
(1999) 09 MAD CK 0092
In the Madras High Court
Case No : C.R.P. No. 450 of 1996

P.K. Duraivelu Mudaliar

APPELLANT

Vs

S.P. Mohana Sundaram

RESPONDENT

Date of Decision : 01-09-1999

Acts Referred:

Citation : (1999) 09 MAD CK 0092

Hon'ble Judges : A. Raman, J

Bench : Single Bench

Advocate : T. Thiruamaram and Mr. M.V. Krishnan, for contesting parties, for the Appellant;

Final Decision : Dismissed

Judgement

A. Raman, J.—Against the order of eviction passed by the Rent Controller, as confirmed by the Appellate Authority, the tenant has preferred this Revision. On the ground that the premises in the occupation of the tenant is required for the purpose of his daughter, the application was filed by the landlord. The Courts below held that the requirement of the landlord is bona fide and therefore, passed an order of eviction.

2. Learned counsel for the petitioner urged three main points for consideration of this Court to contend that the requirement of the Landlord is not bona fide. The main argument of the learned counsel for the petitioner is that subsequent, to the filing of the petition, two of the tenants in the property had vacated and thus, these portions were available for the landlord. Hence, the request of the landlord is not bona fide. According to the tenant, after filing of the application two of the tenants, who were occupying different portions of the same building i.e., Raja Lakshmi Ammal and Baspachari had vacated and therefore, the portions occupied by them having fallen vacant, the conduct of the landlord in pressing the application would show that his claim is not bona fide. Of course, at the appellate stage, it was further contended by the tenant that one Devaraj and Suralivelu have also vacated the portions in their occupation. In this connection,

at the appellate stage, the tenant was permitted to adduce further evidence and voters" list of the year 1988 was marked as Ex.R9. The voters" list marked does not show that in the year 1988, there was any such tenant in the property in Door No. 188, by name Baspachari. Therefore ,when the voters list does not show that there was any such person in occupation of No. 188, in the year 1988, the contention of the tenant that there was such a tenant and he has vacated in the year 1990 can hardly be accepted as true. The application for eviction was filed in the year 1989. Therefore, that part of the tenant's case cannot be accepted.

2A. Now, with regard to Raja Lakshmi Ammal, according to the tenant, she vacated some time in June of July, 1990, since she constructed a house of her own in Anna Nagar, to which place she has shifted. The voters list of the years 1988 and 1993 are produced to show that in the year 1988, her name is mentioned as one of the residents of the property, whereas in the year 1993, is not mentioned so. That here was a tenant by name Rajalakshmi is not disputed. But, it is to be pointed out that in the course of evidence, the tenant took steps to examine her, but the summon sent to her was returned. Whether the person to whom summon was sent is the same person and whether she was the erstwhile tenant of the said building, have not been established in the sense that excepting the interested allegation of the tenant, there is no other proof relating to the same.

3. Even otherwise, the evidence of P.Ws.1 and 2 would show that the said portion, which consists of only a hall and a room will not be sufficient for the family of the landlord's daughter. Further, as regards the Door number and address of Raja Lakshmi Ammal at Anna Nagar, there is same variance in the evidence of R.W. 1. Therefore, it is not possible to hold that any portion fell vacant subsequent to the filing of the application and that it is adequate for the residential purpose of the landlord's daughter.

4. It is categorically admitted by R.W. 1 in his evidence that the landlord's daughter is occupying a rental premises in Chinganna Chetty Street, on payment of rent of Rs. 500/- per month. It is further admitted that the portion in occupation of the tenant is a bigger portion and a separate portion with separate provisions for electricity, water and telephone-wire. Therefore, there is nothing strange or wrong of the landlord in asking for the said portion which is a self-contained portion for the residential purpose of his daughter. The portion that is said to have been vacated by Rajalakshmi Ammal did not have this convenience.

5. It is admitted in the counter that the family of the landlord consists of 8 persons and they are occupying the premises in Door No. 79, Perumal Mudali Street, according to the landlord, the said portion is not even sufficient for him and as his daughter who is occupying a rental building is in need of a house, he requires the premises in the occupation of the tenant for her purpose. As I pointed out already, it is stated that the house, which is in occupation of the landlord in Door No.79, Perumal Mudali Street, is not sufficient for him. It is not

disputed that there are 8 members occupying the said building. According to the landlord, it measures only 800 sq. ft. in area, while according to the tenant, it measures 6000 sq. ft. As to the assertion of the tenant about the area, we have no material to disbelieve the landlord's version of the same.

6. The other contention of the tenant is that the landlord is the owner of the property bearing Door No. 8, Pycrofts Road I Street, Chennai-14. This is disputed by the landlord. A Commissioner was appointed in this case to inspect the property at the appellate stage. The Commissioner has stated that this property bearing door No. 8, Pycrofts Road, stands in the name S.P. Shanmugasundaram and S.P. Radhakrishna, and there are about six tenants occupying the same. He has further stated that G. Sakunthlal, daughter of the landlord for whose requirement, the petition is filed is not residing in the said property. The Commissioner has also produced into court the documents relating to the said property and the tax receipt which all show that the property does not stand in the name of the landlord. Therefore, it follows that the contention of the tenant that the landlord is possessed of a building in Door No. 8, Pycrofts Road, is not made out. It is clear from the evidence on record that the landlord's daughter is occupying a rental premises in Singanna Chetty Street, Madras-2. It is also on record that eight members belonging to the landlord's family are residing in Door No. 79, Perumal Mudali Street, Chennai.

7. It is not the suggestion made to the landlord that enough area of accommodation is available in Door No. 79 for her daughter's residential purpose. On the other hand, before the learned Rent Controller, it was strenuously contended that after filing of the application, two portions in the property bearing door No. 88, Pycrofts Road, fell vacant, which contention has not been established. In the appellate stage, it was contended that two other tenants viz. Surelivel and Devarajan, who were tenants of the petition mentioned building has also vacated subsequently. When no such additional counter has been filed to that effect before the Rent Controller or before the appellate authority, such a case cannot be allowed to be pleaded now by the tenant. Even as question of fact we find that the summons sent to the said persons viz., Surelivelu and Devarajan were returned. Merely from the endorsement of return, it cannot be inferred that these persons were residing in that property.

8. Learned counsel for the petitioner submitted that in para-4 of the petition, the petitioner has stated that the present occupation in Door No. 79, Perumal Mudali Street is not sufficient for him, and therefore, on the basis of the same would contend that the petition is not filed, to accommodate his daughter and that it would disprove the bona fide requirement of the Landlord. I am afraid that such an inference cannot be drawn. In para 4, when it is stated that the accommodation available in Door No.79, Perumal Mudali Street, is not sufficient for the landlord and his family it is so made with a view to emphasise the fact that it will not be possible to accommodate the request of her daughter in the said premises and therefore, the petition mentioned building is required for the

residential purpose of his daughter. Thus, no inconsistency can be inferred in the landlord's requirement.

9. Learned counsel for the petitioner also submitted that the lower appellate court has not considered the points raised by the petitioner viz., about certain portions falling vacant after filing of the application and without any proper discussion, has abruptly disposed of the appeal. It is true that the lower appellate court has not done a clean job of the matter. It has omitted to discuss in detail, the case of the petitioner specially in the light of the evidence adduced before him and the return of summons sent to these parties. But, on the ground, the conclusion arrived at by the lower Appellate Court, cannot be held to be vitiated. There is an application of mind on the part of the lower appellate court. The only defect is that the lower appellate court has not proceeded to analyse the case and write an order in accordance with an excepted norm. But, on that ground, I cannot set aside the judgment, since I am of the view that the ultimate conclusion arrived at by the VII Judge is proper and correct, and is supportable on the materials placed on record. It is to be pointed out that the landlord is occupying the premises in Door No. 79, where according to the landlord, there is no possibility of accommodating his daughter's wish. The landlord as well as his daughter have spoken to about their bona fide requirement. The daughter is not possessed of a house of her own and she is admittedly residing in a rental premises. The premises in occupation of the tenant/revision petitioner is a self-contained one with all facilities. The landlord is not possessed of any other building of his own. Hence, the requirement of the landlord has to be upheld as bona fide.

10. The Supreme Court has held in the decision reported in V. Radhakrishnan Vs. S.N. Loganatha Mudaliar, as follows:

On a plain reading of Section 10(3) (a) (iii) of the Act, it appears that the legislature intended that a landlord seeking eviction of the tenant could be disentitled from claiming possession of the non-residential premises where he requires those premises for his own use, if he is occupying a non-residential building of his own. Similarly, the landlord would also be disentitled from claiming possession of non-residential premises for the benefit of a member of his family, if that member of the family was in occupation of a non-residential building of his own. Any other interpretation of this Section would not only be doing violence to the plain language of the Section but would result, in absurdity in as much as the benefit of the provision would stand denied to the family member of the landlord, who did not occupy any premises of their own and for whose benefit eviction is sought, if the landlord himself is in occupation of a non-residential building.

11. This Court has held in the decision reported in 1997-3-L.W. 141 (S. Mariappan v. Kadar Beevi), as follows:

If the requirement is found to be bona fide, then the choice is left to the landlady

to decide as to which building her son should occupy, and the tenant will not have any say in the matter. If the bona fide is proved, then the tenant cannot dictate terms to the landlady that her son should occupy only some other building and not the schedule building.

The Supreme Court has said that the choice must be given to the landlord to occupy a building which will be more convenient and advantageous for him. The submission of the learned counsel that the Rent Control Act is a beneficial legislation only for the tenant is not correct. The Rent Control Legislation, though restricts the rights of the landlord to get possession of the buildings, it enables him to get possession on certain specified grounds. If those specified grounds are made out, to put further restrictions on the landlord to get possession is not permissible in law. If the contention of learned counsel for revision petition is accepted, even if it is proved by the landlady that her son is not in possession of any building and is occupying a rented premises, the eviction petition will have to be thrown out only on the ground that the landlady detained possession of some other building, which will meet the requirement of the son.

12. Therefore, in view of the legal position and the circumstances of the case, I do not find any reason to differ from the view taken by the courts below. I have to uphold the order of the Courts below and held that the requirement of the landlord is bona fide.

13. Now, coming to this Revision, there is a concurrent conclusion of both the authorities as to the bona fide nature of the landlord's claim. There is no perversity in the order of the courts below. Therefore, the Revision is also not maintainable. Hence, on an analysis, I am satisfied that the order of the Courts below directing eviction of the tenant on the ground of bona fide requirement of the landlord is legal and proper and cannot be interfered with. In the result, this Revision is dismissed, with costs confirming the order and decretal order of the courts below.