
(1990) 06 MAD CK 0040
In the Madras High Court

M.P. Ramanujammal

APPELLANT

Vs

C. Parankujam represented by father and guardian C.
Venkatachalam

RESPONDENT

Date of Decision : 29-06-1990

Acts Referred:

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

Citation : (1990) 2 LW 244 : (1991) 116 MLJ 1

Hon'ble Judges : Somasundaram, J

Bench : Division Bench

Judgement

Somasundaram, J.—The defendant, who succeeded before the trial Court but failed before the lower appellate court, is the appellant in the second appeal. For the sake of convenience, in this second appeal, the parties are referred to by their nomenclature given in the suit.

2. The plaintiff filed the suit O.S. No. 1743 of 1979 on the file of the City Civil Court, Madras for recovery of possession of the suit property, which is a shop bearing door No. 70/72 and new No. 87, Amman Koil Street, Madras and for recovery of a sum of Rs. 2,700 towards past damages for use and occupation and for Rs. 75 per month towards future damages for use and occupation with effect from 1-4-1977.

3. The case of the plaintiff is as follows: The suit property belonging to the plaintiff was let out to One Loganayakiammal on a monthly rent of Rs. 50 for non-residential purposes. When the rent for the month of June, 1973 was sent by money order by the defendant, the plaintiff enquired into the matter and found that the tenant, Loganayakiammal, died some time back and that the defendant had trespassed the suit property and he was illegally occupying the same. On coming to know about the death of the tenant Loganayakiammal, the plaintiff issued a lawyer's notice dated 25-8-1973 calling upon the defendant to vacate the same as the defendant is in unlawful possession of the suit property. The defendant, having trespassed into the shop and continuing in occupation illegally,

is liable to pay damages for use and occupation at the rate of Rs. 75 per month from the date of trespass into the premises and the plaintiff restricted his claim for damages from 1-5-1974 to 30-4-1977.

4. The defendant filed a written statement contending as follows: Loganayakiammal, the tenant, and her husband, Ranganatha Mudaliar, were issueless. They brought up Srinivasa Mudaliar, the brother's son of Ranganatha Mudaliar as their own son from the time when the said Srinivasa Mudaliar was three years old. Srinivasa Mudaliar was throughout residing only with Loganayakiammal and grew up as her son. After the death of Ranganatha Mudaliar in or about 1943, Srinivasa Mudaliar was, also looking after the charcoal business and he was associated with Loganayakiammal in the said business. After Srinivasa Mudaliar retired from Government service in 1961, the charcoal business was carried on in the suit property only by him and the licence for the same was transferred to his name. Srinivasa Mudaliar carried on the charcoal business till his death in May, 1971. Thereafter, his wife Padmavathi Ammal, continued the said business in the suit property till 1973. The defendant, who was married to one Perumal, one of the sons of Padmavathi Ammal, in 1962, came to live with Padmavathi Ammal, Loganayaki Ammal and her husband. The defendant became associated with the said charcoal business in the suit property and was carrying on the same from 1972. Srinivasa Mudaliar, his wife Padmavathi Ammal and his daughter-in-law, the defendant, one after another were closely associated with the charcoal business started by Loganayakiammal and were carrying on the same paying rents to the knowledge of the landlords. The defendant was carrying on the business in the suit property both as the legal representative and the member of the family of Loganayakiammal and therefore, she is a tenant entitled to the benefits of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 hereinafter referred to as the Act and the plaintiff is not entitled to recover possession of the suit property.

5. The trial Court found that though the defendant was not the legal representative of Loganayakiammal she carried on the business in the suit property either with the express or implied permission of the plaintiff and, therefore, the plaintiff is not entitled to recover possession of the suit property and consequently dismissed the suit. As against the judgment of the trial court the plaintiff preferred A.S. No. 30 of 1984 before the Principal Judge, City Civil Court, Madras. The appellate Court found that the defendant has not proved that she is the legal representative of Loganayakiammal and that she is associated with the business carried on by Loganayakiammal in the suit property and, therefore, she is not a tenant within the meaning of Section 2(8) of the Act 18 of 1960, hereinafter referred to as the Act. Consequently the appellate court allowed the appeal and decreed the suit as prayed for. Aggrieved by the judgment of the appellate court the defendant has filed the present second appeal.

6. Mr. G.P. Pattabiraman, learned Counsel for the appellant contended that the

suit property was leased out to Loganayakiammal. The said Loganayakiammal, and her husband Ranganatha Mudaliar did not have issues and so they brought up Ranganatha Mudaliar's brother's son, Srinivasa Mudaliar as their foster son. The Srinivasa Mudaliar and his wife Padmavathiammal lived with Loganayakiammal. The said Srinivasa Mudaliar was carrying on the charcoal business in the suit property after obtaining licence from the Corporation. After him, his wife Padmavathi and thereafter their daughter-in-law, the defendant in the suit, continued the business in the suit property and, therefore, the defendant is a tenant within the meaning of Section 2(8) of the Act and the plaintiff cannot recover possession of the suit property. The said contention of the learned Counsel for the appellant is without any substance.

7. Let us first consider whether the defendant is a tenant within the meaning of Section 2(8) of the Act. Section 2(8) of the Act runs as follows:

"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 representative 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 up to the death of the tenant, and

(ii) in 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 up to the death of the tenant and continue to carry on such business thereafter, and a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building by its tenant or a person to whom the collection of rents or fees in a public market, cart-stand or slaughterhouse or of rents for shops has been farmed out or leased by municipal council or a Panchayat Union Council or the Municipal Corporation of Madras or the Municipal Corporation of Madurai.

The inclusive definition of "tenant" in Section 2(8) of the Act will include the surviving spouse or any son or daughter or the legal representatives of the deceased tenant. An examination of Section 2(8) shows that the person who is claiming that he is a tenant within the meaning of Section 2(8) of the Act must satisfy the following two conditions:

(1) that he or she is the surviving spouse or any son or daughter or the legal representative of the deceased tenant.

and

(2) that such spouse or son or daughter or the legal representative of the deceased tenant 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 in the case of a non-residential building such spouse, son, daughter or the legal representative of the deceased tenant 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.

The defendant can be called a tenant within the meaning of Section 2(8) of the Act only if she succeeds in proving that she is the legal representative of the deceased tenant and that she 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. The evidence in this case discloses that the defendant is not the legal representative of Loganayakiammal and both the courts below have rightly found that the defendant is not the legal representative of Loganayakiammal. There is also no evidence in this case that Loganayakiammal, carried on the charcoal business in the suit property till her death in 1972. In para. 5 of the written statement the defendant has specifically pleaded that after Srinivasa Mudaliar retired from Government service in 1961, and that the charcoal business was solely carried on by him since Loganayakiammal became old. The evidence in this case also shows that Srinivasa Mudaliar was carrying on the charcoal business in the suit, property having licence in his own name even during the lifetime of Loganayakiammal. There is also no evidence in this case to show that Loganayakiammal ever carried on any business in charcoal in the suit property and the appellate court rightly came to the conclusion that Loganayakiammal never carried any business in charcoal in the suit property during her lifetime and that the defendant was never associated with Loganayakiammal in carrying on the business in charcoal in the suit property till her death. Since the defendant failed to satisfy both the conditions prescribed in Section 2(8) of the Act she cannot claim that she is a tenant in respect of the suit property within the meaning of Section 2(8) of the Act.

8. Learned Counsel for the appellant further contended that Srinivasa Mudaliar was brought up by Loganayakiammal and her husband Ranganatha Mudaliar as their foster son and the expression "any son" in Section 2(8) will include a "foster son" also. I am unable to accept this contention of the learned Counsel for the appellant. The expression "any son" in Section 2(8), of the Act cannot include "a foster son", because, the word "any" in Section 2(8) when read along with Sections 2(8)(i) and 2(8)(ii) only refers to in the case of a residential building, to that particular son who is living with the tenant in the building as a member of the family upto the date of death of the tenant or in the case of non-residential building that particular son who 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. The expression "any son" in Section 2(8) of the Act will not take in "a foster son".

9. The third contention of the learned Counsel for the appellant is that even after the death of Loganayakiammal on 7-10-1972, the defendant was paying rent to the plaintiff as a tenant in her own right till June, 1973 and such conduct of the parties leads to the inference that the intention of the parties was to create the relationship of landlord and tenant between them. In support of the said

contention learned Counsel relies on the decision reported in Jagannath Vs. District Judge, Mathura and Others, . There is no merit in this contention of the learned Counsel for the appellant also. There is no averment in the written statement that the defendant was paying rent after the death of Loganayakiammal in her own right as a tenant. Her specific, case in the written statement is that she is carrying on the charcoal business in the suit property both as a legal representative and a member of the family of Loganayakiammal and she was continuously associated with the said business even during the lifetime of Loganayakiammal. The lower appellate court rightly did not accept the case of the defendant that the licence to carry on the charcoal business in the suit property was obtained in the name of Srinivasa Mudaliar with the consent of the landlord and thereafter with the consent of the landlord the licence ,was transferred in the name of Padmavathi in the first instance and then in the name of the defendant, as there was no evidence to support such a case of the defendant. There are no merits in the second appeal and the same is liable to be dismissed. Accordingly the second appeal is dismissed, but, in the circumstances, there is no order as to costs.