

(2008) 12 MAD CK 0073

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 2119 of 2008 and M.P. (MD) No. 2 of 2008

P. Mohan

APPELLANT

Vs

D. Rajagopal Naidu and Brothers, South India Mills Stores,
T.K. Sampath and A. Selvaraj

RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 26

Citation : (2009) 3 MLJ 193

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; R. Nandakumar, for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The revision petitioner is the second respondent in RCOP.No.20 of 1999 filed by the first respondent, the land lord on

the file of the Rent Controller (Principal District Munsif) Court, Dindigul. The petition was filed by the landlord, the first respondent herein on two

grounds, for eviction of the second respondent. Respondents 3 and 4 are sub-tenants under the second respondent. First ground is on wilful

default and the second ground is, subletting the building without the written consent of the land lord. The rent payable for the premises is Rs.

1,200/-. The learned Rent Controller passed an order of eviction on 21.01.2002 directing the respondents therein to vacate the demised premises

within two months. This petitioner and the present 4th respondent preferred appeal in R.C.A. No. 4 of 2002 on the file of the appellate authority

(Principal Sub-judge) Dindigul and the same suffered dismissal confirming the

order passed by the Rent Controller. Hence, this petitioner is before this Court.

2. The learned Counsel for the petitioner Mr. R. Subramanian and the learned Counsel for the respondents Mr. R. Nandakumar accepted to argue on the point of maintainability of the RCOP before the Rent Controller and the civil revision petition before this Court and advanced their arguments on this aspect alone. Hence, this Court proceeded with this point without touching the merits of the matter in depth.

3. The learned Counsel for the petitioner would assail the filing of RCOP by one of the partners on behalf of the firm and submits that the rent control original petition is not maintainable by contending that all the names of the partners should find place in the array of the petition and even if it is not so, the other partners have to be added as eo nomine of the parties to the petition and in the absence of others as such, the petition is non-est in the eye of law.

4. In support of his contention, he placed much reliance upon a decision of the Hon"ble Supreme Court of India reported in 1984 (SC) 1570,

Chhotelal Pyarelal v. Shikharchand, in which Their Lordships have held thus:

2. Now, there can be no doubt that since the CPC does not apply to proceedings under the HRC Order, no application for eviction can be

maintained against a firm in the firm name. The firm is merely a compendious name for the partners constituting it and it is only by virtue of the

provisions of Order 30 of the CPC that a firm can sue and be sued in its own name without the partners being impleaded eo nomine.

5. After observing as above, the Supreme Court remitted back the matter to the Rent Controller enabling the land lord to carry out the amendment

in the eviction application adding the names of the partners of the firm. He also draws attention of this Court to the allegation found in the counter

filed by him which goes to the effect that the firm as described in the petition is not in existence and hence, it is not maintainable.

6. In order to establish locus standi to agitate against the claim of the first respondent in the rent control proceedings before the appellate authority

and before this Court, he contends that only with the consent of the land lord, himself and others were inducted in possession of the premises as

sub-tenants and it is evident from a circumstance of making additional deposit

for getting permission for additional load by the land lord, the first respondent from the Electricity Board. While Rent Control Appeal was pending, this petitioner filed an application in I.A. No. 15 of 2004 to send for the file relating to service connection No. 23 meant for the demised premises from the Electricity Board and the said file was sent for, which contains the copies of test report obtained from the consumer, the land lord, agreement bond issued by him, test report for effecting additional load of 2 H.P., containing a letter dated 23.01.1991 of the Assistant Executive Engineer, Dindigul and Permanent Registration Certificate issued on 26.02.1996 by the General Manager District Industries Centre, Dindigul.

7. A scrutiny of those documents would show that without reference to anybody else the first respondent himself applied for additional load and the same was sanctioned in his favour. There is nothing to show that the petitioner arranged for additional load and at his behest, it was sanctioned and that he deposited charges for the additional load. The file was marked as Ex.R.4 before the appellate authority and it is also in the judgment passed by the appellate authority that merely because obtaining an additional load, it could not be presumed that the land lord offered his implied consent for induction of the sub-tenants. The finding is proper and there is nothing to reverse it.

8. The next leaf of the contention of the learned Counsel for the petitioner is that one So. Ramachandran deposed as P.W.1, who posed as a power of attorney of the partner of the firm by name one D. Saketh Ramasamy and none of the partners entered into witness box to say between the affairs relating to the tenancy or sub-tenancy and hence, his evidence does not have any value at all. It is his further contention that the demised premises does not belong either to the firm or any of the partners.

9. His next limb of contention is that the land lord obtained the eviction order by fraud and collusion in order to prejudice the rights of the sub-tenants who was introduced in possession with his consent alone and hence, the eviction order is vitiated as per Section 26 of the Tamil Nadu

Buildings (Lease & Rent Control) Act 1960. Section 26 of the Act goes thus:

26. Order under the Act to be binding on sub-tenants: Any order for the eviction of a tenant passed under this Act shall be binding on all sub-

tenants who were made parties in the application for eviction but any person

who became a sub-tenant after the date of the application for eviction shall be bound by the order of eviction and be evicted as if he were a party to the proceedings, provided that such order was not obtained by fraud or collusion.

10. It is gamut of the Section that in case an order of eviction is passed against the tenant, it will bind upon all the sub-tenants when they are on the array of the parties. One class of persons is excluded by this provision, namely, a sub-tenant against whom an order of eviction was obtained by playing fraud or collusion.

11. The learned Counsel for the petitioner indicates a situation that the original tenant obtained Rs. 1,00,000/- from the sub-tenants and quit the place inducting the sub-tenants including the petitioner in the premises and it was well known to the land lord. But the said pleading was not established before both the for a below. In this regard, their findings have to be confirmed. Solely on the reason that the tenant who was the first respondent in RCOP had been remaining ex parte all along, it could not be presumed that the land lord colluded with him and played fraud on the Court to obtain eviction order. At the cost of repetition, it is stated that no consent either written or oral or implicit was obtained from the land lord by the sub-tenants.

12. The learned Counsel for the respondent resisted the above said contentions and repelled them by stating that the petitioner, a sub-tenant has been in possession without the consent of the land lord by any manner and the petitioner has no locus standi to maintain this civil revision petition. It is quintessence of his contention that the sub-tenant is not clothed with any rights in the Act and the only ground available to him is that he has to show that the eviction order was obtained by fraud or collision and that he is not eligible to raise any other contention of his own. For this proposition of law, he has cited the following authorities pronounced by this Court.

12.1. In a decision reported in 1994 LW 102, S. Balasubramaniam v. Gulab Jan, this Court has held as follows:

If the landlord makes out a case for eviction under the Act against the main tenant, the sub-tenant cannot have any voice in such a contingency and has to abide by the decision in the action taken by the landlord against the main

tenant. The sub-tenant cannot put forth any grievance since the Act confers upon him no protection whatsoever and his right to be in possession is in the very nature of things, very nebulous and is a defeasible right.

12.2. In a decision in Natarajan Vs. Nachimuthu Chettiar and Another, , Section 26 has also been discussed. The relevant portion of the said judgment goes thus:

The interpretation to be given to Section 26 is that when a sub-tenant is made a party to the proceedings, he can only raise a defence which is available to him under law or it other words permissible under the Act. When he does not dispute his status as a sub-tenant under the tenant, the only defence available to him is to show that the sub-tenancy was not an unauthorised one, but had been created with the knowledge and written consent of the landlord. No other defence can be raised by a sub-tenant.

....

The scheme of the Act is such that a sub-tenant has no status or right of his own against the landlord except to the limited extent that is provided under the Act. The exception to the Rule has been provided only in those cases, where the sub-tenancy has been created with the knowledge and written consent of the landlord. In all other cases, the sub-tenant has no status of his own as against the landlord except to stand in the shadow of the tenant.

12.3. In another decision reported in 1998 (1) LW 70 N. Sankaran v. R. Ramadoss and Anr., it is observed thus:

It is settled law that a decree in ejectment passed against a tenant at the instance of the landlord is not only on the tenant but also on his sub-tenant.

Section 26 of the Act is only an enabling provision and does not affect the well established principle that the sub-tenant has no independent right under the Act and in the absence of contest by the main tenant for valid reasons and in the absence of fraud or collusion between the landlord and the tenant it is not permissible for the tenant to stultify the proceeding for eviction by the landlord by putting forth any independent contention of his own.

12.4. In another ruling reported in 1999 (1) LW 650, M.P.M. Hameed Ibrahim and Anr. v. V.S. Bagirathan and 3 Ors., it has been held as

follows:

Since he accepted the order of eviction, the petitioners herein have no locus standi or any legal right to question the correctness or otherwise of the

order passed against the tenant. Therefore, the revision is not maintainable at the instance of the petitioners.

13. The weighty and authoritative judicial pronouncements on this point have illuminated the legal position. The consistent view of this Court is that

in the absence of consent of any kind of the land lord, if the sub-tenant is in occupation of the premises, he cannot take shelter under the tenant and

he cannot plead anything before the Court to safe guard his rights. The statutory requirement as regards a sub-tenant establishing his occupation

with prior consent of the land lord which would only make him competent to claim the sole right conferred upon him u/s 26 of the Tamil Nadu

Buildings (Lease & Rent Control) Act, 1960 (for short "the Act") that against the land lord, who obtains the order of eviction by means of fraud or

collusion. Whatever may be the defence or contention projected by the sub-tenant, as per the statute and the law settled by this Court is subject to

the proof of consent given by the land lord. When there is no consent, no right flows from the Act to the sub-tenant.

14. In the light of the above said judicial opinion of this Court, all categories of contentions raised by the learned Counsel for the petitioner could

not stand and it ought to be held that the petitioner has no locus standi to maintain the civil revision petition. It is reiterated that the consent of the

land lord is not evident from any material for subletting. In such view of this matter, this Court is of the considered view that the petition does not

merit consideration. Hence, the civil revision petition fails and it is liable to be dismissed.

15. In the result, this civil revision petition is dismissed with costs. Consequently, connected M.P. is closed. Two months time is granted for

vacating the premises.