

(1993) 11 MAD CK 0021
In the Madras High Court

M.I. Irudayam Pillai (deceased) and Others	APPELLANT
Vs	
S.P.L. Chockalingam Chettiar and Another	RESPONDENT

Date of Decision : 12-11-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 65

Citation : (1994) 2 LW 176 : (1994) 1 MLJ 600

Hon'ble Judges : S.M. Ali Mohamed, J

Bench : Division Bench

Judgement

S.M. Ali Mohamed, J.—This revision petition is against the order passed by the Principal Sub Judge, Madurai, in R.C.A. No. 119 of 1982, dated 4.10.1983.

2. During the material time, the original owner of the building in premises No. 282, South Market Street, Madurai, was one Abdul Khader and the

second respondent Union of India, Madurai City Division, represented by the Senior Superintendent of Post Offices, was the tenant in a portion of

the building by paying a rent of Rs. 350 per month. The property was brought for sale as per the judgment and decree in O.S. No. 530 of 1970.

The first respondent S.P.L. Chockalinga Chettiar purchased the property in court auction sale on 29.3.1976 and the sale was confirmed by the

court on 20.12.1976. Between the period of sale of the property, viz. 29.3.1976 and 2` 12.1976 the petitioner entered into a mortgage on

14.6.1976. The second respondent Union of India filed a petition in R.C.O.P. No. 129 of 1978 for deposit of rent. The first respondent filed I.A.

No. 394 of 1982 for withdrawal of the amount. The petitioner who was a party to the application filed a counter contending that he was entitled to

the amount of rent that was deposited. The Rent Controller rejected the contention of the petitioner and allowed I.A. No. 394 of 1982 in favour of the first respondent. The petitioner filed in appeal in R.C.A. No. 119 of 1982 and the same was also dismissed. In the meantime, the first respondent had already withdrawn the amount of Rs. 15,200 that was deposited by the second respondent. Aggrieved by the said order, the petitioner has filed this revision petition.

3. It is contended by the learned Counsel for the petitioner that he entered into a mortgage with the original owner, Abdul Khader on 14.6.1976 and the encumbrance certificate did not disclose that there was any sale in favour of the first respondent. Therefore, he is entitled to the amount deposited in the court by the second respondent and both the courts erred in law by dismissing the application.

4. On the other hand, the learned Counsel for the first respondent submitted that he is an auction purchaser of the property and purchased the same on 29.6.1976 and the sale was confirmed by court on 20.12.1976 and therefore, he is the owner of the property and he is entitled to the amount of rent deposited by the second respondent, with the Rent Controller and there is no infirmity in the orders of the Rent Controller and the Appellate Authority. In support of the above contention, he has cited the ruling of the Supreme Court in Janak Raj Vs. Gurdial Singh and Another, , wherein it is observed as follows:

Section 65 of the CPC lays down that where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when it is said and not from the time when the sale becomes absolute. The result is that the purchaser's title relates back to the date of sale and not the confirmation of sale.

5. It is clear from the above ruling of the Supreme Court that as per Section 65 of Civil Procedure Code, where immovable property is sold in execution of a decree and once such sale is confirmed by the court, the title of the purchaser relates back to the date of sale and as such during the material time, the first respondent has title to the property and he is the owner of the property and is entitled to the amount of rent deposited by the second respondent/tenant. In view of the above there is no substance in the

contention of the learned Counsel for the petitioner that he is entitled to the amount deposited by the second respondent. The learned Counsel for the petitioner submitted that the petitioner has already filed a suit in O.S.

No. 768 of 1988 on the file of III Additional Sub Court, Madurai, challenging the sale of the property in favour of the first respondent, is the

petitioner has filed the suit questioning the title of the first respondent with regard to the property, it is open to him in the suit to claim for mesne

profits, if ultimately the court gives a judgment in his favour. Accordingly, this revision petition is dismissed. Upon the peculiar facts and

circumstances of the case, there will be no order as to costs.