

(1956) 08 MAD CK 0049
In the Madras High Court
Case No : C.R.R. No. 1176 of 1954

R. Padmanabha Naidu

APPELLANT

Vs

V.K. Ponnuswami Naicker

RESPONDENT

Date of Decision : 03-08-1956

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 41

Citation : (1956) 08 MAD CK 0049

Hon'ble Judges : Basheer Ahmed Sayeed, J

Bench : Single Bench

Advocate : N.C. Vijayaraghavachari and N.C. Srinivasan, for the Appellant; K. Venkataraman and S.B. Mani, for the Respondent

Judgement

Basheer Ahmed Sayeed, J.—This revision petition is against the order of the learned Small Cause Judge directing the return of the plaint for presentation to the proper Court. The respondent in this case in 1941 took up a certain land together with the superstructure thereon as a tenant under the petitioner agreeing to pay a rent of Rs. 35 per month. At that time there was a vacant piece of land belonging to the petitioner forming part of the land and superstructure leased to the respondent. But that vacant piece of land did not form the subject matter of the lease granted to the respondent in 1941. In 1943 the respondent approached the petitioner and took up the vacant piece of land that was still available on a rent of Rs. 10 per month. After taking up the vacant land on the said rent, the respondent appears to have put up superstructure thereon. For his having put up superstructure, the parties seem to have agreed that there should be some further rent payable by the respondent. Therefore the total rent that was payable by the respondent became Rs. 70. It does not appear, however, either from the records or from the evidence that when the total rent he came Rs. 70, any apportionment of the increase of Rs. 25 over the above Rs. 45 was made either to the vacant land taken up on lease in 1943 and on which superstructures were put up or to the previous lease which comprised the land and the superstructures thereon. But the presumption is that when the

superstructures were put up on the vacant land, the justification was felt that more rent should be paid by reason of the better enjoyment of the land by the respondent.

2. The petitioner is also a merchant and he wanted to expand his business. All along he has been in a small rented place. He felt the necessity to do business on his own premises. He thereupon gave notice to the respondent to vacate not merely the original superstructures and the land which were leased to him in 1941, but also called upon him to vacate the vacant land that was taken over by the respondent in 1943 and over which he has put up superstructures. There was a reply by the respondent and there was further exchange of notices between the two parties. Ultimately the petitioner went to the Court of Small Causes for evicting the respondent, under S. 41 of the Presidency Small Causes Courts Act, from the land which was leased to the respondent in 1943 and over which the respondent had put up superstructures and in respect of which he admitted he was paying extra rent of Rs. 25 for the superstructures put up by him, over and above Rs. 10 which was originally agreed in respect of the lease for the vacant piece of land. Wisely the petitioner did not ask the Court of Small Causes for eviction against the respondent from the land and superstructures which were leased to him in the year 1941.

3. The defence put up by the respondent was that the entire land and superstructures now in question formed one unit in respect of which the respondent was a tenant under the petitioner and that if the petitioner wanted to evict him from the land and superstructures, he should apply to the Rent Controller under the Madras Buildings (Lease and Rent Control) Act, and that the petitioner's application before the Small Causes Court was incompetent. The respondent also contended that the petitioner split up the two leases as if there were two separate entities with a view to avoid his seeking remedy before the Rent Controller.

4. The learned Small Cause Judge accepted and upheld the plea of the defendant-respondent and directed that the plaint should be returned for presentation to the proper Court. Hence this revision petition.

5. The case has been argued very vehemently by both sides before me. But on a consideration of the entire evidence, documentary and oral, in the case, the conclusion seems to be irresistible that the respondent did not take the lease as one single unit when he became the tenant of the petitioner. He first took up only the land with superstructures in 1941. Then two years later he took up on lease the vacant piece of land and put up superstructures thereon. Two different rates of rent were fixed for the two different leases. Though the petitioner might have contended that the second lease was only a tenancy at will or that it was only permissive occupation, as if it was on the basis of leave and licence, still the fact remains that the second lease also was a tenancy agreement of the usual type. It is beyond question that there were two tenancy agreements, one in respect of the superstructures which were on the land, and another of some vacant piece of

land. Though it has been contended by the learned Counsel for the respondent that prior to the filing of the suit the petitioner had treated the two leases as one composite lease and that the rent was being paid for both the leases only as a single payment, still it is difficult to agree with him that the leases were not two different leases. The first lease being one for superstructures on the piece of land, it would be one governed by the Madras Buildings (Lease and Rent Control) Act and the proper thing for the petitioner if he seeks; to evict the respondent from these superstructures and the land, would be to approach the Rent Controller. He applied to the Small Cause Court not for eviction of the respondent from those premises, but in respect of the other leases which was given to the respondent merely in respect of the vacant piece of land, this obviously does not fall within the scope of the definition of the term ""building" as contained in the Madras Buildings (Lease and Rent Control) Act. "Building" is no doubt defined as including gardens, lands, etc, appurtenant to the building which have been let out along with the building. But in this case neither the documentary evidence nor the oral evidence goes to show that when the vacant piece of land was leased, it was leased as appurtenant to the superstructures that were leased in 1941. If the respondent had been careful enough, he would have surely insisted upon the vacant piece of land also to be included in the lease which he took up in 1941, if he had any idea or any belief that the vacant piece of land lying adjacent to the premises was appurtenant to the building and should be let out along with the building when in 1941 he took up the superstructures on lease. This piece of land was not let out to him along with that building. Therefore it is difficult to agree with the learned Small Cause Judge when he says that the particular land leased to the respondent in 1943 was leased to him along with the land and superstructures leased to him in 1941. Therefore, the definition of the term "building" as contained in the Madras Buildings (Lease and Rent Control) Act could not be pressed into service in order to say that the second bit of land which was leased to the respondent formed part and parcel of the original lease in favour of the respondent in 1941. When actually the vacant piece of land was not let to the respondent as part and parcel or as appurtenant to the superstructures which were let to him in 1941 and when the vacant piece of land was not considered at the time the contract of tenancy was entered into as an appurtenant which should have been leased to him or which was actually leased to him along with the superstructures, the learned Small Cause Judge is not correct when he came to the conclusion that the petitioner should seek his remedy before the Rent Controller. The Rent Controller will not have in such cases any jurisdiction and the proper Court would be the Small Cause Court when the lease pertained merely to the land without any superstructures. Such lands without superstructures would not be comprised within the definition of "building" as contained in the Madras Buildings (Lease and Rent Control) Act. In these circumstances, I am of the view that the return of the plaint to the petitioner for presentation to proper Court was wrong. The proper thing to do is that the plaint should be received back, when presented, by the Small Cause Court and dealt with according to law and in the light of the foregoing

observations and the evidence on record. So far as the costs of this petition are concerned, I make no order.