
(1970) 02 SC CK 0045

In the Supreme Court Of India

Case No : Civil Appeal No. 1450 Of 1966

M.K. Palaniappa Chettiar and Another

APPELLANT

Vs

A. Pennuswami Pillai

RESPONDENT

Date of Decision : 27-02-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1970) 2 SCC 290

Hon'ble Judges : Vishishtha Bhargava, J;S. M. Sikri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V. BHARGAVA, J.—The respondent in this appeal, who was the landlord of a building in Tiruchirapalli, filed an application under Section 10(2) of the Madras Buildings (Lease and Rent Control) Act No. 18 of 1960 (hereinafter referred to as "the Act"), for eviction of the 1st appellant who was his tenant, on the following four grounds

- (1) that the tenant had committed wilful default in payment of rent;
- (2) that the tenant had sub-let a part of the building without the consent of the landlord;
- (3) that the tenant had used the building for a purpose other than that for which it was leased ; and
- (4) that the tenant had caused material damage to the building.

2. The Rent Controller, before whom the application for eviction was filed, dismissed the application holding on all the four grounds in favour of the tenant and against the landlord. An appeal before the appellate authority empowered under Section 23 of the Act was also unsuccessful. Before that authority, the ground which was principally urged was that the premises had been let out for purposes of carrying on a trade, while the tenant had used the premises for

residential purposes. The plea taken by the tenant was that the lease was for residential as well as trade purposes and there had been no breach of the terms of the lease. The appellate authority recorded the finding that the building was let out for purposes of trade and, consequently, for non-residential purpose only. It further proceeded to hold that a very small portion of the building was being used for residential purposes and that did not amount to use of the building for a purpose contrary to that for which it was let out. Thereafter, the landlord moved a revision before the District court under Section 25(1)(b)(ii) of the Act. The District court affirmed the finding and decision of the appellate authority. The landlord proceeded to file a revision in the High court of Madras against this decision under Section 115 of the Code of Civil Procedure. The High court set aside the decisions of the subordinate courts and granted a decree for eviction, holding that the building had been used for a purpose other than that for which it had been let out ; and it is against this decision that the tenant and his nephew, who was also impleaded with him as an opposite party, have come up to this court by special leave.

3. The first point urged on behalf of the tenant is that there was no error of jurisdiction in the decisions of the Rent Controller, the appellate authority, or the District court and consequently, the High court did not have jurisdiction to interfere in exercise of its powers under Section 115 of the Code of Civil Procedure. The High court interfered under Section 115, C. P. C., on the view that, on the facts found and on the pleadings, the suit for eviction should have been decreed. The view taken was that the tenant never took up the plea that, even if a part of the premises had been used for residential purposes, it did not amount to use against the terms of the lease, so that this plea was not open to be considered by the lower courts. The plea that was raised by the tenant was that the lease itself was for the dual purpose of residence as well as trade ; and that plea having failed, the application for eviction should have been allowed. On the face of it, this order made by the High court does not proceed on the basis that any error of jurisdiction was committed by the lower courts. The courts had the jurisdiction either to grant the application or to reject it, depending on whether the landlord succeeded in proving that the tenant had used the building for a purpose other than the one for which it was let out, or failed to do so. Even if the finding by the lower courts was incorrect, it would be an error committed by those courts in the decision itself in proper exercise of their jurisdiction. It could not be held that, in giving such a decision, the courts exercised jurisdiction not vested in them. At the highest, the only criticism that could be levelled was that their decision suffered from an error of law ; but, however gross an error of law committed by those courts, the High court could not interfere under Section 115 of the Code of Civil Procedure, specially when there was no procedural error committed by those courts. This principle was clearly laid down by this court in *Keshardeo Chamria v. Radha Kissen Chamria and Others* and vice versa. The same principle was affirmed in *Pandurang Dhoni Chougule v. Maruti Hari Jadhav*. The errors committed by the courts do not relate to any question of fact which

would determine their jurisdiction to deal with the proceedings before them. The error was purely in giving the decision in a case in which they had jurisdiction to decide the dispute that was raised before them. In these circumstances, it is clear that the High court was wrong in interfering with the setting aside the concurrent findings of the three lower courts, acting under Section 115 of the Code of Civil Procedure.

4. Even on the alternative point pressed before us that the High court itself took an incorrect view, we are inclined to accept the submission made on behalf of the tenant. The finding recorded by the revisional court acting under Section 25(I)(b) (ii) of the Act was to the effect that the portion of the building, which was being used by the tenant for cooking, was very negligible, while the rest of the building was being continued to be used for the purpose for which it was taken on lease. On this finding, the lower courts were quite correct in holding that there had been no such conversion in breach of the terms of the lease as would render the tenant liable to eviction. The High court interfered because, in its opinion, the lower courts were not competent to decide the case on this basis as no plea had been taken on behalf of the tenant that, even if the lease was for trade purposes only and a part of the building had been used for residence, it did not amount to use in contravention of the terms of the lease. In taking this view, the High court lost sight of the fact that, in this case, the landlord came as the applicant for eviction of the tenant and the burden was on the landlord to prove all the ingredients which entitled him to seek eviction. It was, therefore, for the landlord to establish, independently of the plea of the tenant, that the tenants use was in breach of the terms of the lease. When the landlord failed to show that any substantial part of the building was being used for a purpose different from the purpose for which the building had been let out, the claim of the landlord had to fail irrespective of the plea taken by the tenant to resist the application. On this ground also, the High court had no justification to interfere.

5. Some other grounds were also urged on behalf of the tenant, but we need not deal with them in view of the fact that the tenant succeeds for the two reasons mentioned above. The appeal is allowed, the judgment of the High court is set aside, and the decision of the lower courts is affirmed. The appellants would be entitled to their costs from the respondent.