
(1953) 10 MAD CK 0013

In the Madras High Court

Case No : Civil Revision Petition No. 460 of 1952

Puliyanaat Kunhiraman Vydier

APPELLANT

Vs

Puthan Purayil Nadukutty Govindan Vaidier

RESPONDENT

Date of Decision : 29-10-1953

Acts Referred:

Contract Act, 1872 — Section 69

Tamil Nadu Tenants and Ryots Protection Act, 1949 — Section 4(5)

Citation : AIR 1954 Mad 641 : (1954) 67 LW 141 : (1954) 1 MLJ 292

Hon'ble Judges : Mack, J

Bench : Single Bench

Advocate : A. Achutha Nambiar, for the Appellant; V.P. Gopala Nambiar, for the Respondent

Final Decision : Dismissed

Judgement

Mack, J.—This petition raises an interesting point of law whether a sub-tenant, who deposits two months' rent u/s 4(5) of Madras Act 24

of 1949 and obtains stay of the trial of a suit for eviction in which there is also a claim for rent, is entitled to recover this deposit from the tenant by

a suit u/s 69, Contract Act. The District Munsif of Nadapuram dismissed the suit by the plaintiff, who was a sub-tenant impleaded as the sixth

defendant to recover a sum of over Rs. 400 he had deposited in a suit O. S. No. 291 of 1945 instituted by three plain-tiffs. The deposit was made

in court on 25-11-1946 and recorded in court on 15-1-1947. The learned District Judge of North Malabar reversed the decision of the District

Munsif. who held that the sub-tenant was not entitled to recover u/s 69, Contract Act and gave the sub-tenant plaintiff a full decree with costs. In

his judgment the learned District Munsif referred to his having decided this question against the depositing sub-tenants in another case.

2. Two decisions of this court have been placed before me, both arising out of the same learned District Munsif's judgments one by Raghava Rao

J. in C. R. P. No. 897 of 1950 (A), the judgment being dated 5-9-1952 in which he took the view that on the facts of the case before him, the

deposit made by the sub-tenant under this Special Act for the purpose of obtaining stay cannot be regarded as a payment made either expressly or

by implication of law on behalf of the defendant-tenant. A different view was taken by Ramaswami J. in C. R. P. No. 663 of 1951 (B) a case

arising from this same District Munsif's Court in which in his judgment dated 23-4-53, after an elaborate consideration of much case law, he held

that the right of a subtenant to recover a deposit made under the Special Act from the tenant in order to obtain stay was covered by Section 69,

Contract Act, the tenant being bound in law to pay rent and the sub-tenant having deposited the rent as claimed in the plaint. Before expressing an

opinion on the point of law involved, the relevant facts of the case before me, which are somewhat peculiar, may be set out briefly.

3. The original suit for rent, O. S. No. 291 of 1945, was filed by three plaintiffs of whom, the third plaintiff P. Kunhiraman Vaidyar, was the

melcharthdar from the first two plaintiffs, who were janmi holders. A melcharthdar may be briefly described as a mortgagee with powers of

eviction. The first defendant in the suit was the Karnavan of the tarwad of the third plaintiff himself, which was collectively the tenant. The sixth

defendant in the suit, who is the contesting respondent before me, was a sub-tenant in actual occupation of five out of ten items from the defendant

tarwad. It is in evidence that the first defendant applied to the plaintiffs for renewal of his tenancy. He subsequently died either in 1949 or 1950 and

then the third plaintiff, i.e. the petitioner before me, became karnavan of his tarwad. He then appears to have resorted to a somewhat ingenious

device. He assigned his melcharth rights to his niece's husband, who came on record as the fourth plaintiff. He then got himself struck out from the

category of plaintiffs and came on record as the 32nd defendant. The deposit had in the meantime been made, when the present petitioner was on

record as the third plaintiff and it is not disputed that he actually withdrew the deposit as plaintiff melcharthdar.

4. The position now taken on behalf of the plaintiff by Mr. Achuthan Nambiar is that as a defendant-tenant, he has no desire at all to stay the trial

of that suit and that this deposit has been made by the sub-tenant for his own benefit and that, as I understand his argument, stay of this suit cannot by any process of law be thrust upon a defendant-tenant. A further argument he has advanced is that the deposit can in no sense be rent, which the tenant was in law bound to pay the plaintiffs in the suit, as the rent had not actually been fixed and was only an amount claimed in the suit. This appears to me rather a hair-splitting distinction sought to be made as regards Section 69, Contract Act. As Ramaswami J. observed, there can be no question that the tenant is bound to pay rent to the plaintiffs, and we have here a sub-tenant very keenly interested in the discharge of this legal obligation, because failure to do so would involve him in possible eviction from the lands of which he has been in occupation. It must be remembered that the whole object of this special legislation was to protect persons in occupation in their actual possession and cultivation.

5. In the case before Raghava Rao J. the facts were a little different. The learned advocates before me say that his decision was placed before Ramaswami J. who considered that the facts were somewhat different. Though the facts that were undoubtedly different from the facts before me in the present case, as it appears to me, the point of law that he decided was substantially the same. With great respect, I am unable to adopt and follow the view of Raghava Rao J. as regards the inapplicability of Section 69 to a suit such as this. From one point of view, no doubt, the tenant though under a legal obligation to pay rent, was not bound in law to make the deposit, as it was open to him to refuse to do so and press for the trial of the suit without any stay. But where this attitude of masterly inactivity on his part to do something, which would stop eviction, may involve great hardship and prejudice to his own tenant, the Court would, I consider, be perfectly entitled to consider the question of his "bona fides" in declining himself to make the deposit and obtaining the necessary stay of the suit in the interests of his own tenant. .

The view that I am inclined to in agreement with Ramaswami J. is that, in cases where the tenant does not make the deposit and as provided for statutorily by Section 4(5) , the sub-tenant does so he can legally recover this deposit from the tenant, who can for the purposes of Section 69, be regarded as a person bound in law to pay the rent in which he is in arrears. I do not think that the very fine distinction sought to be drawn between

the deposit paid and rent, on the ground that the latter has not been exactly determined, will in any way affect the applicability of Section 69,

Contract Act.

I do not however think that a hard and fast rule can be laid down in these cases, as there may be some in which a tenant, although he may have

leased out some of his land to subtenants, may be genuinely anxious and desirous of the suit for redemption going on to a termination without a stay

and if in such cases he can satisfy the court as regards his "bona fides", I am not prepared to say that it would not be a good ground for resisting a

suit by a subtenant, who by this deposit has obtained a stay of the suit, such stay in such circumstances being solely for his own advantage. But as a

general rule, it may be taken that tenants as a body are not very anxious to be evicted and in cases, where they do not deposit the two months rent

and obtain stay, their conduct exposes itself to the inference that they are forcing the hands of the sub-tenants to deposit into court rents, which

they are primarily & legally liable to pay. I agree with the learned District Judge, that the suit is in time.

6. This petition is dismissed with costs.