

(1972) 12 MAD CK 0057

In the Madras High Court

Case No : Civil Revision Petition No. 2614 of 1971

N.S. Ramanathan

APPELLANT

Vs

B. Ratnavelu and Another

RESPONDENT

Date of Decision : 08-12-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 63
Transfer of Property Act, 1882 — Section 106

Citation : AIR 1973 Mad 391 : (1973) 86 LW 256 : (1973) 1 MLJ 433

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

1. The landlord is the petitioner. He applied for eviction of the tenant on the ground that the tenant committed willful default in payment of rent and that he denied the title of the landlord. The tenant, in defense, submitted that he had an agreement of sale entered into with the second respondent before he sold the building to the petitioner who filed the petition before the Rent Controller and that he bona fide thought he had title to the property in question and therefore withheld the payment of rent and he was not guilty of denial of title of the landlord or of willful default. The Courts below accepted the contention of the tenant and dismissed the landlord's petition.

2. The plea of the tenant is that he entered into an agreement with the second respondent for sale of the premise in which he was having his tea shop business. The agreement of sale was is 2-10-1968. The landlord (Petitioner herein) purchased the property from the second respondent on 27-8-1969. The tenant by virtue of the agreement of sale from the second respondent, had filed a claim petition on the ground that he was in possession of the property under an agreement of sale. This was in a suit filed by the present landlord against the second respondent. The claim petition filed by the tenant (first respondent) was rejected and the tenant had not filed any suit as required under Order 21, Rule 63. C. P Code, Whatever right the tenant might have had, by virtue of the agreement of sale, on account of his failure to file a suit against the claim order,

he cannot raise this question again and the title of the landlord (Petitioner) so far as the first respondent-tenant and his claim is concerned has become final.

3. Even after the claim was rejected, the tenant did not pay any rent. Therefore no claim of any bona fide denial of title after the claim petition was dismissed can be allowed. The first respondent's only remedy was to file a suit and question the correctness of the claim order. Having not done so the tenant cannot say that he continued to have a right in the premises and he cannot also assert his title and fail to pay the rent. The plea of the tenant-first respondent, therefore, of bona fide dispute in title and failure to pay the rent due to his belief that he had title to the property cannot be upheld and this point will have to be answered in favor of the landlord (Petitioner).

4. It is next contended that the tenant-first respondent had advanced large sums of money to the second respondent and the landlord (petitioner) as purchaser of the property is bound to account for the amounts which the second respondent, The former landlord had to pay to the tenant-first respondent. This contention also can not accepted. Apart from the statement of the tenant (first respondent) that he had paid money to the second respondent, there is nothing to indicate as to how the petitioner, The present landlord, is bound to give credit to the amounts that were paid to the second respondent by the tenant-first respondent.

5. Lastly it was contended that the notice given by the landlord is not accordance with the provisions of Section 106 of the Transfer of Property Act and therefore this petition is not maintainable. In this case, the tenancy was for a period of 5 years from 8-3-1962. The tenancy expired on 8-3--1967. The second respondent gave a notice terminating the tenancy giving notice of termination of 15 days. But the petition filed by the second respondent before the Rent Controller for eviction of the tenant was dismissed. After the purchase by the landlord petitioner, he filed the present petition. Before filling this petition he did not give a fresh notice terminating the tenancy after giving 15 days notice ending with the month of the tenancy. It is also true that he did not avail himself of the forfeiture clause on the ground of denial of title ; but the plea of the landlord petitioner is that he is not bound to give a notice u/s 106 of the Transfer of Property Act.. His contention is that the tenancy was determined by efflux of time and by a notice of termination of tenancy, after his purchase of the property did not enter into a fresh agreement of tenancy nor did he in any way recognize the first respondent as his contractual tenant. On the facts there is no material for coming to the conclusion that the petitioner landlord created any fresh tenancy or agreed to have the first respondent-tenant as his tenant. In such circumstances it has been held by the Supreme Court in Ganga Dutt Murarka Vs. Kartik Chandra Das and Others, , Following the decision of the Federal Court in AIR 1949 124 (Federal Court) that no notice u/s 106 of the Transfer of Property Act were necessary. The Supreme Court in Bhawanji Lakhamshi and Others Vs. Himatlal Jamnadas Dani and Others, , has also reiterated this proposition. The Madras High Court also in Munavar Basha and Another Vs. V. Narayanan and

Another, has expressed similar view. In this case, as there was no fresh tenancy the tenancy having been terminated by efflux of time and by notice, a fresh notice by the purchaser u/s 106 of the Transfer of Property Act is not required.

6. In the result I accept all the contentions of the petitioner-landlord, namely, that the denial of title is willful, that there was willful default in the payment of rent and no fresh notice as required u/s 106 of the Transfer of Property Act is necessary. The landlord is therefore entitled to have his tenant-first respondent evicted. This petition is allowed with costs. Time for payment of arrears of rent upto date till 8th December 1972. If all arrears of rent upto that date is paid, the tenant, first respondent, will be given three months time to vacate Call on 8-12-1972.

7. Order : As the arrears of rent upto date as provided in the order dated 27-11-1972 has not been paid, there will be no order granting time

8. Order accordingly.