
(1983) 10 MAD CK 0009
In the Madras High Court

N. Rajeswari and Others

APPELLANT

Vs

S.P. Palaniappan and Others

RESPONDENT

Date of Decision : 28-10-1983

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2)(ii)(a)
Transfer of Property Act, 1882 — Section 11(d)

Citation : (1985) ILR (Mad) 1 : (1984) 97 LW 334 : (1984) 2 MLJ 62

Hon'ble Judges : K.B.N. Singh, C.J

Bench : Division Bench

Judgement

K.B.N. Singh, C.J.—This Civil Revision petition is directed against the order of the Appellate Authority (Principal Subordinate Judge),

Erode, reversing the order of the Rent Controller (Addl. Dist. Munsif), Erode, dismissing the application of the landlords for eviction of the tenants-

respondents.

2. The petition for eviction was filed by the admitted landlord, Namachivayam, for the eviction of the respondents under the provisions of Section

10(2)(ii)(a), (b) and (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act (hereinafter referred to as the Act), from premises door No.

262 Brough Road, Erode. The said premises was leased out to respondents 1 and 2 on 17th October, 1969, by the landlord Namachivayam, for

a period of six years on a monthly rental of Rs. 500/- for running a printing press. The rent was payable on the first of every Tamil Month. On 11th

August 1975 the landlord filed R.C.O.P. No. 72 of 1975 before the Rent Controller for eviction of the tenants-respondents 1 and 2, and the sub-

tenants-respondents 3 to 5, inducted by respondents 1 and 2, on the grounds of (i) sub-letting without the consent of the landlord; (ii) putting the

building to a different use from the one for which it was let out; and (iii) committing acts of waste. The petition for eviction was filed after a notice

dated 24th June, 1975 terminating the tenancy. Respondents 1 and 2 contested the proceedings denying the allegations of sub-letting, putting the

premises to a different use and acts of waste.

During the pendency of the proceedings Namachivayam, the original owner, died, and his legal representatives were brought on record as

petitioners 2 to 11.

3. During the pendency of the proceedings respondents 1 and 2 purchased a 11/60 share in the property from the third petitioner, Arunachalam,

by a registered sale deed dated 23rd October, 1977 (Exhibit B-14). Based on this purchase, respondents 1 and 2 contended that by virtue of this

purchase they had become co-owners and hence were not liable to be evicted from the premises.

4. The Rent Controller recorded the following findings:

(i) that the tenants-Respondents 1 and 2 had sub-let the premises to respondents 3 to 5. without the written consent of the landlord.

(ii) that respondents 1 and 2 had put the building to a different use from the one for which it had been let out and

(iii) that they had committed acts of waste and materially impaired the value and utility of the premises.

5. The learned Rent Controller rejected the contention of the respondents 1 and 2 that on their purchase of the 11/60 share they had become co-

owners and that the lease in question had been extinguished. The Rent Controller accordingly passed an order of eviction.

6. The tenants-respondents 1 and 2 preferred an appeal against the said order before the Appellate Authority (Principal Subordinate Judge),

Erode, who confirmed two of the three findings of the Rent Controller, namely, subletting without the consent of the landlord, and committing acts

of waste. On the question of different user, it differed. The Appellate Authority however, came to the conclusion that by virtue of their purchase of

the 11/60 share respondents 1 and 2 were entitled to be in possession as co-owners, and that the remedy open to the petitioners was to file a suit

for partition and separate possession of their share and allowed the appeal. It is against this order the present civil revision petition was filed.

7. When the matter came up before the learned single Judge (Mohan, J), in view of the importance of the question involved, he referred the matter

for consideration by a larger Bench. The question posed by the learned Judge is as follows:

Where the tenant purchases a fractional interest in the demised property, could he be called a co-owner so as to disentitle the original owner

(landlord) to seek eviction under the Rent Control Act?

8. The learned Advocate-General appearing on behalf of the petitioners contended that, where a tenant purchased a share of the landlord, the

original tenancy cannot be affected by the subsequent purchase; only when the entire interest of the landlord is purchased, by the tenant, the

tenancy can be extinguished, and not otherwise. Learned counsel has referred to the provisions of Section 11(d) of the Transfer of Property Act, in

support of his contention. That provision reads as follows:

iii. A lease of immovable property determines...

(d) in case the interest of the lessee and the lessor in the whole of the property becomes vested at the same time in one person in the same right.

9. The decisions on which the learned Advocate-General relied in support of his contention may now be considered. In AIR 1931 63 (Privy

Council) , the plaintiff and the defendant were pro indiviso joint proprietors of a property. The plaintiff was also a lessee of a portion of the entire

property from before acquisition of their interests by the parties. The lease was subsisting when the shares were bought by the parties. In a suit

instituted by the plaintiff for accounts, it was held that the plaintiff's rights under the lease of a part did not merge in his rights as joint proprietor of

the whole of the property, that as between the parties the plaintiff held a valid and subsisting lease and that therefore in an accounting between them

the rent under the lease and not the reasonable profits of the property leased was the measure of contribution which the leased properties ought to

make to the divisible revenue of the entire property.

10. In *Tadikonda Ramakrishna Rao and Another Vs. Kottagundu Subba Rao* , :

On behalf of the appellants, three contentions have been urged before me. It was first contended that the purchase by the defendant from

Hanumantha Rao will not bring about a merger of the leasehold and the vendee's interest because the purchase was only of a half-share. Reliance

was placed in support of this contention on the decision of the judicial Committee in AIR 1931 63 (Privy Council) . As a proposition of law there

can be little doubt that, if a person is a tenant of the whole of a property, the acquisition by him of ownership in a portion thereof will not of itself

extinguish the leasehold interest.

11. In Shah Mathuradas Maganlal and Co. Vs. Nagappa Shankarappa Malage and Others, , it was held as follows (Paragraph 15):

Though the mortgage deed was made on 21st May, 1953, the tenancy was continued till about 7th November, 1953. The possession of the

appellant as mortgagee was confirmed from 7th November, 1953. This is rightly held to be unequivocal conduct showing that no tenancy was to

exist from 7th November, 1953, but the relationship was that of mortgagor and mortgagee. If intention of the parties was to revise the tenancy

there was no necessity of a term that the appellant might let out the property to any one.

It was further observed, that, for a merger to arise, it is necessary that a lesser estate and a higher estate should merge in one person at one and the

same time and in the same right and no interest in the property should remain outside and that in the case of a lease the estate that is in the lessor is

a reversion. A reference to the above decisions supports the contention of the learned Advocate-General that for a merger of the interests of the

lessor and the lessee, it is necessary that the lessor's interest and the lessee's interest should merge in the same person at one and the same time

and that no interest in the property should remain outside.

12. Judged in the light of the aforesaid decisions, in the instant case, the tenants respondents 1 and 2 acquired only a 11/60 interest of the landlord

in the leasehold property, which they were holding as lessees and this acquisition would not affect the original lease.

13. Mr. T.R. Mani, learned Counsel appearing on behalf of the respondents, did not dispute the position that a merger to be effective, u/s 111(d)

of the Transfer of Property Act must be of the whole interest, as contended by the learned Advocate-General. He however, submits that the Tamil

Nadu Rent Control Act is a self-contained Act and that the provisions of Section 111 of the Transfer of Property Act cannot be applied to an

application for eviction under the Tamil Nadu Rent Control Act. Learned counsel

has rightly submitted that, although the tenancy was terminated by a notice, the position of respondents 1 and 2 would be that of statutory tenants and that the Rent Control Act continued to apply to them: and that Act being a self-contained Act, the provisions of Section 111 of the Transfer of Property Act would not be applicable for finding out whether there has been a merger or not. Learned counsel has relied on the decisions in Raval and Co. Vs. K.G. Ramachandran and Others, , P.J. Gupta and Co. Vs. K. Venkatesan Merchant and Others, , Puwada Venkateswara Rao Vs. Chidamana Venkata Ramana, , besides the decisions in K. Sukumaran Nair Vs. S. Neelakantan Nair by constituted attorney P. Raman Nair, and Devarajan v. Munirathnam (1981)94 L.W. 435, for the proposition that the Tamil Nadu Act is a self contained Act. Suffice it to refer to Puwada Venkateswara Rao Vs. Chidamana Venkata Ramana, on which special emphasis has been laid by Mr. Mani, as it was considering somewhat similar provisions of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act and the decision in Raval and Co. Vs. K.G. Ramachandran and Others, any v. K.G. Ramachandran has also been relied upon.

14. Learned counsel has submitted that, while considering similar provisions of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, XV of 1960, the Supreme Court, in Puwada Venkateswara Rao Vs. Chidamana Venkata Ramana, has held the Act to be a complete code providing the procedure for eviction and has further held that prior notice u/s 106 of the Transfer of Property Act terminating the lease is not necessary before filing a petition for eviction u/s 10 of the Andhra Pradesh Act. It is true that in that case the question that arose for consideration was whether a lease should be determined by a notice u/s 106 of the Transfer of Property Act before filing a petition for eviction of the tenant under the Andhra Pradesh Act. After referring to the provisions of the Andhra Pradesh Act, the Supreme Court observed as follows. (Paragraph 4):

The Andhra Pradesh High Court, however, relied upon Ulligappa v, S. Mohan Rao. (1969) 2 A.L.T. 268 where a Division Bench of that High Court had held that the Act with which we are now concerned, provided a procedure for eviction of tenants which was self-contained so that no

recourse to the provisions of Section 106 of the Transfer of Property Act was necessary.

15. The Supreme Court also referred to an earlier decision of the Supreme Court and observed as follows. (Paragraph 5):

We may also refer here to the observations of this Court in *Raval and Co. Vs. K.G. Ramachandran and Others*, There this Court noticed *Shri*

Ram Chand v. Smt. Sham Devi ILR (1955) Punj. 36 and pointed out that it was held there that the Act under consideration in that case provided

the whole procedure for obtaining the relief of ejectment and that being so provisions of Section 106 of the Transfer of Property Act had no

relevance. No doubt the decision mentioned with approval by this Court related to another enactment. But the principle indicated by this Court

was the same as that applied by the Andhra Pradesh High Court.

16. The Supreme Court also took note of the fact that it depends upon the provisions of the particular Rent Control Act as to whether it is a

complete code and excludes the requirement of notice u/s 106 of the Transfer of Property Act, The Supreme Court also referred to its earlier

decision in *Mangilal Vs. Suganchand Rathi*, dealing with Section 4 of the Madhya Pradesh Accommodation Control Act, 1955, and held that the

Act did not dispense with the requirement of compliance with the provisions of Section 106 of the Transfer of Property Act, and observed as

follows:

In that case, however, Section 4 of the Madhya Pradesh Act merely operated as a bar to an ordinary civil suit so that service of a notice u/s 106 of

the Transfer of Property Act became relevant in considering whether an ordinary civil suit filed on a ground which constituted an exemption to the

bar contained in Section 4 had to be preceded by a notice u/s 106 of the Transfer of Property Act. In the context of the remedy of ejectment by

an ordinary civil suit it was held that the usual notice of termination of tenancy u/s 106 of the Transfer of Property Act was necessary to terminate a

tenancy as a condition precedent to the maintainability of such suit.

17. It is not necessary to refer in detail to the provisions of the Tamil Nadu Rent Control Act, nor have they been referred to before us by learned

Counsel for the parties. There is nothing in the Act to indicate that, if a tenant occupying a premises under the Act, acquires a moiety interest of the

landlord, he ceases to be a tenant within the meaning of the term under the Act, and ceases to be liable to pay rent. Section 2(6) of the Act defines

a landlord as follows:

Landlord includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or

on behalf of himself and Ors. or as an agent, trustee, executor, administrator, receiver or guardian or who would receive the rent or be entitled to

receive the rent if the building were let to a tenant.

Section 2(8) defines "tenant" and the portion relevant for our purpose may be extracted:

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.

18. It also includes a person ""continuing in possession after the termination of the tenancy in his favour"". Section 10 deals with the eviction of

tenants, and lays down that a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions

of Section 10 or sections. 14 to 16 of the Act. Admittedly the petition for eviction in this case was filed by the undisputed landlord u/s 10(2)(ii)(a),

(b) and (iii) of the Act, and after his death, both the tenants-respondents 1 and 2, purchased a moiety interest of one of his heirs. We do not find

anything in the Act from which any inference could be drawn that, on such subsequent acquisition of a moiety interest, the petition for eviction filed

under the Tamil Nadu Act will no longer be maintainable, or that the lease creating the tenancy itself will be put an end to. The petition for eviction

which was filed in the year 1975 will not be rendered nugatory on the acquisition of a share, two years later on (23rd October, 1977), by the

tenant from one of the co-sharers of the landlord, under Exhibit B-14.

19. If that is the correct position of law than, in the absence of the tenants acquiring the entire interest of the landlord, they cannot non-suit the

landlord's application for eviction on that ground alone. It is, however, another matter as to what is the relief that could be granted to them in such

a situation, to which we shall revert later.

20. The expression ""merger"" according to the Concise Oxford Dictionary, means as follows: ""merging, especially of one estate in another,

combining of two commercial companies, etc., into one..." In the Eighth Edition of K.J. Aiyer's Judicial Dictionary "merger" is defined as "the

sinking or drowning of a lesser estate into a greater by reason of them both coinciding and meeting in one and the same person". According to

Venkataramaiah's Law Lexicon and. Legal Maxims, "mer" is "... Whenever a greater estate and a lesser coincide and meet in one and the same

person without any intermediate estate, the lesser is immediately annihilated: or in the law phrase is said to be merged; that is, sunk or drowned in

the greater." Therefore, even assuming that the Tamil Nadu Act is a self-contained Act and that Section 111(d) of the Transfer of Property Act will

not apply in terms, still it must be held, on general principles, that the only circumstance under which the petition for eviction by the landlord can be

frustrated is when the tenant acquires the entire interest of the landlord during the pendency of the eviction proceedings. Where a tenant acquires

the entire interest of the landlord, there is no plaintiff or defendant left in the suit and there is no lis, as the entire interest coalesces in a single person.

Such a suit has to be dismissed as having become infructuous even under the Rent Control Act without reference to Section 111 of the Transfer of

Property Act, on general principles.

21. The view we have taken, to some extent gains support from the decision of the Supreme Court in *Indra Perfumery v. Mothilal and Ors.* (1970)

R.C.J. 49. In that case Mohd. Shafi was the owner of a house in the town of Delhi. On 6th April, 1954, he let out the premises to the respondents,

Mothilal and Triloknath, on a monthly rental of Rs. 400 odd. On 3rd November, 1956, the tenants sub-let a portion of the house to Indra

Perfumery on a monthly rental of Rs. 145. On 7th January, 1957, Indra Perfumery purchased the house from Mohd. Shafi. On 10th February,

1962, the respondents (Mothilal and Triloknath) applied to the Rent Controller, u/s 14(1)(a) of the Delhi Rent Control Act, for an order in

ejection against the appellant, Indra Perfumery, from the portion of the house in its occupation, on the plea that the appellant had failed and

neglected to pay rent within two months of the date on which the notice of demand for payment of arrears of rent was served on him and claimed

that between 3rd April, 1958 and 2nd February, 1962, an amount of Rs. 5,290 was due from the sub-tenant. It was contended by the sub-tenant

in that case that the relationship of landlord and tenant between the tenant and the sub-tenant had ceased when the sub-tenant purchased the house

from Mohd. Shafi entitled to recover the rent. The plea was negatived by the Rent Controller, which was affirmed by the higher authorities up to

the High Court stage. Thereafter the matter was taken to the Supreme Court. The Supreme Court observed as follows (paragraph 3):

The title of Mohd. Shafi, when he sold the house to the appellant on 7th January, 1957, was subject to the right of the respondents as tenants. The

respondents could claim protection of the statute in respect of the premises in their occupation which was enforceable against Mohd. Shafi and

persons deriving title under him. The appellant as transferee was subject to the obligations which were enforceable against Mohd. Shafi and it was

therefore bound to recognize the right of the respondents as tenants. The appellant was a sub-tenant in respect of a part of the premises held by the

respondents as tenants. By purchasing the interest of Mohd. Shafi the relationship between the respondents and the appellant under the tenancy of

3rd November, 1956, was not determined, nor was the interest of the respondents as tenants of Mohd. Shafi extinguished.

22. The Supreme Court also recognised the claim of the sub-tenant of merger u/s 111(d) of the Transfer of Property Act, as the sub-tenant had

purchased the entire interest of the landlord, and observed as follows (Paragraph 4):

Section 111(d) of the Transfer of Property Act, on which the appellant relied does not assist his case. That clause provides that a lease of

immovable property determines in case the interests of the lessee and the lessor in whole of the property becomes vested at the same time in one

person in the same right. This has no application, unless the interest of the lessee and the lessor in the whole of the property is vested in the same

person. The appellant is the owner of the house, it is also a tenant of a part of the house of which the respondents are tenants from Mohd Shafi.

23. On the basis of the aforesaid decision of the Supreme Court it can safely be held that, by virtue of their purchase no doubt respondents 1 and

2 will be co-owners, but at the same time the tenancy will not be wiped out and they will continue to be tenant in respect of the share or interest

belonging to the petitioners. That is to say, respondents 1 and 2 have two capacities one as co-owners in respect of the share purchased by them,

and another as tenants in respect of the remaining share belonging to the petitioners, at any rate in respect of the rent that may be payable by them to the petitioners.

24. The two Bench decisions relied on by Mr. Mani may here be referred to. The Bench decision of the Calcutta High Court in Hirendra Nath

Poddar Vs. Shibendra Nath Poddar and Others, has no application to the facts of the present case. That was a case in relation to the West Bengal

Tenancy Act, by a co-sharer against a co-sharer-cum-tenant. The plaintiff had a 3/4 share and the first defendant, his brother, had 1/4 share in the

property, and was carrying on a shoe business in the premises. The Bench of the Calcutta High Court accepted the contention of the first

defendant that he was a tenant in respect of the premises on the basis of admission; that is not the situation here, for that was not a case where the

tenant subsequently acquired a moiety share in the property.

25. Kuppuswami v. Balgurunurthi (1965) 1 M.L.J. 86 was a case where a co-owner of a building sold his undivided share to another and

obtained a lease from his vendee of the undivided share conveyed by him to the vendee. It was held that he could not claim to be entitled to the

protection of the Tamil Nadu Buildings (Lease and Rent Control) Act, because in such a case there is no lease of any "building" as defined in the

Act.

26. That case is clearly distinguishable, It was held in that case that it was not a case of letting out a "building", but was only an arrangement with

respect to the undivided share of the entire property and that no tenancy of any building, as defined in the Act, was created.

27. It is rather strange that Mr. Mani at one stage claimed the status of a statutory tenant under the Tamil Nadu Rent Control Act, for excluding the

operation of Section 111(d) of the Transfer of Property Act, and at the same time, when faced with an adverse finding against respondents 1 and

2, decries the status of tenant, and claims the status of co-owners, and not tenants.

28. It is well-settled that the right to relief in an action between parties must be judged in relation to the date of the suit, but the Court may take

subsequent events into consideration for moulding the relief in fairness to both the parties as observed by the Supreme Court in Pasupuleti

Venkateswarlu Vs. The Motor and General Traders,

It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date of suit which institutes the legal proceeding.

Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the *lis*, has come to

Court and has a fundamental impact on the right to relief or the manner of moulding it, and is brought diligently to the notice of the Tribunal, it

cannot blink as it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rule of procedure, where no

specific provision of fairplay is violated, with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or

just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation

pends, the power exists, absent other special circumstances, repelling resort to that course in law or justice. Rulings on this point are legion, even

as situations for application of this equitable rule are myriad. We affirm the proposition that for making the rights or remedy claimed by the party

just and meaningful as also legally and factually in accord with the current realities, the Court can, and in any cases must, take cautious cognizance

of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.

29. Following the aforesaid decision of the Supreme Court, it must be held that the petition was maintainable on the date when it was filed and that

it will not be a non-est proceeding merely on account of the purchase by respondents 1 and 2 of a moiety share, though it will have relevance to

the relief that may be granted to the petitioners. The tenants being already in possession of the building. the proper order that could be passed in

the circumstances of the case will be to direct the landlord to be in joint possession along with the tenants, leaving it open to the landlord to sue for

partition of his specific share in the property. In the instant case, the finding of subletting without the consent of the landlord, and acts of waste has

not been challenged before us. MR. T.R. Mani, learned Counsel for the respondents, wanted to contend that, so far as the fifth respondent is

concerned, he was running a lodge as an agent of respondents 1 and 2. This plea has been clearly negated by the Courts below. Mr. Mani

referred to certain observations of the Appellate Authority in support of his contention. Thus the Appellate Authority has observed (page 79):

In these circumstances and having regard to the evidence of P.W. 1 and Exhibits A-11 to A-13 it is probable that the fifth respondent was running

the lodge as contended by the petitioners, though it might be that the respondents 1 and 2 have converted the upstairs as a lodge.

But this observation has to be considered in the light of the finding of the Appellate Authority given in paragraph 24 of its order, namely that "the

finding of the learned Rent Controller on the question of subletting and acts of waste were not challenged by the learned Counsel for the appellants

before the Appellate Authority. This observation of the Appellate Authority on the point must be taken to be the correct statement of the position

prevailing before him Vide State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another,

30. Coming to the question of the relief that has to be granted to the landlord, it appears that the ground-floor is in possession of the two sub-

tenants, namely, respondents 3 and 4, the third respondent running a sweetmeat stall and the fourth respondent running a cycle shop. The first floor

has been let out to the fifth respondent for running a lodge called Dwarka Lodge. Both the Courts have found that the sub-letting was unauthorised

and that the petitioner-land lord is entitled to an order for eviction of the persons who were unauthorizedly put in possession of the building.

31. In the result, the civil revision petition is allowed, and the order of the Appellate Authority, allowing the appeal, is set aside. The petitioners are

entitled to an order for eviction of the tenants-respondents 3 to 5 in respect of the portion in their occupation. So far as respondents 1 and 2 are

concerned, taking note of subsequent events, namely, of their acquisition of a share in the building, no order for eviction need be passed against

them, leaving it open to the parties to seek appropriate relief by way of partition and separate possession of their respective shares in the premises

in question.

32. Under the circumstances of the case, we make no order as to costs.