
(1969) 09 MAD CK 0037
In the Madras High Court

R. Thangavelu

APPELLANT

Vs

Bhahadur Sheriff

RESPONDENT

Date of Decision : 09-09-1969

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 111, 111(A), 111(g), 111(h)

Citation : (1970) 83 LW 124 : (1970) 1 MLJ 495

Hon'ble Judges : R. Sadasivam, J

Bench : Single Bench

Judgement

R. Sadasivam, J.—Petitioner Thangavelu seeks to revise the judgment and decree of the Appellate Authority in HRA. No. 342 of 1967 on its file, confirming the order of the Rent Controller in HRC. No. 4828 of 1966 on his file, directing the eviction of the petitioner on the ground of wilful default in the payment of rent from 1st May, 1966 to 30th September, 1966 at the rate of one rupee per day. The petitioner denied the title of the respondent. His case is that the respondent put up the northern superstructure and he put up the southern half of the superstructure of the premises in question and that he has let out three rooms with thatched roofing behind the southern half portion. But the case of the respondent was that he put up the entire superstructure of the premises at his cost and that he has let out the premises occupied by the petitioner for running a Tea shop. Each party examined five witnesses in support of his case, apart from adducing documentary evidence. The Courts below accepted the case of the respondent that the petitioner is his tenant and in doing so they relied among other things, on the notice (Exhibit P-2) sent by the petitioner through his advocate admitting that he is a tenant of the respondent. But in a subsequent notice the petitioner has attempted to explain it as a mistake committed by his advocate and that it referred only to the arrangement to pay electricity charges. He denied having executed the lease agreement, Exhibit P-11, but that plea was not also accepted by the Rent Controller or the Appellate Authority. They found that the denial of the title of the respondent by the petitioner is not bona fide and that in view of the wilful default in the payment of rent the petitioner is liable

to be evicted. I see no ground to interfere in revision with the said findings of fact which are not vitiated by any error of jurisdiction or of law.

2. The learned Advocate for the petitioner, however, relied on the decision in C.R.P. No. 2542 of 1965 rendered on 9th September, 1969. It has been held in that case that so long as the contractual tenancy is not terminated in the manner provided by Section 106 read with Section 111 (h) of the Transfer of Property Act, the tenant is protected in his possession and the landlord cannot evict him, with the necessary corollary that there is no need for the tenant to seek protective refuge under the Rent Control Act of 1960 and that the landlord cannot, during the subsistence of the tenancy, resort to eviction on grounds provided by that Act irrespective of the protection available to the tenant under the subsisting contractual tenancy. It has been further observed in that decision that there is nothing in the said Act which expressly or by necessary implication abrogates the general law relating to the necessity to terminate the contractual tenancy before proceedings in ejectment can be initiated, and that it is only after the expiration of the contractual tenancy either by efflux of time or by notice of termination that the field becomes open for the landlord to get over the statutory protection to the tenant by resorting to and establishing the grounds provided by the 1960 Act for eviction. As a single Judge, I am bound by this Bench decision.

3. The learned Advocate for the respondent rightly urged that the lease of immovable property could be determined in any one of the modes prescribed in Section 111 of the Transfer of Property Act and that by virtue of Clause (g) of Section 111 of the Act disclaimer or denial of the landlord's title is a ground of forfeiture. This is well recognised both in English common law and in India, and it is clear from the findings of the Rent Controller and the Appellate Authority that the denial of the title of the landlord by the petitioner-tenant in this case is not bona fide. But even the denial of the title of the landlord by the tenant or the act of the tenant in claiming title in himself is by itself not sufficient, though it will certainly amount to forfeiture of the lease, to determine the lease. u/s 111 (g) of the Transfer of Property Act, in addition to the forfeiture of the lease by the tenant on one or the other of the grounds mentioned therein, the lessor or his transferee should give notice in writing to the lessee of his intention to determine the lease on account of the forfeiture. The respondent-landlord has not, in any of his notices, referred to the forfeiture of the lease on the ground of denial of his title or the petitioner asserting title in himself, and determined the lease. In the absence of such determination of the lease either by notice in writing to the lessee of the landlord's intention to determine the lease on the ground of forfeiture as required u/s 111 (g) or by giving notice u/s 111(A) complying with the requirements of Section 106, the contractual lease will continue to subsist and the respondent cannot get an order of eviction in view of the Bench decision.

4. The order of eviction passed against the petitioner is, therefore, set aside. It is needless for me to state that it is open to the respondent to give the necessary notice if he wants to evict the petitioner and take such steps as he may be

advised. In view of the facts and circumstances of the case, I direct the parties to bear their own costs.