

(1998) 02 MAD CK 0076
In the Madras High Court
Case No : C.R.P.No. 2296 to 1992

Purandara Vittal

APPELLANT

Vs

Mrs. Radha Bai Dr. S. E. Shivasenkar rep. by Power Agent V.
S. Palaniandi

RESPONDENT

Date of Decision : 23-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2), 25

Citation : (1998) 1 CTC 531 : (1998) 2 LW 66 : (1998) 3 MLJ 367

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : Mr. T. V. Krishnamachari, for the Appellant; Mr. M. S. Umapathy, for the Respondent

Final Decision : Allowed

Judgement

R. Balasubramanian, J.

1. The revision petitioner is the tenant in R.C.O.P.No. 3943 of 1983 on the file of the 10th Court of Small Causes, Madras (Rent Controller) and

the appellant in R.C.A.No.246 of 1989 on the file of the 7th Court of Small Causes, Madras (Appellate Authority). The respondents are the

petitioners in the rent control petition and the respondents in the appeal. Eviction was sought for in this rent control petition by the respondents on

two grounds namely, wilful default in the payment of the rent and for different user. There were two connected rent control petitions namely

R.C.O.P.No.3338 of 1984 between the same parties for eviction on the ground of owner's occupation (Residential) and demolition and

reconstruction and R.C.O.P.No.4097 of 1984, for fixation of fair rent. In R.C.O.P.NO.3338 of 1984 the relief based on demolition and

reconstruction was given up. The finding on the owner's occupation went against the landlord. In R.C.O.P.No.4097 of 1984, the fair rent was

fixed at Rs. 507 per month. However in this revision, we are not concerned with R.C.O.P.No.3338 of 1984 and R.C.O.P.No.4097 of 1984. As

far as R.C.O.P.No.3493 of 1983 is concerned, the learned Rent Controller ordered eviction on the ground of wilful default and rejected on the

ground of different user. The rejection of the rent control petition on the ground of different user had not been challenged by the landlord in any

appeal or even before this Court. The order of eviction on the ground of wilful default was sustained by the appellate authority. Hence the present

revision. In this revision, the learned counsel on both sides advanced arguments only on the ground of wilful default on which eviction was ordered.

2. I heard Mr. T. V. Krishnamachari, learned counsel appearing for the revision petitioner and Mr. M. S. Umapathy, learned counsel appearing for

the respondents. It appears that one Rajamanickam Mudaliar was the owner of the subject property. He died in the year 1979. On his death his

Will"" came into operation and thus the subject property devolved upon his children. Thus Radha Bai Ammal, S.E. Easwari, S.E. Ambashankar,

S.E. Jothishankar and Dr. S. E. Siva Shankar came to be the co-owners of the property. The tenant appears to have been the tenant in the subject

property even from the year 1974 on a monthly rent of Rs.30, which was subsequently increased to Rs.50 p.m. from July, 1979. There was a

family partition by a registered instrument dated 19.11.83 in and by which the subject property came to be allotted to the second respondent in this

revision. In this order, the parties to this proceeding will hereinafter be referred to as the landlords and tenant.

3. The landlords filed an application for eviction in R.C.O.P.No.3493 of 1983 alleging that the rent for the subject property is Rs.400 p.m. and

that the tenant had not paid the rent from March, 1983 to May, 1983, in spite of repeated demands. I am confining in this order only to the facts

relating to the conduct of wilful default attributed to the tenant. The defence would go to show that the tenant was not in arrears of rent and that he

had been regularly sending the rent to S.E. Ambashankar, one of the co-owners and that he had been refusing consistently. Therefore the tenant

contended that though there was a default, yet it cannot be said that he has committed wilful default in the payment of the rent. The learned Rent

Controller upheld the claim of the landlords and ordered eviction as already stated, which order was affirmed in appeal. Mr. T. V. Krishnamachari, learned counsel appearing for the revision petitioner contended that the default period complained of in this case is from March, 1983 to May, 1983, both months inclusive and the tenant had established in this case that he had been sending the rent to one of the co-owners which he had refused and therefore when a valid tender made by the tenant was refused, the landlords cannot be allowed to come and complain that the tenant had committed wilful default in the payment of the rent. According to him, on the facts and circumstances of this case the payment of rent for the period complained of in the rent control petition stands fully established, though the tender was not accepted by the landlords. Therefore the learned counsel for the revision petitioner argued that both the Rent Controller and the Appellate Authority have made an erroneous approach to the point in issue, which resulted in mis-carriage of justice. Mr. M. S. Umapathy, learned counsel appearing for the respondents contended that the tender of the rent for the relevant period as put forward by the tenant is not established at all. Even assuming that the tender of the rent had been made out, yet it had been made to a person who has no authority to receive and therefore, it cannot be said that it is a valid tender. In any event, even if the rent tendered have been refused, it is the duty of the tenant to see that the landlords are paid the rent which they are entitled to collect, which has not been done in this case. According to the learned counsel, it is seen from the additional counter statement of the tenant that S.E. Ambashankar was not to be seen as he was not available from April, 1983 onwards. Therefore the tenant could not have sent the rent to him and yet if he had chosen to sent the same to S.E. Ambashankar, it only exposes his conduct towards his discharge of the obligations in the payment of the rent to the landlords. The learned counsel for the landlords also contended that the tenant had even denied the landlord-tenant relationship and he set up right in himself under the Tamil Nadu City Tenant's Protection Act and therefore his conduct in not paying the rent has to be necessarily inferred as wilful.

4. In the light of the submissions made by the learned counsel on either side, I perused the records. It appears from the records, that the

respondent has been a tenant from the year 1974. The present respondent with three other persons have become the co-owners of the subject

property only sometime in 1979, after the death of one Rajamanicka Mudaliar. Originally the rent control petition was filed by the first respondent

alone. The second respondent in this revision came on record as the second petitioner before the Rent Controller by an order dated 11.3.85,

consequent to the family partition deed dated 19.11.83 which is marked as Ex.P.19 in this case. The petition as originally stood, proceeded on the

basis that the first respondent was the landlady and the revision petitioner was her tenant. No other details are given in the rent control petition.

However during the course of trial, to sustain the case of wilful default, it is attempted to be established that the first respondent herein was the

landlady who was collecting the rent and therefore the tenant has to necessarily pay the rent only to her and not to anybody else .This new version

was brought out only in view of the defence of the tenant that he was paying the rent to S.E. Ambashankar, who is also a co-owner. To

substantiate the case of the landlords, they have filed Ex.P.16. Ex.P.16 are two rental receipts, one is dated 7.12.80 and the other one is dated

12.2.81. According to the landlords, these two rental receipts were issued by Mrs. Radha Bai Ammal the first respondent in this revision. I

perused these two receipts and they are signed by one J. Ragavan. On the top of the receipts the names of all the five owners namely, Radha Bai

Ammal S.E. Easwari, S.E. Ambashankar, S.E. Jothishankar and Dr. S. E. Shivashankar are mentioned. Therefore there is absolutely no

documentary evidence to show that Radha Bai Ammal ever collected the rent in her name.

5. The argument of the learned counsel for the respondents is that the tender of the rent to Amba Shankar is an illegal tender and he has no right to

collect the rent. The only person who is entitled to collect the rent is Radha Bai Ammal. This argument can be tested from the following materials as

well. The rental receipts marked as Ex.P.16 in this case show the monthly rent as Rs.50 only. However in the rent control petition, it is mentioned

that the rent per month is Rs.400. There was no contract, at any point of time, entered into between the landlords and the tenant, increasing the

rent from Rs.50 to Rs.400. There was also no letter at any point of time from Radha Bai Ammal to the tenant evidencing any such agreement.

There is also no pleading at all in the rent control petition on this aspect. Then one has to find out as to how in the rent control petition, the rent per

month has been stated as Rs.400. To decide this question, the documents filed by the tenant come handy. Ex.R.1 is the letter from S.E.

Ambashankar to the tenant. No doubt it is undated. It is in the letter head of Solden and Company. It discloses that S.E. Ambashankar is the

proprietor. This letter states that the rent is fixed at Rs.400 p.m. with effect from 1.3.1983. Ex.R.2 dated 7.4.83 is the reply from the tenant

disputing the rent at Rs.400 p.m. This was followed by another letter dated 15.4.83 from the tenant to S. E. Ambashankar, marked in this case as

Ex.R.3. No doubt Exs. R.2 and R.3 were addressed to S. E. Ambashankar to his Adyar address. Ex.R.1 shows the address of the company of

which S. E. Ambashankar is proprietor as at Triplicane. Therefore only for the first time in Ex.R.1, the rent has been shown as Rs.400 p.m. from

March, 1983. The rent control petition itself came to be filed in August, 1983. I find that the demand for the rent at Rs.400 p.m. commencing from

1.3.83 is reflected in the rent control petition. But for this letter i.e. Ex.R.1 there are no other materials to send that the rent was ever asked and

paid at Rs.400. Therefore the argument of the learned counsel for the respondents that S. E. Ambashankar has nothing to do with the subject

property or he has nothing to do with the collection of the rent cannot be accepted. On the other hand, I hold that S. E. Ambashankar and Radha

Bai Ammal been acting together in all matters relating to the subject property. Though it is mentioned in the rent control petition that the monthly

rent is Rs.400, yet it had been categorically admitted by P.W.1 while he was in the witness box that the rent per month is Rs.50 only.

6. Therefore on this basis, namely Radha Bai Ammal and S.E. Ambashankar have been jointly acting in all matters relating to the subject property

and the rent per month is only Rs.50, let me analyse the case of the landlords as to whether the tenant had committed any wilful default in the

payment of the rent or not from March, 1983 to May, 1983, both months inclusive. The courts below have found that the tenant had sent a sum of

Rs.50 representing the rent for March, 1983 to S. E. Ambashankar, which was refused. It is no doubt true that the rent for the month of March,

1983 has not been sent again. The rent at the rate of Rs.50 p.m. for the subsequent months namely, April, May, June and July, 1983 have all been

sent by the tenant under Exs.R.11 to R.14. Exs.R.4, R.5 and R.6 are the money order coupons for the payment of the rent at the rate of Rs.50

p.m. for the months of December 1982, January 1983 and February, 1983. All these money orders had been received by S. E. Ambashankar. The

signature found on these three money orders tallies with the signature of S. E. Ambashankar in Ex.P.3 which is the letter sent on 14.5.1984 jointly

by Radha Bai Ammal and S. E. Ambashankar to the tenant. There is also no dispute that the rent, sent under Ex.R.4 to R.6 money orders were

received by S. E. Ambashankar. Ex.R.17 dated 5.12.83 is another letter from the postmaster to the tenant informing him that the money orders

covered under Exs.R.11 to R.14 and referred to above have been repaid to the tenant earlier. In the mean time the rent control petition was filed in

August, 1983.

7. On these facts, the argument of the learned counsel for the respondents is that the conduct of the tenant in sending the money orders covered

under Exs.R.11 to R.13 to one Solden and Company, who has nothing to do with the subject property, shows his callous and indifferent attitude.

This argument has to be noted only to be rejected immediately. I have already referred to Ex.R.I sent by S. E. Ambashankar to the tenant. Ex.R.I is

the letter head of Solden and Company. It is shown in that letter head that S. E. Ambashankar is the proprietor of the said Company. Ex.R.10 is

the postcard dated 8.3.83 written and send by S.E. Ambashankar to the tenant. On the reverse of this post card, the office seal of Solden and

Company, Triplicane, Madras is found. This letter confirms the details of demand contained in Ex.R.I. There is a recital in this letter as follows:

This is a true copy of the registered letter sent to you on 8.3.1983.

Verbatim the contents of Ex.R.I are reflected in Ex.R.10. Though Ex.R.1 is undated, yet it could be safely assumed from Ex.R.10 that it is dated

8.3.1983. Therefore I am of the considered opinion that the rent for the month of April, May and June, 1983 had been tendered to a person who

had an authority to receive and he is the person who had earlier received the rent and he is S. E. Ambashankar. S. E. Ambashankar is the

proprietor of Solden and Company. It may be true that the money orders covered under Exs.R.11 to R.13 had been sent to Solden and

Company. When S. E. Ambashankar is the proprietor of Solden and Company, I

am of the opinion that the tenant had not committed any illegality in sending the money orders as stated above. Law recognises a person carrying on business in his own name or in a pseudo name. In other words, Solden and Company is an alias for Ambashankar.

8. The learned counsel for the revision petitioner, brought to my notice a judgment of the Honourable Supreme Court of India reported in

Appavoo (dead) by L.Rs. v. Sree Dharma Vinayakan Dharmaraja Devasthanam 1991 (1) M.L.J. 41. That case arose out of the judgment from

the Tamil Nadu Buildings (Lease and Rent Control) Act. Default was alleged in the payment of the rent. There was a demand for a higher rent by

the landlord. All the arrears of rent at the agreed rate was paid by the tenant. The appellate Judge took the conduct of the landlord demanding rent

at a higher rate than the agreed rent into consideration as a circumstance to find against the landlord's plea that the tenant being a wilful defaulter.

This reasoning is specifically referred to in the judgment of Honourable Supreme Court of India. The Honourable Judges upheld the order of the

appellate authority and set aside the order of eviction passed by this Court in the revision. In this case also, there is a demand for a higher rent

which is at eight times the original rent. The landlords admitted before the court that the rent was only Rs.50/- and not Rs.400/-. This conduct of

the landlords is also taken into account by me in holding that the tenant cannot be said to be guilty of committing a wilful default in the payment of

the rent. It is no doubt true that the rent for the month of March, 1983 sent by the tenant was refused by the landlords. It is also on record that the

refused rent for March, 1983 was not sent again by the tenant. All the tenant brought to my notice a judgment of this court reported in G. Kannaih

Chetty v. H. Subramaniam (died) and others 1994 T.L.N.J. 124. In that case also, the rent sent for February, 1983 was refused by the landlord.

The subsequent rents for the subsequent months alone were sent by the tenant and they were also refused. In that context, a similar argument was

advanced before the learned single Judge and it was dealt with as follows:

The point urged by the learned counsel for the petitioner is that under each month, he was sending only Rs.250 which represents only one month

rent and no arrears of rent were sent. This contention is rightly repelled by the learned counsel for the respondent who would submit that once a

valid tender is made, there is no need to make again a second tender with regard to the same amount. I find that this submission made by the

learned counsel for the respondent is correct. So, it cannot be stated that there was no valid tender.

Under these circumstances, it cannot be held that not sending the March, 1983 rent again, which was earlier refused, would in any way be held

against the tenant. The rent for March, 1983 was validly tendered and illegally refused by the landlord.

9. For all the reasons stated above, I am of the firm opinion that the courts below have committed a serious error in law as well as on facts in

holding that the tenant had committed wilful default. The learned counsel for the respondent brought to my notice a judgment of this Court, wherein

it has been held that when the courts below concurrently found on a particular point against a party to it, it cannot be possible for this court to

interfere in such a concurrent finding unless those findings could be attacked as perverse findings. I too agree with the law laid down by this Court.

However at the same time, I do not want to lose sight of the fact that when the landlord had not established his case of wilful default, he is not

entitled to an order of eviction. To grant relief in favour of the landlord in such a situation, would amount to rendering great injustice to a tenant.

The power of revision u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act appears to be wider than the power of revision of this

court u/s 115 of the Code of Civil Procedure. u/s 25 of the above said Act, this court can satisfy itself as to the regularity of such proceeding or the

correctness, legality or propriety of any decision or order passed. Under these circumstances and in view of the power of revision u/s 25 of the

above Act, I am inclined to interfere in this case to render justice to the tenant. Accordingly the revision is allowed with cost. The cost is quantified

at Rs.500.