

(2008) 04 MAD CK 0195

In the Madras High Court

Case No : C.R.P. (PD) No"s. 1714 and 1715 of 2007 and M.P. No"s. 1, 1 and 2 of 2007

M/s. Tufflite Plastics Pvt. Ltd.

APPELLANT

Vs

Sree Anjali and M/s. Rajashree Automotive Pvt. Ltd.

RESPONDENT

Date of Decision : 21-04-2008

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10, 10(1), 10(2)

Citation : (2008) 04 MAD CK 0195

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : M.S. Krishnan for M/s. Sarvabhauman Associates, for the Appellant; P.R. Krishnan, for Mr. R.S. Anandan (R1 to R3) and Mr. N. Damodaran (R4), for the Respondent

Final Decision : Allowed

Judgement

K. Venkataraman, J.—The sub-tenant before the learned Rent Controller, who has enjoyed the fruits of the compromise decree, thereby in possession of the premises for five years, has filed the suit for declaration that the decree obtained by the petitioner before the learned Rent Controller is null and void and obtained an order of interim injunction, which is under challenge in the present Revision. The first defendant in the above referred suit is the petitioner and the plaintiffs thereon are the respondents 1 to 3 and the second defendant is the fourth respondent in these Revisions. The respondents 1 to 3 have filed the said suit for the following reliefs:-

a. declaring that the compromise fair and final order and decree 25.4.2003 passed in RCOP No. 71 of 2003 by the learned Rent Controller cum Principal District Munsif, Coimbatore as null and void with jurisdiction by means of a declaratory decree;

b. grant a permanent injunction restraining the first and second defendants their men or agents, servants or associates from in any manner interfere or

interrupting with the peaceful possession and enjoyment of the property as described in Schedule "A".

c. restraining the first defendant from in any manner giving effect to or act in pursuance of the fair and final order and decree dated 25.4.2000 passed in RCOP No. 71 of 2003 by the Rent Controller cum Principal District Munsif, Coimbatore by filing E.P. by means of permanent injunction.

d. directing the first defendant to execute a sale deed pertaining to the property as detailed in Schedule B by receiving the balance sale price out of Rs. 4,90,000/- on or a date to be fixed by this Court and in failure thereof to execute a sale deed pertaining to said property by this Court.

2. Along with the suit they have filed I.A.Nos.373 and 374 of 2007 for interim orders. In I.A. No. 373 of 2007 they sought for temporary injunction restraining the petitioner herein from proceeding with the fair and final order and compromise decree passed in R.C.O.P.No.71 of 2003 on the file of the learned Principal District Munsif Cum Rent Controller, Coimbatore by filing execution petitions till the disposal of the LA. In I.A.No. 374 of 2007 the interim relief that has been sought for is temporary injunction restraining the petitioner and the fourth respondent from in any manner interfering with their peaceful possession and enjoyment of the suit property. By an order dated 29.3.2007 the interim orders have been granted by the Court referred to above and against the said orders, the present Revisions have been filed.

3. The short matrix which are necessary for the disposal of the present Revisions are set out hereunder:-

The petitioner herein had filed eviction petition against the respondent 1 to 4 before the learned Rent Controller cum District Munsif of Coimbatore in R.C.O.P.No. 71 of 2003 for eviction u/s 10(2)(ii) (a &b) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 Thus, the eviction petition had been filed stating that though the property had been leased out to the fourth respondent herein, he has sub-let to other respondents. Further, the premises that has been leased out to the fourth respondent has been put to use for a purpose other than for which it was leased out. Further acts of waste has been committed to impair materially the value and utility of the property. Thus, the grounds of eviction was

(1) sub-letting

(2) using the premises for a purpose other than for which it was leased out

(3) and on the ground of acts of waste.

4. In the said proceedings, compromise was arrived at between the petitioner and the respondents and a compromise memo had been filed before the said authority. On the basis of the compromise memo an order was passed on 25.4.2003 in and by which the respondents herein have agreed to vacate the

premises on or before 31.3.2007. While so the respondents 1 to 3 have filed the suit in O.S.No. 197 of 2007 against the petitioner and the fourth respondent herein before the learned Subordinate Judge, Coimbatore for declaration that the decree dated 25.4.2003 passed in R.C.O.P No. 71 of 2003 by the learned Rent controller cum Principal District Munsif, Coimbatore is null and void and for incidental reliefs, which have been extracted above.

5. In the said suit the respondents 1 to 3 have filed interlocutory applications in I.A.Nos.373 and 374 of 2007 for interim orders which have been extracted above. The learned Judge had heard the applications and granted interim orders and hence these Revisions are filed. In these Revisions, the main contentions of the petitioner are that

(a) The learned Judge, while granting interim order failed to appreciate that the eviction proceedings was initiated by the petitioner against the respondents on the ground that the property in question has been leased out only to the fourth respondent. However, he contravened the lease conditions and sub-let the property to the first respondent. The respondents 2 and 3 being the partners of the first respondent and hence the eviction petition in R.C.O.P. No. 71 of 2003 was filed before the learned Rent Controller cum District Munsif, Coimbatore and in that a compromise was arrived at between the parties and in pursuant to the compromise decree dated 25.4.2003, time has been granted to the respondents 1 to 3 till 31.3.2007 for vacating the premises in question. While so in contravention of the compromise arrived between the parties and in violation of the order passed thereon, the present suit has been filed and interim orders have been obtained, which is liable to be set aside.

(b) The Court below ought not to have granted an order of injunction, which prima facie on the face of the records will prove that the same has been obtained by fraud and mis-representation.

(c) The order obtained by fraud should be set aside in limine since fraud vitiates all solemn proceedings.

(d) The suit itself is barred by limitation inasmuch as the suit is filed on 27.3.2007 to declare a decree dated 25.4.2003 as null and void, which is nearly 4 years after the decree came to be passed.

(e) When the first respondent has not come forward with the allegation that the compromise had been entered into by fraud so as to render it a nullity, the Court below ought not to have granted interim relief in favour of the respondents 1 to 3 herein.

(f) The order of eviction on the basis of a compromise, need not necessarily state the reasons, provided at the time of the passing of the compromise decree, when there was enough material on the basis of which the Court was primarily satisfied about a statutory ground for eviction.

(g) The non-filing of the counter in the said R.C.O.P. by the first respondent

would amply establish that it had admitted the averments made in the petition. The said reasoning coupled with the fact that there is a mention about the Franchise Agreement between the first respondent and the fourth respondent in a compromise memo, it will prove that the Rent Controller was satisfied that there was subletting and consequently recorded the compromise.

(h) The learned trial Judge totally has over looked the fact that the first respondent herein cannot be allowed to approbate and reprobate especially, when a compromise memo was signed and agreed to abide by the terms and condition of the compromise, Thus, it cannot be allowed to opt out of the same.

The learned counsel appearing for the petitioner Mr. M.S. Krishnan mainly made his submission on the above said grounds raised in the Revision.

(7) Per contra, Mr. P.R. Krishnan learned Senior Counsel appearing for the respondents 1 to 3 contended that the order of the learned Principal Subordinate Judge is within the jurisdiction and the suit is not barred by limitation. Further there was no fraud in getting the interim orders. The main contention of the learned Senior Counsel appearing for the first respondent are that:-

(a) The first respondent is not the sub-lessee as pleaded by the petitioner.

(b) The suit has been filed not only for declaration that the decree passed in R,C.O.P.No.71 of 2003 is not valid but also for execution of the sale deed in favour of the first respondent.

(c) The decree passed by the Court without jurisdiction is a nullity (coram non judice) is void abinitio. It can be challenged anywhere and at any time whenever and wherever it is sought to be enforced.

(d) The non-filing of the counter was due to the circumstances then existed and the relationship between the parties. Further within one month from the date of filing of the RCOP, compromise was entered into between the parties and hence the question of filing counter does not arise. Further nowhere in the compromise memo signed by the parties it is accepted that the first respondent is the sub-lessee.

(e) The learned Rent Controller has not given any finding on the grounds of eviction on which the Rent Control proceedings was initiated. The order basing on compromise decree alone without giving a finding on the grounds of eviction raised by the landlord, cannot be enforced in law.

Thus, the learned Senior Counsel appearing for the first respondent sought for dismissal of the revisions.

7. Mr. N. Damodaran, learned counsel appears for the fourth respondent and he reiterated the arguments advanced on the side of the first respondent.

8. On the above pleadings, I will have to arrive at a conclusion whether these revisions are to be allowed or dismissed.

9. Admittedly the petitioner had laid the rent control proceedings in R.C.O.P.No.71 of 2003 against the respondents before the learned Rent Controller cum District Munsif, Coimbatore, on the ground of sub-letting, using the premises for a purpose other than for which it was leased and for causing damage. In the said proceeding, it is the definite case of the petitioner that it has leased out the premises in question to the 4th respondent herein as per the agreement of lease dated 17.4.1998. It is the further case of the petitioner thereon that the 4th respondent herein being the first respondent in that Rent Control proceeding had leased out premises to the respondents 1 to 3 herein, who were the respondents 2 to 4 in that rent control proceedings, without its knowledge and such sub-lease is in violation of the terms and conditions of the lease agreement between the petitioner and 4th respondent. Paragraphs 5 and 6 of the R.C.O.P. No. 71 of 2003 are reproduced hereunder:-

"5 The petitioner submits that recently they found that a Hotel in the name of the second respondent has been started in their property. The petitioner understands that the 2nd respondent Hotel is being run by the respondents 3 and 4 and the first respondent has parted with the possession of a portion of the property let out by the petitioner. The petitioner submits that the first respondent has transferred its rights under the lease and sub-let a portion of the property to the respondents 2 to 4. Clause No. 14 of the said Agreement of Lease dated 17.4.1998, specifically prohibits transfer, assign, sub-let or parting with the possession of the property by leave and licence or in any other manner.

6. The petitioner submits that the sublease of the property by the first respondent to the respondents 2 to 4 is without the written consent of the petitioner. The petitioner has no knowledge of such transaction between the respondents. The first respondent has violated the terms of the said agreement of lease, as well as the provision of law, and created a sub-lease of the property without knowledge and consent of the petitioner. Hence the respondents are liable to be evicted on the ground of unauthorised sub-letting."

10. Thus, the petitioner sought for eviction on the ground of sub-letting and other grounds. Admittedly, no counter has been filed in the said rent control proceedings. Before the counter could be filed, a compromise was entered into between the petitioner and the respondents and in pursuant to the same, compromise decree was passed by the Rent Controller on 25.4.2003 granting five years time to the respondents 1 to 3 for vacating and handing over vacant possession.

11.(a) The first and foremost submission of the learned counsel appearing for the petitioner is that since no counter has been filed by the respondents 1 to 3 herein in the said rent control proceedings, it has to be presumed that the respondents 1 to 3 have accepted the plea of sub-lease raised by the petitioner.

(b). On the other hand, learned Senior Counsel appearing for the first respondent contended that the eviction petition was filed on 29.3.2003 and the

memo of compromise was arrived at within a month and hence the non-filing of the counter in the eviction proceedings shall not be construed that the respondents 1 to 3 have accepted the plea of sublease put forth by the petitioner herein. Further the learned Senior Counsel appearing for the respondents 1 to 3 pointed out that even in the compromise memo clause 3 specifically recited that

"the respondents 2 to 4 deny the various averments made against them in R.C.O.P. They are ready to file a detailed counter in support of their claim".

Again in para 5 of the said compromise memo it has been recited that

"In the above circumstances, without prejudice to the various rival contentions all the parties herein have amicably settled all the disputes inter-se on the following terms and conditions."

By pointing out these portions in the memo of compromise between the parties, learned Senior counsel appearing for the respondents 1 to 3 contended that the respondents 2 to 4 thereon have not accepted the contention of the petitioner that the premise has been sub-let to them by the 4th respondent herein.

(c). On considering the above submissions made by the learned counsel appearing for the petitioner as well as the respondents 1 to 3, I am of considered view that merely because the respondents 1 to 3 herein have not filed the counter, it cannot be said that they have accepted the plea of sub-lease raised by the petitioner. Two reasons could be assigned for such conclusion.

(i) The first being, as contended by the learned Senior Counsel appearing for the respondents 1 to 3 within one month from the date of filing of RCOP a compromise has been arrived at between the parties and hence the non-filing of the counter should not be put against the respondents 1 to 3 and it cannot be inferred that on the said ground that the respondents 1 to 3 have accepted the plea of sublease raised by the petitioner. (ii) The second reason being even in the compromise memo, the respondents 1 to 3 herein have clearly spelt out that they deny the various averments made against them in the RCOP and that they are ready to file a detailed counter in support of their claim. Further in clause 5 of the memo of compromise it has been clearly spelt out that without prejudice to various rival contentions all the parties have amicably settled all the disputes inter-se among them on various terms and conditions set out thereon.

(iii) Thus, it could be safely concluded that mere non-filing of counter by respondents 1 to 3, in the said R.C.O.P. cannot be concluded that they have accepted that they are sub-lessees.

(d)(i) However, from the later terms and conditions of the memo of compromise, it could be inferred that the respondents 1 to 3 have accepted the plea of petitioner regarding sub-letting. Subclause (ii) of Clause 5 of the memo of compromise specifically reads as follows:-

"(ii) The Franchise Agreement dated 2.6.1998 entered into between the 1st

respondent and the respondents 2 to 4 shall come to an end and the respondents 2 to 4 shall cease to have any right or interest to do business in the property after 31.12.2006. The respondents 2 to 4 shall leave and vacate the property and cease to be in possession as a franchisor or licensee or in any other capacity on or after 31.3.2007. Three months from 31.12.2006 to 31.3.2007 is given to enable them to dismantle and remove their construction. However, payments will be paid till vacating the property as agreed herein."

(ii). Thus, sub-clause (ii) in the memo of compromise clearly reads that even though there was an agreement dated 2.6.1998 between the respondents 1 to 3 herein on the one hand and the fourth respondent on the other hand, there was no lease or tenancy agreement between the petitioner and the respondents 1 to 3 herein. If really the respondents 1 to 3 are not sub tenants and they have been let in possession by the petitioner herein, it would have been definitely recited in the compromise memo filed by the parties. The compromise memo is more silent about this aspect.

(iii) Further more sub-clauses (iv) and (v) of the memo of compromise reads as follows:-

(iv) The payment of (a) Rs. 12,000/- (Rupees Twelve thousand only) per month from 17.4.2001 to 16.4.2002 (b) Rs. 12,600/- (Rupees Twelve thousand six hundred only) per month from 17.4.2002 to 16.4.2003 (c) Rs. 13,230/- (Rupees Thirteen thousand two hundred and thirty only) per month from 17.4.2003 to 16.4.2005 (d) Rs. 13,891/- (Rupees Thirteen thousand eight hundred and ninety one only) per month from 17.4.2005 to 31.12.2006 for carrying on business as Franchisor shall be paid by the respondents 2 to 4 to the 1st respondent. The said amount shall be made over to the petitioner by the 1st respondent. It is further agreed to by the 1st respondent that whatever amount collected by it from Respondent 2 to 4 from the date of induction from 2.6.1998 shall be made over to the petitioner by the 1st respondent. The respondents 2 to 4 are given time to vacate and deliver possession to petitioner, purely as a result of compromise arrived between parties on the grounds of justice, equity and fairness.

(v) The respondents 2 to 4 shall simultaneously withdraw and not press the suit in O.S.No.1761 of 2000 on the file of the District Munsif Court of Coimbatore filed by them.

(iv). A reading of the said clauses in the said memo of compromise will clearly show that the 4th respondent herein has to collect the amounts from the respondents 1 to 3 herein and it shall be handed over to the petitioner. If really the contention of the respondents 1 to 3 that they are the tenants under the petitioner has to be accepted, there need be no clause in the memo of compromise authorising the fourth respondent herein to collect the rent from the respondents 1 to 3 and hand over the same to the petitioner. This clearly shows that the petitioner had not accepted the respondents 1 to 3 as its tenants and

the respondents 1 to 3 have indirectly admitted that they are not direct tenants under the petitioner. That is why the fourth respondent herein had been permitted to receive the amounts from the respondents 1 to 3 herein and hand over the same to the petitioner.

(v) The learned Senior counsel appearing for the first respondent submitted that in view of sub-clauses 3, 4 and 5 of the Memo of compromise which reads that

"the respondents 2 to 4 deny the various averments made against them in the RCOP. They are ready to file a detailed counter in support of their claim and in the above circumstances, without prejudice to various rival contentions all the parties herein have amicably settled all the disputes inter-se on the following terms and conditions"

the respondents 1 to 3 have not accepted that they are sub-tenants. However, in view of the latter clause one could infer that the petitioner did not accept the respondents 1 to 3 as its direct tenants and that the respondents 1 to 3 have rather accepted that they are only subtenants, who have been inducted by the 4th respondent.

(vi) Thus, considering the over all facts and circumstances the one and only the conclusion that could be arrived at is that the petitioner had treated the respondents 1 to 3 as its sub-tenants which fact is not being disputed by the respondents 1 to 3 herein.

13(a). The next submission of the learned counsel appearing for the petitioner is that having filed a compromise memo and having accepted for grant of time for vacating the premises, can it be open to the respondents 1 to 3 to say, at the fag end of the 5th year that the compromise decree arrived at in the rent control proceedings is not valid. Learned counsel appearing for the petitioner strenuously contended that the respondents 1 to 3 having enjoyed the fruits of the compromise decree passed by the Rent Controller, cannot now at the fag end of the 5th year, contend that the decree obtained before the Rent Controller is not valid.

(b). Per contra, learned Senior Counsel appearing for the respondents 1 to 3 contended that if a valid decree has not been passed by the Rent Controller, it is always open to the parties thereon to contend that the decree passed by the Rent Controller is not valid and binding on them. Learned Senior Counsel appearing for the respondents 1 to 3 vehemently contended that the expression used in Section 10(1) of Tamil Nadu Building (Lease and Rent Control) Act, 1960 is that "if controller is satisfied" and hence the satisfaction of the Rent Controller could be the basis for eviction and the order is very silent about the same and hence the same cannot be executed. Learned Senior Counsel appearing for the respondents 1 to 3 relied on the decision in K.K. Chari Vs. R.M. Seshadri, and contended that if the landlord asked for eviction on the grounds enumerated u/s 10, the controller can pass an order in his favour only if he is satisfied that the claim is bona fide. Thus, the satisfaction of the Rent Controller should form part

of the order.

(c). Per contra, learned counsel appearing for the petitioner contended that satisfaction of the Court is though a prerequisite for the order of eviction, if there are sufficient materials before it, before the parties invited it to pass an order, in terms of their agreement, it is possible to postulate that the Court was satisfied about the grounds on which the order of eviction was based. Learned counsel appearing for the petitioner relied on para 27, 28, 29, 30, 31 and 32 of the decision in K.K. Chari Vs. R.M. Seshadri,), which are reproduced hereunder:

"27. In the last decision, in our opinion, there is an indication as to how the satisfaction of a court can be expressed or gathered in a particular case. If a stage had been reached in a particular proceeding for a court to apply its mind regarding the existence of a statutory condition, it may be held that it was so satisfied about the plea of the landlord. Again from other material on record, it can be inferred that the court was so satisfied.

28. We are not inclined to accept the contention of Mr Tarkunde that the decree for eviction in the case before us has been passed solely on the basis of the compromise arrived at between the parties. No doubt a reading of the order of the court, dated March 31, 1969, isolated from all other circumstances, may give the impression that the decree for eviction is passed because of the compromise between the parties. It is no doubt true that the order on the face of it does not show that the court has expressed its satisfaction that the requirement of the landlord is bona fide. If the court had expressed its satisfaction in the order itself, that will conclude the matter. That the court was so satisfied can also be considered from the point of view whether a stage had been reached in the proceedings for the court to apply its mind to the relevant question? Other materials on record can also be taken into account to find out if the court was so satisfied. The High Court has proceeded on the basis that even if there was material before the court, when it passed the order of eviction by consent, from which it can be shown that the court was satisfied about the requirement of the landlord being bona fide, nevertheless such an order will be a nullity unless the Rent Controller has given his decision in favour of the landlord. In our opinion, this view is erroneous.

29. We have very exhaustively referred to the plea of the landlord as well as the evidence let in by him regarding his requiring the building bona fide for his own occupation. There is no controversy that if such a plea is established, an order of eviction of the tenant can be obtained by the landlord u/s 10 of the Act. The respondent no doubt at the initial stage denied the claim of the landlord. The landlord gave evidence on various matters with particular reference to his requiring the house bona fide for his own occupation. He had also filed, as referred by us earlier, as many as 45 exhibits, one of which was the order of eviction obtained against him, being Ext. 45. The respondent did not cross-examine the appellant. When the evidence of the landlord was before the court supported, as it was, by the innumerable exhibits filed by him, it can surely be

stated that a stage had been reached when the Controller was called upon to apply his mind to the question whether the plea of the landlord that he required the premises for his own occupation was bona fide. There is the further circumstance that the tenant did not cross-examine the plaintiff. On the other hand, he entered into a compromise in and by which he withdrew his defence and submitted to a decree for eviction unconditionally. His withdrawal of the defence, after the plaintiff had given evidence and filed exhibits in support of his plea, clearly shows that he accepted as true the claim of the landlord that he requires the premises bona fide for his own occupation. He has accepted the position that the landlord has made out the statutory requirement, entitling him to ask for possession of the premises. It is this unconditional withdrawal of the defence regarding the statutory condition pleaded by the landlord, and the compromise following it, that was accepted by the court and a decree for eviction passed thereon. Under those circumstances, when the tenant has accepted the plea of the landlord, in our opinion, it is futile to hold that the Rent Controller must again embark upon an enquiry regarding the requirement of the landlord being bona fide and adjudicated upon the same. Of course, if there is a dispute between the landlord and tenant, the court must decide the matter and adjudicate upon the plea of the landlord.

30. The true position appears to be that an order of eviction based on consent of the parties is not necessarily void if the jurisdictional fact viz. the existence of one or more of the conditions mentioned in Section 10 were shown to have existed when the Court made the order. Satisfaction of the Court, which is no doubt a pre-requisite for the order of eviction, need not be by the manifestation borne out by a judicial finding. If at some stage the Court was called upon to apply its mind to the question and there was sufficient material before it, before the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the Court was satisfied about the grounds on which the order of eviction was based.

31. It is no doubt true that before making an order for possession the court is under a duty to satisfy itself as to the truth of the landlord's claim if there is a dispute between the landlord and tenant. But if the tenant in fact admits that the landlord is entitled to possession on one or other of the statutory grounds mentioned in the Act, it is open to the court to act on that admission and make an order for possession in favour of the landlord without further enquiry. It is no doubt true that each case will have to be decided on its own facts to find out whether there is any material to justify an inference that an admission, express or implied, has been made by the tenant about the existence of one or other of the statutory grounds. But in the case on hand, we have already referred to the specific claim of the landlord as well as the fact of the tenant withdrawing his defence. According to us, such withdrawal of the defence expressly amounts to the tenant admitting that the landlord had made out his case regarding his requiring the premises for his own occupation being bona fide. In the three decisions of this Court, to which we have already referred, the position was

entirely different. In none of those cases was there any material to show that the tenant had expressly or impliedly accepted the plea of the landlord as true. Therefore those decisions do not assist the respondent-tenant.

32. For all the reasons mentioned above, it cannot be held, in the particular circumstances of this case, that the decree for eviction has been passed solely on the basis of the compromise entered into between the parties. On the other hand, it is clear from the various matters referred to, that the court was satisfied about the bona fide requirement of the landlord. Therefore, the decree for eviction is neither void nor inexecutable.

(d). From the reading of the above paragraphs in the said judgment one could safely conclude that if the Rent Controller on certain materials placed before him passed an order in terms of the memo of compromise arrived at between the parties, it is possible to postulate that the Rent Controller was satisfied about the grounds on which the order of eviction was based.

(e) On the said principles laid down by the Hon"ble Apex Court, now let us see whether the Rent Controller was possessed of any material, before ordering eviction on the basis of memo of compromise.

(i). As pointed out earlier in the memo of compromise, it has been clearly set out that there was franchise agreement only between the respondents 1 to 3 herein on the one hand and the 4th respondent on the other hand. There is no reference in the said memo of compromise that the premises in question has been leased out by the petitioner to the respondents 1 to 3. (ii). Further more, even in the said compromise memo, it has been clearly set out that the amounts have to be recovered from the respondents 1 to 3 herein by the 4th respondent herein and the same shall be handed over to the petitioner. This will clearly make out a case that the petitioner did not accept the respondents 1 to 3 as its direct tenants and has recognised only the 4th respondent as its tenant. This fact has to be taken into consideration while deciding the question whether the Rent Controller had sufficient materials before him about the factum that the respondents 1 to 3 herein are the sub-tenants in respect of the petition mentioned property.

(iii) Thus it is crystal clear that the Rent Controller was satisfied about the sub-lease made by the 4th respondent in favour of the respondents 1 to 3 herein.

13. Learned counsel appearing for the petitioner relied on a decision reported in AIR 1961 SC 1327 (Bhau Ram vs. Baij Nath Singh and others). Para 3 of the said judgment is reproduced hereunder:

"3. The two English decisions just referred to and some of the Indian decisions were considered in Gadde Venkatarayudu and Others Vs. Anumolu Chinna Ramakrishnayya and Others, Dealing with them Venkatasubba Rao, J., observed as follows:

"What is the principle underlying these decisions? When an order shows plainly

that it is intended to take effect in its entirety and that several parts of it depend upon each other, a person cannot adopt one part and repudiate another. For instance, if the Court directs that the suit shall be restored on the plaintiff paying the costs of the opposing party, there is no intention to benefit the latter, except on the terms mentioned in the order itself. If the party receives the costs, his act is tantamount to adopting the order.... According to Halsbury this rule is an application of the doctrine "that a person. may not approbate and reprobate" (13 Halsbury, para. 508).....In other words, to allow a party, who takes a benefit under such an order, to complain against it, would be to permit a breach of faith".

On relying the decision, Their Lordships have held that a person, who takes benefit under an order, de hors the claim on merits, cannot repudiate that part of the order, which is detrimental to him, because the order is to take effect in its entirety. Thus, the respondents 1 to 3, who were benefited by the order of the Rent Controller by being in possession of the property for five years, cannot now complain at the fag end of the 5th year that the said decree passed by the Rent Controller is not valid.

14. The other decision that has been cited by the learned counsel appearing for the petitioner is reported in C. Beepathumma and Others Vs. V.S. Kadambolithaya and Others, are usefully extracted hereunder.

18. The Indian courts have applied this doctrine in several cases and a reference to all of them is hardly necessary. We may, however, refer to a decision of the Madras High Court in (Vemulapalli) Ramakotayya Vs. (Gutha) Viraraghavayya, where after referring to the passage quoted by us from White and Tudor, courts Trotter, G. J. observed that the principle is often put in another form that a person cannot approbate and reprobate the same transaction and he referred to the decision of the Judicial committee in 50 Ind. Cas. 498 (Privy Council) . Recently, this court has also considered the doctrine in Bhau Ram v. Baij Nath Singh, AIR 1961 SC 1327.

19. The short question is whether, in the words of the Scottish lawyers Kunhi Pakki can be said to have approbated Exs. P-1 and P-2(a) and therefore his successors-in-title cannot now reprobate them. In this connection, Exs. P-3 and P-4 quite clearly show that Kunhi Pakki considered that he was bound by Ex. P-2(a) and the mortgagors were bound by Ex. P-2. His taking of the mortgage of the released properties clearly indicated that he accepted that the mortgagors were released from the obligations of Ex. P-1. In Ex. P-3, he took the mortgage of the released properties for a period of 32 years which made the two mortgages run for an identical term, ant) that document referred to the earlier trans-action as one under an Avadhi Illida Arwar (usufructuary mortgage with a time limit) which indicated that the time limit imposed by Exs. P-2 and P-2(a) was in his contemplation. In all subsequent documents, reference is to be found to the Illida Arwar and the reference is not only to the 3-16 share of Cheriamma but, to the entire 7-16 share of Kunhi Pakki, that is to say, his original share of

1/4 obtained by him through his father by Exs. P-6 and 3/16 share which he obtained later. In view of the fact that in this way, Kunhi Pakki obtained the enjoyment of the mortgage in respect of his 1/4 share for a period of 40 years certain, he must be taken to have elected to apply to his own 1/4 share the terms of Ex. P-2. Having in this way accepted benefit and thus approbated that document, neither he nor his successors could be heard to say that the mortgage in Ex. P-1 was independent of Ex. P-2 and that the limitation ran out on the lapse of 60 years from 1842. In our opinion, the doctrine of election was properly applied in respect of Kunhi Pakki's 1/4 share now in the possession of the present appellants through defendant 8.

15. The above judgment of the Apex Court clearly indicates that the person who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument and cannot approbate and reprobate the same transaction. If we apply the said principle in this case, the respondents 1 to 3, who have enjoyed the fruits of the decree by being in possession of the premises for five years at the end of the 5th year cannot now complain that the decree passed by the Rent Controller is not valid in law.

16. Learned counsel appearing for the petitioner cited yet another decision reported in 1956 SC 593 (Nagubai ammal and others vs. B. Shama rao and others) Para 23 of the said judgment is usefully reproduced hereunder:-

"23. But it is argued by Sri Krishnaswami Ayyangar that as the proceedings in O.S. No. 92 of 1938-39 are relied on as barring the plea that the decree and sale in O. S. No. 100 of 1919-20 are not collusive, not on the ground of res judicata or estoppel but on the principle that a person cannot both approbate and reprobate. It is immaterial that the present appellants were not parties thereto, and the decision in *Verschures Creameries Ltd. V. Hull and Netherlands Steamship Co. Ltd.* (1921) 2 KB 608 (D), and in particular, the observations of Scrutton, L. J. at p. 611 were quoted in support of this position. There, the facts were that an agent delivered goods to the customer contrary to the instructions of the principal, who thereafter filed a suit against the purchaser for price of goods and obtained a decree.

Not having obtained satisfaction, the principal next filed a suit against the agent for damages on the ground of negligence and breach of duty. It was held that such an action was barred. The ground of the decision is that when on the same facts, a person has the right to claim one of two beliefs and with full knowledge he elects to claim one and obtains it, it is not open to him thereafter to go back on his election and claim the alternative relief, The principle was thus stated by Bankes, L. J.:

"Having elected to treat the delivery to him as an authorised delivery they cannot treat the same act as a misdelivery. To do so would be to approbate and reprobate the same act".

The observations of Scrutton, L. J. on which the appellants rely are as follows:

"A plaintiff is not permitted to "approve and reprove". The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election - namely, that no party can accept and reject the same instrument: *Ker v. Wauchope* (1819) 1 Bligh 1 (21) (E): *Douglas-Menzies v. Umphelby* 1908 AC 224 (232) (F). The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage.

That is to approve and reprove the transaction".

It is clear from the above observations that the maxim that a person cannot "approve and reprove" is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The law is thus stated in *Halsbury's Laws of England* Volume XII, p. 454, para 512: "On the principle that a person may not approve and reprove, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e.g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it".

The plaintiff obtained no advantage against the appellants by pleading in O. S. No. 92 of 1938-39 that the proceedings in O. S. No. 100 of 1919-20 were collusive; nor did they acting on those pleadings acquire rights to the suit properties. Nor is there any question of election, because the relief which the plaintiff claimed in O. S. No. 92 of 1938-39 and which he now claims is that he is entitled to the suit properties. Only, the ground on which that relief is claimed is different and, it is true, inconsistent. But the principle of election does not forbid, it, and there being no question of estoppel, the plea that the proceedings in O. S. No. 100 of 1919-20 are not collusive is open to the plaintiff."

17. Thus a person may not be allowed to approve and reprove and the respondents 1 to 3 having accepted to be in possession of the premises for five years cannot now turn down and say, after enjoying the said period that the decree obtained by the petitioner herein is not valid.

18. Yet another decision that has been relied on by the counsel for the petitioner is reported in *Smt. Nai Bahu Vs. Lala Ramnarayan and Others*, In the said judgment it has been clearly spelt out that a decree for eviction of a tenant cannot be passed solely on the basis of a compromise between the parties. The court has to be satisfied that a statutory ground for eviction has been pleaded which the tenant has admitted by compromise, dispensing with further proof. As

discussed earlier, there was sufficient material before the Rent Controller to satisfy himself that the respondents 1 to 3 were sub-tenants under the petitioner and hence it could be safely concluded that on the said basis, the Rent Controller was satisfied about the fact that the respondents 1 to 3 herein are sub-tenants inducted by the fourth respondent and hence the failure to give a specific finding by the Rent Controller about the grounds raised in the eviction petition cannot be held to be invalid in law.

19. The respondents 1 to 3 have filed the suit in O.S. No. 197 of 2007 before the Sub-Court, Coimbatore claiming the reliefs set out above. Even in the said suit it is not the case of the respondents 1 to 3 that the petitioner herein had let out the premises to them. It is their case that believing the representation made by the petitioner herein that a portion of the property will be sold to them, they have been made to sign the memo of compromise. Paragraphs 19, 21 and 24 are usefully extracted hereunder:-

"19. The plaintiffs submit that though the defendants entered appearance in the suit in O.S.No.1761 of 2000 they realised the truth of plaintiffs need and thereby expressed their willingness to come for a compromise with the plaintiffs. The first defendant being land owner and the second defendant being its tenant had negotiated with the plaintiffs and during such course of negotiation the plaintiffs disclosed the actual dealings with the plaintiff and the second defendant with the first defendant. The first defendant also considered all the efforts taken by the plaintiffs in bringing a good restaurant at Peelamedu that too by investing several lakhs of rupees by erecting such constructions, etc., Thus, after discussions and negotiations with the plaintiffs, there was a compromise arrived between all of them. As per the compromise, the first defendant expressed that the plaintiffs and the second defendant had to vacate the premises on or before 31.3.2007 and at the time of vacating the premises, the plaintiffs were entitled to remove the entire structure put up by it.

21. The first defendant also realised the versions of plaintiff and came forward with an offer for the sale of the said built up area of 2000 sq. ft. along with its appurtenant at later time. The second defendant also sailed with the first defendant and expressed that the plaintiffs would be offered to purchase the combined portion in due course and based on the said assurance of the defendants, the plaintiffs agreed to go for a compromise.

24. The plaintiffs submit that the defendants at the time of hearing, influenced the plaintiffs to sign the compromise petition assuring the offer to sell the combined portion of 2000 sq. ft along with its corresponding land in due course. The plaintiffs also under such influence of the second defendant who was originally responsible to bring the Hotel business at Peelamedu and that too at the present premises, the plaintiffs had no other option than to sign the compromise petition believing the representation of the defendants in offering to sell the said premises.

20. The pleadings made in the suit thus clearly postulate that the respondents 1 to 3 never pleaded that they have been inducted in possession of the premises by the petitioner, the owner of the property.

21. While so, the respondents 1 to 3 cannot now turn down and say that out of compulsion and that out of the fact that the petitioner accepted to execute a sale deed in respect of a portion of the property, the memo of compromise was signed by them. If the respondents 1 to 3 are having any right in view of the assurance given to them by the petitioner for sale of a portion of the property, the respondents 1 to 3 can always prove their case before the civil court, where they have filed the suit for the said relief. But they cannot stall the petitioner from taking delivery of the property by filing a suit stating that the decree obtained by the petitioner before the Rent Controller for eviction is not valid in law. The respondents 1 to 3 therefore cannot stall the petitioner from taking delivery of the property in pursuant to the compromise decree obtained by it. The respondents 1 to 3 can very well agitate before the said suit regarding their claim of declaratory relief, directing the petitioner to execute the sale deed pertaining to a portion of the suit property. As and when the respondents 1 to 3 succeeds they can very well get restitution of the said property.

22. The discussions made above will amply prove that the respondents 1 to 3 having accepted for a compromise decree and having been in possession of the property for five years pursuant to the said compromise decree cannot now turn down and say that the decree obtained by the petitioner is not valid in law. The person, who was enjoying the fruits of the decree cannot be allowed to say that the decree is null and void at the fag end of the period, granted in that Rent Control Proceeding. Thus, the respondents 1 to 3 have abused the process of law by filing the suit against the petitioner and the 4th respondent and obtained an order of injunction restraining the petitioner from executing the decree which it has validly obtained.

23. Though normally if an order of injunction is granted by the trial Court, the person who challenged the same will be directed to approach the said court for vacating the said order, I am not inclined to direct the petitioner to undergo such process in view of the fact that the respondents 1 to 3, who have enjoyed the fruits of the decree and they cannot by fraudulent means prevent the decree holder, the petitioner herein from enjoying the fruits of the decree. However, the respondents 1 and 3 can very well agitate their rights in respect of the claim of declaratory relief of directing the petitioner to execute the sale deed in their favour. The Court below has to decide the same on merits. In the event of success by respondents 1 to 3, in respect of such relief, it is always open to them to work out their remedy.

24. In fine, I am inclined to set aside the order of the learned Subordinate Judge, Coimbatore dated 29.3,2007 made in I.A. Nos. 373 and 374 of 2007 in O.S. No. 197 of 2007 and these Civil Revision Petitions are allowed. Consequently, the connected M.Ps are closed. No costs. After pronouncement of the order, Mr. P.R.

Krishnan, learned Senior Counsel appearing for the respondents 1 to 3 requested some time to proceed with further. Considering the request made by the learned Senior Counsel appearing for the respondents 1 to 3, I direct that the petitioner shall not proceed with the execution petition for a period of one month from this date.