an object is quite legitimate, and that the decree in such a suit would bind the sub-lessee. The Supreme Court pointed out that this may act harshly on the sub-lessee but this is a position well understood by him when he took the sub-lease. This is what Ramamurti, J. has referred to in Ramachandra Chetti v. Mothaliyandan Chettiar (1965) 2 M.L.J. 265 : 78 L.W. 489, as settled law, that, if a decree for eviction is passed against the main tenant, the order of eviction can be straightaway enforced and executed as against the sub-tenant and, pointed out that by enacting Section 26 of the Act it was not the intention of the Legislature to make a deliberate departure from this settled and accepted position in law. It is clear from Mulla's Transfer of Property Act, 5th Edition, page 700 that the sub-lessee is not entitled to larger rights than the lessee himself and that there is no privity of estate or contract between him and the landlord of his lessor.

6. The decision in Parthasarathi Chetti v. Chitra Pillai (1967) 1 M.L.J. 83, though rendered prior to the date of reference has been reported subsequently and this decision deals with the very point which has led to this reference. At page 88 of the decision Natesan, J. has pointed out:

The object of the particular provision in the old Act and the effect of the variation by the new Act can be appreciated only if the general law in regard to the matter and the processual law relating to execution of the order in question is understood.

7. u/s 12-C of the Madras Act XXV of 1949 an order for the eviction of a tenant

passed under the Act shall be binding on all sub-tenants under such tenant, whether they were parties to the proceeding or not, provided that such order was not obtained by fraud or collusion. But, u/s 26 of the Act, only the binding nature of the order of eviction against the sub-tenants who Were made parties, was specified, leaving the general law as to the rights and liabilities of the sub-tenants not made parties intact. It is clear from the latter part of Section 26 of the Act that persons who became sub-tenants after the date of application for eviction shall be bound by the order of eviction, whether made parties or not. If the sub-tenants are made parties, the order of eviction would be binding on them of its own force and execution could be levied under Order 21, Rule 35, Civil Procedure Code. But if the sub-tenants are not made parties to the eviction application, they will not be parties to the order and any obstruction for delivery in execution would fall only under Order 21, Rule 98, Civil Procedure Code. Natesan, J. has pointed out, at page 88 of the decision in Parthasarathi Chetti v. Chitra Pillai (1967) 1 M.L.J. 83, that in such circumstances the provisions of Order 21, Rule 97, Civil Procedure Code, have to be availed of by the decree-holder and if the Court is satisfied that the objection was wanton and made without just cause, the obstruction could be directed to be removed and the decree-holder placed in possession, dispossessing the sub-tenant. The sub-tenant, who is not made a party may set up independent right to continue in possession of the demised premises. Thus, as pointed out by Natesan, J., a sub-tenant who was not made a party to the eviction application may set up his own title or he may plead a direct tenancy, apart from contending that the eviction order had been obtained fraudulently and in collusion. The rights of a subtenant, who has not been made a party, are sufficiently protected by the general provisions contained in Order 21, rules 98 to 103, Civil Procedure Code.

8. We, therefore, answer the question in the affirmative, that is to say, that the order of eviction obtained against the chief tenant can be executed by evicting the sub-tenants who were not made parties in the application for eviction.

ORDER

The only question in the Civil Revision Petition is whether an order for eviction obtained against the chief tenant is binding on the sub-tenants also, even though they might not have been added as parties to the proceedings. The matter was before a Bench and it has since decided that it is binding on the subtenants. There is no other question in the Civil Revision Petition and it is accordingly dismissed with costs. The petitioners will have a period of three months to vacate.