
(1993) 11 MAD CK 0009

In the Madras High Court

Case No : Civil Revision Petition No's. 2993, 3118, 3119 and 3146 of 1992

Messrs Godrej Soaps Limited

APPELLANT

Vs

Ambujammal (deceased) and 5 others

RESPONDENT

Date of Decision : 29-11-1993

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10, 10(1), 10(2) (i), 10(2)(vii), 10(3)(a)(iii)

Citation : (1993) 11 MAD CK 0009

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Advocate : K.V. Padmanabha Rao in all CRPs, for the Appellant; K.P. Unnikrishnan for Respondents 3 and 4 in CRP. Nos. 2993 and 3118 and for Respondents in C.R.P. No. 3119/92, for the Respondent

Judgement

Ratnam, J.—These Civil Revision Petitions arise out of the proceedings instituted by the respondents herein, against the petitioner, in

R.C.O.P. Nos. 2497/82, 1692/85 and 3664 of 1992. In R.C.O.P. Nos. 2497/82 and 1692/85 filed by the respondents under Ss. 10(2) (vii),

10(3) (a) (iii) and 10 (2) (i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, hereinafter referred to as "the Act", an order for

eviction was prayed for against the petitioner on the ground of wilful denial of title, bona fide requirement of the premises for the use and

occupation of the respondents (though the claim under this head was later given up) and wilful default in payment of rent. R.C.O.P. No. 3664 of

1982 was filed under S. 4 of the Act for the purpose of fixation of fair rent in respect of the premises in the occupation of the petitioner herein. The

premises in question is a non-residential building in the occupation of the petitioner. According to the case of the respondents, Ambujammal

(deceased), the first petitioner in the eviction petition, was the landlord of the petition premises, within the meaning of S. 6 of the Act and she was receiving and also entitled to receive, the rent from the petitioner in respect of the premises and was also doing so on behalf of her son, the second petitioner in the eviction petition, who is the first respondent herein. Deceased Ambujammal and the first respondent sold the premises in question to respondents 3 to 5 under a registered sale deed dated 29-1-1982 and also wrote a letter on 29-1-1982 to the petitioner requesting that the rent be paid to respondents 3 to 5 and also for vacating the building. The petitioner is said to have sent a reply to the fourth respondent, according to which, the rent would be sent to respondents 3 to 5 on the basis of the representation made by the deceased Ambujammal and the first respondent herein, without prejudice to their claims, rights, etc. A reply was sent on 11-2-1982 by the respondents requesting the petitioner to remit the rent and thereafter a letter was received from the counsel for the petitioner to the effect that the title of the first respondent got extinguished and that the petitioner claimed title to the property by adverse possession. The claim so made by the petitioner was characterised as denial of the title of the respondents, which was not bona fide, and that justified the passing of an order of eviction against the petitioner. In addition, it was also stated by the respondents that the petitioner had not paid the rent for February, 1982 and such non-payment was wilful, which justified the passing of an order for the eviction of the petitioner. In R.C.O.P. 1692 of 1985, in addition to the wilful denial of title attributed to the petitioner, the respondents also charged the petitioner with wilful non-payment of the rent for about 35 months from 1-2-1982 to January, 1985 and that constituted wilful default justifying the eviction of the petitioner from the premises in its occupation. In R.C.O.P. No.3664 of 1982, filed under S.4 of the Act, the respondents prayed that the fair rent for the premises in the occupation of the petitioner may be fixed at Rs. 16,426/- per month, after setting out all the relevant data as per the provisions of the Act. The applications so filed were resisted by the petitioner on the ground that the petitioner was not a tenant in respect of the premises, but had acquired title by adverse possession and a suit had already been filed in C.S. No. 253 of 1982 claiming title to the property and as there was a bona fide dispute regarding the title, the Court had no jurisdiction to entertain the eviction petition.

With reference to the rents paid already, the petitioner stated that a suit had been filed seeking refund of the amount collected from 1967 till the date of sale in favour of respondents 3 to 5. Denying the relationship of landlord and tenant, the petitioner also disputed its liability for the payment of rent to the respondents and it was stated that there was no default, much less wilful default. It was also the further case of the petitioner that having regard to the absence of the relationship of landlord and tenant, and the acquisition of prescriptive title, there was no question of fixation of fair rent as well. Before the Rent Controller, on behalf of the respondents, Exhibits P1 to P-21 were marked and P.Ws. 1 and 2 gave evidence, while on behalf of the petitioner, Exhibits R1 to R-9 were filed and P.Ws. 1 and 2 were examined. On a consideration of the oral as well as the documentary evidence, the learned Rent Controller found that the denial of title of the respondents by the petitioner was not at all bona fide, that the default in the payment of rents from February, 1982 till January, 1985, was nothing but wilful and that the fair rent for the premises could be fixed at Rs. 14,491/- per month from the date of the petition. Ultimately, the Rent Controller ordered the eviction of the petitioner by allowing R.C.O.P. Nos. 2497/82 and 1692/85. Aggrieved by this, the petitioner filed R.C.A. Nos. 353 and 355 of 1988 against the order in R.C.O.P. Nos. 2497/82 and 1692/85 and R.C.A. 354 of 1988 against R.C.O.P. No. 3664 of 1982. The respondents filed R.C.A. 20 of 1989 against the order passed in R.C.O.P. 3664 of 1982 fixing the fair rent for the building at Rs. 14,491/-. All the appeals were heard together after reception of additional evidence and disposed of by a common judgment. The Appellate Authority confirmed the order of eviction passed by the Rent Controller, holding that the denial of title of the respondents by the petitioner was wilful and that the default in the payment of rent was also wilful. In so far as the fixation of fair rent was concerned, the Appellate Authority dismissed R.C.A. 354/85 filed by the petitioner, but determined the fair rent in respect of the premises in the occupation of the petitioner at Rs. 19,775/- per month and to this extent R.C.A.20 of 1989 was allowed. It is the correctness of the common order so passed, that is questioned by the petitioner in these revision petitions.

2. The important question that arises for consideration is whether the authorities below were right in their conclusion that the denial of title by the

petitioner was not bona fide?

3. Learned counsel for the petitioner contended that the authorities below have virtually proceeded to decide the question of title to the premises in

the occupation of the petitioner and that was not in order, as what was contemplated by S. 10 (2) (vii) of the Act, was whether the denial was

made simply or casually or was bona fide. It was further submitted that functioning under S. 10 of the Act, the authorities do not have the

jurisdiction to embark upon a detailed enquiry to adjudicate upon the title, especially when the question of title formed the subject matter of another

litigation in C.S. No. 253 of 1982. On the other hand, learned counsel for the respondents submitted that the documentary evidence available

clearly established that right from 1967 onwards till January, 1982, the petitioner was in occupation only as a tenant and the putting forward of the

plea of acquisition of title by prescription, in denial of the title of the respondents was nothing but wilful and that justified the passing of an order of

eviction against the petitioner. Reliance in support of the respective contentions was placed by learned counsel on both sides on quite a number of

decisions.

4. Under the second Proviso to S. 10(1) of the Act, in case where the tenant denies the title of the landlord, the Controller shall decide whether the

denial or claim is bona fide and if a finding to that effect is recorded, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court

and the Court may pass a decree for eviction on any of the grounds mentioned in the said Sections, notwithstanding that the Court finds that such

denial does not involve forfeiture of the lease or that the claim is unfounded. S. 10 (2) (vii) further provides that if the Controller is satisfied that the

tenant has denied the title of the landlord and that such denial or claim was not bona fide, he shall make an order directing the tenant to put the

landlord in possession of the building. From the provisions aforesaid, it is seen that when the tenant denies the title of the landlord, it is the duty of

the Controller to decide whether such denial is bona fide. On the finding arrived at that the denial is not bona fide, the Rent Controller is

empowered to proceed to pass an order for eviction. It is thus seen that merely because there is a denial of title, the jurisdiction of the Controller to

deal with the application for eviction is not taken away; on the other hand, the

Rent Controller is called upon to decide whether the denial is bona fide and also to record a finding. From the nature of the duty so cast on the Rent Controller, it is obvious at once, that the Controller, has atleast, prima facie, to go into the question, on the basis of the materials available, whether the denial is bona fide or not. In this case, it is seen that the petitioner had for the first time come into possession of the premises under the lease deed marked as Exhibit P-3 dated 27-7-1967. Therein deceased Ambujammal has been accepted to be the landlord and it has also been stated that the lessor is absolutely seized and possessed of the land described and set out therein. The lease granted was for a period of five years on a monthly rental of Rs. 900/- and Rs. 300/- towards amenity charges. The lease deed also recites receipt of an advance of Rs. 2,400/-. Under Clause 4 (d) of Ex. P-3, provision is made for renewal of the lease for a further period of five years on receipt of a notice in writing from the petitioner, one month prior to the expiry of the lease. From the aforesaid provisions, it is obvious that the relationship of landlord and tenant as per S. 2(6) of the Act had been created between deceased Ambujammal, who was none other than the member of the first respondent herein, and the Petitioner. In Ex. P-4 dated 21-6-1978, deceased Ambujammal has been again referred to as the lessor and the petitioner as the lessee. It is no doubt stated in Ex. P-4 that deceased Ambujammal is the owner of the premises. However, to bring about the relationship of landlord and tenant, owner-ship of the property is not necessary, as per S. 2 (6) of the Act. Even if deceased Ambujammal, mother of the first respondent, was not the owner of the property let out to the petitioner, she was a person, who was entitled to collect the rent on behalf of her son, the first respondent and in that same, she would be the landlord under S. 2 (6) of the Act of the property. In Ex. P-4, reference is made to the issue of a notice by the petitioner pursuant to Cl. 4 (d) of Ex. P-3 and the grant of a further lease for a period of five years from 1-4-1978 onwards on a monthly rental of Rs. 1,600/- and amenity charges of Rs. 800/-. It is thus clear that even in this document the petitioner had accepted the title of the deceased Ambujammal, as the landlord. In the sale deed Ex. P-1 executed by deceased Ambujammal and her son, the first respondent herein, it had been stated that the deceased was managing the property and

the property demised to the petitioner belonged to the first respondent, though it came to be registered in the name of deceased Ambujammal in

some of the Corporation and other records in the course of her management of the property on behalf of the first respondent. Ex.P-1 further

recites that the deceased declared and acknowledged the exclusive and absolute right and ownership of her son, the first respondent, of the

property as per the will dated 29-3-1940 and that she joined the execution of the sale deed at the request of the purchasers, to convey better title

to the purchasers, viz., respondents 3 to 5 in these revision petitions. It is seen from Ex. P-6 dated 29-1-1982 that deceased Ambujammal and the

first respondent herein, had joined together to inform the petitioner about the sale deed dated 29-1-1982 and have added in paragraph 4 that the

rent and other charges accruing from 1-2-1982 have to be paid directly to the purchasers. This evoked a reply dated 24-2-1982 (Ex.P-7)

wherein the petitioner stated that deceased Ambujammal and the first respondent herein have no right or title to terminate the deed dated

21.6.1978 (Ex. P-4) and that on production of sufficient proof by the alleged purchasers, the petitioner will forward the rental to them. From this

letter, it is obvious, even upto the point of time when Ex.P-7 was issued by the petitioner, that no claim was put forward that the petitioner had

acquired any title to the property by adverse possession. The reason for the petitioner putting forward a plea of acquisition of title by prescription is

also not far to seek, for, Ex. P-7 shows that deceased Ambujammal and the first respondent had not informed the petitioner of the intended sale of

the premises so as to enable it to exercise its option to purchase the property or not, but that after the sale, they had purported to terminate the

lease by 30-4-1982. The real reason for the petitioner putting forward the claim of prescriptive title is that the petitioner had not been successful in

securing the property from the deceased and the first respondent. Ex. P-5 shows that the petitioner had addressed a letter even on 4-1-1982

enclosing a cheque towards the rent for the premises for the month of December, 1981. It is thus clearly established from the documentary

evidence referred to above that the petitioner had come into possession of the premises as a tenant, having been admitted as such by deceased

Ambujammal, who is none other than the mother of the first respondent herein, the owner of the property. The claim that the deceased had

disclaimed her interest while executing Exhibit P-1 would establish that the petitioner had been in possession of the property adverse to the interest

of the first respondent, cannot be accepted. When once at the inception it was a case of tenancy, it is difficult to appreciate how the tenancy could

ripen into one of ownership either against deceased Ambujammal or even against the first respondent.

Thus, on a due consideration of the manner in which the petitioner came into possession of the property and also the other attendant

circumstances, it is clear that at no point of time, till after the sale in favour of respondents 3 to 5 under Ex. P-1, the petitioner had thought of

putting forward any claim of acquisition of prescriptive title to the property in its occupation. As pointed out earlier, the entry by the petitioner into

the premises was as a tenant and it had not been established as to when and how such entry became adverse either to the landlord, deceased

Ambujammal, or the real owner of the property, viz., first respondent herein. The institution of the suit in April, 1982 after Exs. P.3 and P.4 and

issue of Ex.P.7 by the petitioner, in C.S. No. 352 of 1982, cannot also be regarded as a bona fide proceeding for, it is the outcome of the

disappointment of the petitioner in not having been able to secure the premises for itself. Likewise, the reliance placed by learned counsel for the

petitioner upon the institution of C.S. 255 of 1985 by the respondents against the petitioner for recovery of damages rent cannot be of any

assistance to the petitioner to contend that the petitioner had been treated as a tres-passer and not as a tenant. P.W. 3 in his evidence had clearly

stated that the suit came to be instituted only for the purpose of overcoming the bar of limitation that otherwise would have arisen. In view of this,

the proceedings in C.S. No. 255 of 1985 cannot be pressed into service by the petitioner. The authorities below were, therefore, justified in

coming to the conclusion that on the facts and circumstances of this case, the denial of title by the petitioner was not bona fide.

5. The argument that the authorities below had embarked upon an enquiry into title cannot also be accepted for, as stated earlier, even under the

second Proviso to S. 10(1) of the Act, the Rent Controller has got to give a finding whether the denial of title was bona fide or not and for the

purpose of recording such a finding, it was necessary for the authorities below to atleast, prima facie, consider the documents and give a finding.

Under those circumstances, the argument of the learned counsel for the petitioner cannot at all be accepted. Since the question of bona fide title

has to be decided on the basis of the materials made available, it is really unnecessary to refer to the decisions relied on by both sides.

6. In so far as the claim of wilful default in the payment of rent is concerned, it is not in dispute that the rents had not been paid by the petitioner

from February, 1982 onwards. It may be that the non-payment of rents by the petitioner was owing to its having set up title in itself. But when once

it is found that the denial is not bona fide, it follows that the petitioner was certainly under a duty to have paid the rents every month as before and

not having done so, even after the issue of Ex. P-6, the default should be construed only as wilful. The authorities were right in holding so. Indeed,

learned counsel for the petitioner did not press any argument whatever on this aspect of the matter.

7. Likewise, in regard to the fixation of fair rent, no argument was addressed by learned counsel for the petitioner, as its stand had been that being

the owner of the property having acquired title by prescription, there was no question of payment of any fair rent by it as a tenant. The civil revision

petitions, therefore, fail and are all dismissed with costs in C.R.P. Nos. 2993 and 3118 of 1992. Counsel fee Rs. 2,500/- (one set). There will be

no order as to costs in the other revision petitions.