
(1981) 12 AP CK 0014

In the Andhra Pradesh High Court

Case No : Second Appeal No. 218 of 1980

Mogilipuvvu Annapurnaiah

APPELLANT

Vs

Malampati Narasimha Rao and Another

RESPONDENT

Date of Decision : 29-12-1981

Acts Referred:

Specific Relief Act, 1963 — Section 38, 6
Transfer of Property Act, 1882 — Section 108, 111

Citation : AIR 1982 AP 253 : (1982) 1 APLJ 130

Hon'ble Judges : Raghuvir, J;Jeevan Reddi, J

Bench : Division Bench

Advocate : Challa Sitaramayya, for the Appellant; M. Chandrasekhara Rao, for the Respondent

Judgement

Raghuvir, J.—M. Annapurnayya, the appellant in the case laid the suit on September 10, 1974 for a permanent injunction against M. Narasimha Rao and G. Koteswara Rao (the lessors) directing them not to interfere with his possession of a building and a vacant site appurtenant thereto. He alleged he is a tenant in the building, that it was let out to him in 1961 by the two lessors for business purposes. The period in the written lease expired in June, 1973 and the lessors extended the lease for three more years, orally up to 1976 on payment of Rs. 2,500. The lessors denied the oral extension of lease. Their case was, the lease was terminated by notice, Ex. A1 dated July 17, 1974, thereafter, the tenant surrendered possession to them. Thus, the tenant was not in possession of the suit premises, therefore, no injunction can be granted against them.

2. The District Munsif, Narasaraopet on November 17, 1977 found the tenant did not surrender possession. The oral lease set up by the tenant up to 1976 is true. The Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act 15 of 1960 however, was found applicable to the suit premises, therefore, he directed the parties to go before the Rent Controller for relief and ordered injunction against the lessors. On appeal, the Subordinate Judge, Narasaraopet on November 28,

1979 held the tenant did not surrender possession to the lessor but it was held in view of "Sec. 32" the Act 15 of 1960 did not apply to the facts of the case. The tenancy, it was held, by Ex. A-1 was terminated. The possession of the tenant, thereafter, was that of a "Trespasser" and, for that reason the tenant, in such circumstances, is not entitled to injunction. The appeal was allowed and the suit was dismissed.

3. In the second appeal, it may, at the outset, be stated that it is not possible to determine whether the possession of the tenant is statutory for in the suit and in appeal, there was no question directly raised as to the applicability of Act 15 of 1960. Without any issue and without determining whether what was let out was a building with a vacant site, or , merely a vacant site, the trial Court held that the parties should have recourse to the provisions of Act 15 of 1960 are inapplicable. Therefore, we do not propose to determine the applicability of Act 15 of 1960 as that question was not raised and decided directly in the suit and in the first appeal.

4. In the second appeal, several questions have been raised as respects possession of Annapurnayya over the demised premises. What are the incidents of a tenant after a lease is terminate: whether possession of such a tenant is that of a trespasser was seriously disputed by the learned counsel for the tenant. Whether his possession is lawful; whether his possession is legal; Whether his possession is illegal or unlawful; Whether he is an unauthorised occupant of the demised premises and, in that context, whether the tenant is a trespasser; Whether he can claim protection from the courts all these aspects were discussed threadbare by the counsel for the lessors and tenants. It is, however, accepted on all hands, if the tenant continues in possession without the consent or acquiescence of the lessor, such a tenant is a "Tenant by sufferance". The position, however, is different where there is consent or acquiescence on the part of the lessor to continue in possession. In the case of a statutory tenant as held by the Supreme Court in the three cases in Ganga Dutt Murarka Vs. Kartik Chandra Das and Others, ; Bhawanji Lakhamshi and Others Vs. Himatlal Jamnadas Dani and Others, and Badrilal Vs. Municipal Corporation of Indore, the possession, of a tenant is protected, is not disputed.

5. On the facts of the case, the tenant in this case cannot be held to be "holding over" for the appellate Court, as a last court of fact, held that there was no oral extension of lease in favour of the tenant. Therefore, incidents of "holding over" as defined in Lallu Yeshwant Singh v. Rao Jagdish Singh AIR 1968 SC 620 are inapplicable.

6. Thus, on the facts of the case, Annapurnayya is a tenant by sufferance after his tenancy was terminated under Ex. A-1. As a tenant by sufferance, what are his rights is not a question of easy answer. The courts have held the possession of a tenant by sufferance as "juridical possession." As to the meaning of that word, it has been defined in Black's Law Dictionary, Fourth Edition, at page 990; Juridical : relating to administration of justice, or office of a Judge : Regular done

in conformity to the laws of the country and the practice which is there observed."

7. It is argued on behalf of the tenant that the appellate Court has misconstrued the incidents of "juridical possession" and equated such a tenant wrongly to be a trespasser and refused injunction. Whereas, the learned counsel for the lessors argued that under clause 9a) of Sec. 108 of the Transfer of Property Act (4 of 1882) there is a duty cast on the tenant to deliver possession after the expiration of the period or after the tenancy has been terminated. The tenant in the instant case it is argued acted in violation of such a duty which is cast on him and continued to remain in possession of the demised premises. Such a possession of tenant by sufferance it is argued is "trespass" in law. Speaking of the rights of such a tenant it is argued he has no right to remain in possession. His possession continues without the consent of the landlord. The civil Court cannot recognise such a possession. The order of injunction in protection of such a trespasser, should not be accorded, for it is illegal. He cannot continue lawfully on the demised premises for his possession is unlawful. He will not be entitled, as of right to an injunction from the Civil Court for the tenant had breached the obligation to deliver possession under the Transfer of Property Act (4 of 1882) to the lessors. These aspects, when were pressed, Muktadar, J. on November 11, 1981, having regard to the general importance of the question, referred to the Division Bench for decision.

8. In considering the nature of juridical possession, very often, provisions of Sec. 6 of the Specific Relief Act (47 of 1963) are referred in the cases that considered the rights of tenants by sufferance.

9. The Supreme Court in India had an occasion to review the rights arising under Sec. 6 of the Specific Relief Act (47 of 1963) and approved the observations of the Privy Council as held in *Midnapur Zamindari Co. Ltd. v. Naresh Narayan Roy* AIR 1924 PC 144 that in our jurisprudence, "persons are not permitted to take forcible possession. They must obtain such possession as they are entitled to through a Court". That idea is incorporated in Sec. 6 of that Act. A person who has to title including a trespasser, cannot be evicted by force even by a person who has a right to occupy the land. A person who has been so dispossessed, the Parliament recognises, he has a right to restitution of possession under Sec. 6 of Act 47 of 1963, if he files a suit within six months of dispossession. It is now decided, such a dispossessed person even after six months, has a right to claim possession, although on this question, earlier there was acute difference of opinion in various High Courts, before it was finally decided by the Supreme Court in *Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others*, . The legal position now is, within twelve years of dispossession, such a person (dispossessed) can reclaim possession if he has been forcibly dispossessed except from a true title holder. It is in this regard, the learned counsel for the lessors has emphasised, recounting the incidents of the rights of a tenant by sufferance, the only right of Annapurnayya is to claim possession if he is dispossessed and no other and that he has no right to claim injunction. The

courts cannot take cognizance of the possession of a tenant by sufferance. In one of the recent cases in *Sri Balaji Trading Company v. Veeraswamy Srinivasan* (1980) 1 AnWR 28, this court held that a tenant by sufferance is entitled to an injunction.

10. In a case that arose under the Government Premises (Eviction) Act (27 of 1950) in *K.K. Verma and Another Vs. Union of India and Another*, S. 1 (b) the words "that any person is in unauthorised occupation of any Government premises" were explained with reference to tenancy by sufferance. The Bombay High Court held that "Our law makes a clear and sharp distinction between a trespasser and an erstwhile tenant and the possession of a tenant by sufferance was a juridical possession and is protected by law". This position has been repeated in times out of number by the Supreme Court, therefore, it is not necessary to further delve into that questions. Thus, possession of a tenant by sufferance, cannot be considered as unauthorised. The Supreme Court again considered the case of "*Kapali Talkies*" under regulation 30 of the Madras Cinemas Regulation Act, 1955, after expiration of lease period, whether possession of such a tenant, thereafter, was "lawful". A single Judge of the Madras High Court held, the tenancy without the consent of the landlord, was not lawful possession. The division Bench of that Court, on appeal reversed that view. The Supreme Court, on further appeal, considered the matter in *M.C. Chockalingam and Others Vs. V. Manickavasagam and Others*, and construed the possession of such a tenant was not lawful. The expression, "lawful" "unlawful", "authorised", "unauthorised", "legal", "illegal", it appears, contain different nuances and shades of content. Therefore, it is not possible to hold what is "not lawful" is "unlawful" what is "not illegal" is legal; when it is unauthorised as distinguished from not authorised. The instant case can be decided without reference to the various nuances. It is however accepted, on all hands, the possession of a tenant by sufferance is a "juridical possession". Whether he is entitled to protection by the courts is, no doubt, seriously disputed in the instant case. In the course of the debate, the counsel referred to the observations made in the following cases: *Chinna Pillai Vs. N. Govindaswami Naidu and Another*, ; *Alagi Alamelu Achi Vs. Ponniah Mudaliar*, ; *Ouseph Lonan Vs. Kochunarayana Pisharady*, ; *Biswabani Private Ltd. Vs. Santosh Kumar Dutta and Others*, ; *Subbiah Nadar Vs. Nallaperumal Pillai and Others*, ; *Ramdas Khatau and Co. Vs. Atlas Mills Co. Ltd.*, It is not necessary to refer to them in detail for , in our view, the Supreme Court approved the decision in *K.K. Verma and Another Vs. Union of India and Another*, which states the possession of a tenant requires to be protected. The policy of the law, or the philosophy, is as stated in *Wali Ahamad Khan v. Ajudhia Kandu* (1891) ILR 13 All 537 & 556, "to drive the person who wanted to eject a person into the proper court and to prevent them from going with a high hand and eject such persons. This is our jurisprudence was accepted by the Supreme Court.

11. It was finally argued on behalf of the lessors that the powers of Courts to order an injunction are restricted by the provisions contained in Part III of

Chapter VIII of Act 47 of 1963: that Courts do not have power to order injunction apart from the provisions in that Act. This contention triggered off a larger question whether the provisions of the Specific Relief Act 47 of 1963 are exhaustive in the context of the subject, "injunction". In *Ram Kissen Joydoyal v. Pooran Mull* (1920) ILR 733: (AIR 1920 Cal 239), it was held the powers of the courts are as enumerated in Act 47 of 1963, and the Act is exhaustive on the question. The Bombay High Court in the case AIR 1931 Bom 151 (*supra*) held with reference to the observation of the Privy Council case on the same subject that the provisions in the Act 47 of 1963 are not exhaustive. That Court added, the power to order injunction, Indian courts derived power from the old Courts of Chancery and injunction can be ordered apart from the provisions of Act 47 of 1963. This question was pressed with reference to the words, "breach of an obligation existing in his favour" under Sec. 38 of the Act, juxtaposed with the obligation of tenant by sufferance under clause (g) of S. 108 of the Transfer of Property Act. It is argued that such a tenant is obliged to deliver possession therefore, the Courts cannot take cognisance of the possession of such a tenant for he has no right to protect his possession. We keep open the larger question debated, for it is not necessary to decide it finally in this case. As held in case (1891 ILR 13 All 537) (*supra*) it is always better that a person is driven to a court of law than to permit him to forcibly evict a tenant. We hold the possession of Annapurnayya is juridical for he is a tenant by sufferance. The possession of such a tenant should be protected by the courts, in our country. In that view, the judgment and decree of the lower appellate Court is set aside. Annapurnayya is entitled to remain in possession of the demised premises till he is evicted in the course of law. We, therefore, order, in the circumstances of the case, if he is in arrears of rent as on today, he shall pay all the arrears payable to lessors within four weeks from today. In case of default, the injunction we have ordered today in the decree of this second appeal, will stand vacated. The Second Appeal is allowed. No costs.

12. Appeal allowed.