

(1977) 06 MAD CK 0018

In the Madras High Court

Case No : L.P.A. No. 12 and O.S.A. No. 3 of 1976

Md. Sultan Moideen and Others

APPELLANT

Vs

Official Trustee, Madras and Another

RESPONDENT

Date of Decision : 21-06-1977

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 2(8)
Transfer of Property Act, 1882 — Section 8

Citation : AIR 1978 Mad 248 : (1977) 90 LW 170

Hon'ble Judges : Suryamurthy, J; Ramaprasada Rao, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ramaprasada Rao, J.

1 . These two appeals are somewhat connected. L. P. A. No. 12 of 1976 is directed against the judgment of N. S. Ramaswami J. in App. No. 19

of 1972 and O. S. A. 3 of 1976 is against an order of Mohan J. in Appln. No. 3234 of 1975 in O. P. 188 of 1920. We shall first deal with the L.

P. A. No. 12 of 1976.

2. M.A. Mohamed Burhanuddin Sahib entered into an arrangement with the Official Trustee, Madras, under Exs. A-1 and A-2 dated 12-5-1961

and 4-1-1963, which were styled as lease deeds, in and by which Mohamed Burhanuddin Sahib (hereinafter referred to as the original tenant)

obtained a right to collect the rents from a market called Connemera 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 purposes 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, cause 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, i.e., 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 1-3-1961, 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 Ex. A-4, the Official Trustee determined the lease with effect from 31-3-1968 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 Mohammed Bahrnuddin 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 threefold. Firstly, his contention was that the Madras Buildings (Lease and Rent Control) Act, XVIII of 1960 (hereinafter 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 11-5-1972. Thereupon, the present appellants including the second defendant were brought on record as the deceased first

defendant's legal representatives. N.S. Ramaswami J. once again considered the objections of the appellants and would not agree with them. 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 the validity of

the notice as per the original of Ex. A-4 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 Trustee 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 L. P. 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 objectives 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. Hence, under the old Act, there was no express reference to a non-residential building, 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, viz, 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 of the Act which reads as follows:--

Clause (8): "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 upto 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 up to

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 the definition 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 quondam 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 had been achieved by the amendment is to declare and clarify such a preexisting 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 Appeal No. 516 of 1973 (Mad) -- Killick Nixon Ltd. Bombay v. V.R. Narayana Rao -- 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 23 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 preexisting 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 Exs. 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 appellant 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 Exs. 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, Exts. 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 Cannemera 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 Exts. 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. 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 named 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 reasons 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 is dismissed.

10. Now, coming to O. S. App No. 3 of 1976, 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 App. No. 19 of 1972. In this view, I see no merit in these applications. Hence they

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

The learned Judge referred to the judgment in App. 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 Mohan J. having regard to the judgment of N.S. Ramaswami J.

in App. 19 of 1972, which we have confirmed in L. P. A. No. 12 of 1976. Having found that such administrative directions were given by Mohan

J., the applicants who were the appellants in K. P. A. No. 12 of 1976, filed Appn. No. 3234 of 1975 seeking to set aside the order made by

Mohan J. earlier enabling the Official Trustee to constructively take delivery of the property which would enable him to collect the rents from the

stallholders 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. Ap. No. 3 of 1976 also fails and it is dismissed.

There will be no order as to costs in both the appeals.