

(1950) 10 MAD CK 0022
In the Madras High Court
Case No : A.A.O. No. 675 of 1949

Mathradas Vadilal Gandhi

APPELLANT

Vs

Sri Kishen Jhavar

RESPONDENT

Date of Decision : 03-10-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16, 50
Madras Buildings (Lease and Rent Control) Act, 1946 — Section 7, 9

Citation : AIR 1951 Mad 822 : (1951) 64 LW 262 : (1951) 1 MLJ 59

Hon'ble Judges : Raghava Rao, J

Bench : Single Bench

Advocate : D. Ramaswami Aiyangar and L. Krishna Das, for the Appellant; P.V. Subramaniam, for the Respondent

Final Decision : Dismissed

Judgement

Raghava Rao, J.—This civil misc. appeal arises out Of E. A. No. 1929 Of 1949 in E. P. No. 2779 of 1949 on the file of the Cty Civil Ct. of Madras. That Ct. ordered the E. A., & the resp. therein appeals. The E. P. & E. A. were in connection with an order for eviction passed in favour of the appct in the Ct. below, that is, of the resp. before me, in a proceeding for eviction u/s 7, Madras Rent Control Act XV (15) of 1946. u/s 9 of the Act, so far as material to the present case, every order made u/s 7 shall be executed in the City of Madras by the principal Judge of the Madras City Civil Ct. as if it were a decree passed by him.

2. Mr. Ramaswami Aiyangar has taken two points before me against the order of the Ct. below. The first is that an execution appln. by a person seeking to come on record as a legal representative is not maintainable in law as a substantive appln. by itself, without the prayers of a regular execution petn. He relies on a judgment of this Ct. reported in "Ramachandra Aiyar v. Subramania Chettiar", 14 MLJ 393. Bhashyam Aiyangar J. has ruled in that case that a transferee decree-holder can only apply to execute the decree u/s 232, Civil P. C. & that he can make no application merely for recognising him as a transferee as there is no

provision of law requiring the Ct. to recognize the validity of the transfer before the transferee applies for execution. The ruling has, in my opinion, no application to the facts of the present case. The son of the landlord applied in the present case for execution in E. P. No. 2779 of 1949 asking to be recognized as a transferee decree-holder, & asking to have the order for eviction executed. Since it was objected that a separate petn. by him to come on record as legal representative was necessary, he filed E. A. No. 1929 of 1949. There was nothing irregular, much less illegal, about what the resp. before me did. He did in fact the only right thing that he could do in the circumstances of the case. I must accordingly repel this contention of the learned advocate for the applt.

3. The next argument of Mr. Ramaswami Aiyangar is one founded on the analogy of certain decisions of this Ct. which have held that where there is a decree passed by a certain Ct. which has transmitted it for execution to another Ct., it is not the latter Ct. but the former which has the power to entertain an appln. to bring on record a person as legal representative of the decree-holder. Prima facie that line of decisions has, in my opinion, no relevancy to the case on hand because we are not concerned here with a case of rival jurisdiction between two Cts. between which it is necessary to determine which has jurisdiction but with the question how far under the terms of Section 9, Rent Control Act, the City Civil Ct. has the jurisdiction to bring on record the petnr. as the legal representative of the original appct. for eviction. Looking at the language of the section, it seems to me that the City Civil Ct. being the only Ct. which has to execute the order for eviction as if it were a decree passed by itself, it has the jurisdiction to entertain the petn. of the resp. before me to come on record as the legal representative of his father. Mr. Ramaswami Aiyangar argues that the expression "shall be executed as if it were a decree passed by him" has reference only to the procedure to be adopted by the Principal Judge of the Madras City Civil Ct. in the process of execution, but has no reference to the right of the resp. to execute the order for eviction, which right is under challenge here. I am not satisfied that this restricted interpretation of the expression is correct. It seems to me that once the City Civil Ct. became seized of the case for the purpose of execution, it had the right to execute it as if it were a decree passed by that Ct. itself in every sense of the term. The determination of the question whether the resp. before me has the right to come on record as legal representative of his father is itself part of the procedure which has to be gone through by that Ct. u/s 9 in the matter of execution. As pointed out by "Chandrasekhara Aiyar J. in K. Kandaswami and Another Vs. K.K. Neelamagam Pillai, the words "as if it were a decree of this Ct. in Section 7-A (2-A), Madras House Rent Control Act, has the effect of rendering the order of the Rent Controller the decree of the particular Ct. for purposes of execution. So in the view of the learned Judge, the provisions of Section 47, Civil P. C. become applicable to the case, & the parties had a right of appeal from orders of the executing Ct. The question that arose before His Lordship was whether the provisions of Section 47, Civil P. C. became applicable to the case of an order of the executing Ct. so as to give the parties a right of

appeal therefrom, although the order of the Rent Controller himself directing eviction was final & could not be challenged in the civil Ct. The question was answered by the learned Judge in the affirmative. This ruling has been followed in a later case decided by a Bench of this Ct. (Horwill & Balakrishna Ayyar JJ.) which is reported in K.P.S. Thangaswamy Chettiar Vs. A. Bapoo Sahib, . In that case, an appln. for eviction of a tenant on the ground of arrears of rent the landlord obtained an order for eviction & actually got possession of the building in execution. On appeal to the subordinate Judge, the appellate authority, the order was revsd. After five days the tenant applied to the Sub-ordinate Judge himself for restitution & redelivery, which was ordered, & on appeal to this Ct. against that order on the ground of want of jurisdiction in the Sub Ct. to make such an order, it has been held by the learned Judges, that the appln. for restitution is an appln. for execution & that once execution proceedings under the Madras Act XV (15) of 1946 come to be placed in the hands of the ordinary Cts., the provisions of the Civil P. C. relating to the subject must apply "mutatis mutandis" & so far as the machinery set up by the Act & the provisions thereof permitted. Reference is made in the course of the decision to the principle of the House of Lords decision in "National Telephone Co., Ltd. v. Post Master General (No. 2)", (1913) AC 546; 82 LJKB 1197: "When a question is stated to be referred to an established Ct. without more, it imports that the ordinary incidents of the procedure of that Ct., are to attach, & also that any general right of appeal from its decision likewise attaches". The argument for the applt. is opposed to principle as well as precedents which have construed the relevant provisions of the statute & must accordingly be repelled.

4. Mr. Subramanyam for the resp. has, in support of the order of the Ct. below also drawn my attention to certain decisions under the Madras Co-operative Societies Act, reported in Kannappa Mudali and Another Vs. Varadachariar, & K. Munisami Chetti (died) and Others Vs. Chenchu Naidu and Another, the principle of which is according to learned counsel applicable to the case on hand. Both are decisions of the same Judge, Wadsworth J. & are to the same effect. The question which arose in these cases was the competency of the executing Ct. to recognise the assignment of an award decree which had been passed by the Registrar of Co-operative Societies. At p. 599 of the report of the former case this is what the learned Judge observes:

"There is very little authority on this subject. Cases under the old Co-operative Societies Act have no direct bearing, for under the old rules the award of the Registrar of Co-operative Societies could be executed only by a procedure similar to that applicable to an award of an ordinary arbitrator. It is established that under the old Act when an award was transferred to the Civil Ct. for execution the civil Ct. had the necessary power to treat the decree as its own decree for purposes incidental to execution including the granting of a certificate transferring the decree to any Ct. for execution. Vide "Krishnaji v. Mahadeo", 46 Bom 128: AIR 1922 Bom 377. There is authority for the view that the award of an arbitrator when it has been filed in Ct. & has become the decree of the Ct. can

be assigned & the assignment can be recognised by the Ct. in which that award is filed. Gladstone Wyllie and Co. Vs. Joosub Peer Mahomed and Co., . It is contended for the applts. that the-provision of Rule 15 Sub-rule (8) is significant & that this rule contemplates that the person to be recognised as the decree-holder by the civil Ct. must always be the person in whose favour the Registrar has granted an award & cannot be his assignee, for the original holder of the award is given the power to apply to the Ct, for the return of the award with a certificate of non-satisfaction. It seems to me to be going too far to hold that because the person in whose favour an award has been passed may apply to the Ct. for its transfer back to the Registrar, the Ct. has necessarily no power to recognise an assignment."

5. It is not necessary for me to express any opinion in regard to the correctness of the point of view of the learned Judge expressed in those two cases. It is sufficient for me to say that, for the reason that I have already given viz., that the language of Section 9, Madras Bent Control Act, is sufficiently wide to cover the case of an execution appln. like the one filed by the resp. before me, this appeal must fail & be dismissed With costs.