
(1978) 08 MAD CK 0017

In the Madras High Court

Case No : Civil Revision Petition No. 3595 of 1974

Rajalakshmi Ammal and Another

APPELLANT

Vs

S.S. Piramanayagam Pillai

RESPONDENT

Date of Decision : 17-08-1978

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3), 13

Citation : AIR 1979 Mad 147 : (1979) ILR (Mad) 387 : (1979) 92 LW 68 : (1979) 1 MLJ 60

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Judgement

1. The two petitioners in this revision, as "landlords" within the meaning of Tamil Nadu Buildings (Lease and Rent Control) Act, Act 18 of 1960. (Hereinafter referred to as the Act), sought the eviction of the respondent-tenant herein by invoking the aid of S. 10(3)(a)(iii) of the Act. According to them, they purchased the premises in question for the purpose of running a jewellery business run by their husbands, which business having been started by their husbands as partners under the name and style of "Ameer Jewellery Mart" is being run in another premises which is not their own. The Rent Controller (Principal District Munsif), Tirunelveli, who entertained the petition of the landlords in HRC No. 43 of 1972, found the case tenable on facts and countenanced their plea for eviction of the tenant and allowed the petition for eviction. The tenant filed an appeal, C. M. A. No. 24 of 1973, which was heard and disposed of by the Rent Control Appellate Authority (Principal Subordinate Judge) Tirunelveli, and the Appellate Authority set aside the orders of the Rent Controller and dismissed the petition for eviction by the "landlords" on a reasoning that the premises in which "Ameer Jewellery Mart" the business of the husbands of the landlords is being carried on belongs to the son of the first of the landlords. The present revision is directed against the orders of the Appellate Authority.

2. Before me, it is not disputed that the husbands of the landlords carry on a

business of their own in partnership. The contention that because the premises where they are carrying on their partnership business at present under the name and style of "Ameer Jewellery mart" belongs to the son of the first of the landlords, they must be deemed to be carrying on the business in the premises of their own cannot be upheld. The Appellate Authority points out that the document, Ex. B.3, which is a registration copy of a sale deed, makes out that the premises where at present the partnership business is being carried on belongs only to the son of the first of the "landlords". The ownership can then be only with the son of the first of the landlords. On such facts, it cannot be stated that the ownership of the son is the ownership of the father so that it can be put against a case u/s 10(3)(a)(iii) of the Act. The reasoning of the Appellate Authority in this connection cannot be upheld.

3. Mr. P. N. Venugopalan, learned counsel for the respondent-tenant, has raised another objection which savours of legal flavour. Learned counsel states that the proceedings having been initiated under S. 10(3)(a)(iii) of the Act before the amendment introduced by Tamil Nadu Act XXIII of 1973, the requirement of the premises concerned for the partnership business of the husbands of the landlords cannot fit in with the said provision. In my view, on a proper construction of the said provision, as it stood even prior to the amendment introduced by Tamil Nadu Act XXIII of 1973, the case of the "landlords" as put forth by them can definitely be served by the said provision. Prior to the amendment introduced by Tamil Nadu Act XXIII of 1973, Section 10(3)(a)(iii) of the Act reads as follows :-

"(3)(a) A landlord may, subject to the provisions of clause (d), apply to the controller for an order directing the tenant to put the landlord in possession of the building..... (i).....(ii).....(iii) in case it is any other nonresidential building, if the landlord or his son is not occupying for purposes of a business which he or his son is carrying on, a non-residential building in the city, town or village concerned which is his own.

By the amendment, the amended provision reads as follows--

"(3)(a) A landlord may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building-(i).....(ii)..... (iii) in case it is any other non-residential building, if the landlord or any member of his family is not occupying for purposes of a business which he or any member of his family is carrying on, a non-residential building in the city, town or village concerned which is his own.

4. Even before the amendment, a question came up for consideration as to whether the requirement of the members of the family of the landlord can be served by invoking the provisions of S. 10(3)(a)(iii) of the Act.

5. Ramaprasada Rao J. as he then was, in K.R. Saraswathi Vs. V. Vadivelu Chettiar, held as followed (at p. 72 of AIR):-

"Here, I am concerned with the meaning of the expression "landlord". Should it

in the light of the passages extracted above by me be circumscribed only to the personality of the landlord or should it be extended to his very near and dear relations? No doubt, the Legislature has expressly included the word "son", I have made it clear that by such specific inclusion, it cannot be reasonably presumed that other dependents such as wife in the case of a landlord or husband in the case of a landlady can be omitted from consideration while appreciating the need of the landlord or landlady, as the case may be. In the instant case, it is the landlady who is seeking for eviction of the tenant on the ground that her husband is carrying on a business and for such business of her husband her premises is needed. I do not think that a beneficial construction—a construction in consonance with justice, equality, reason and good conscience—would exclude a request by a landlady for being put in possession of her building for the use and occupation by her husband for his business. In Hindu society it is the legitimate duty of the wife to provide comfort to her husband and a fortiori it is so for furtherance of the interests of the business of her husband in which it can be safely presumed that she is vitally interested. Thus, the addition of the word "son" in S. 10(3)(a)(iii) of Act 18 of 1960 does not militate against the adoption of a reasonable and beneficial construction of the word "landlord" appearing therein. In my view, therefore, the petitioner (wife) is entitled in the circumstances to ask for possession of the premises from the tenant for the furtherance of the business of her husband which he is admittedly and undisputably carrying on."

6. If the above principle is kept in mind, there is no difficulty in countenancing the plea of the "landlords" that to serve the requirements of their husbands who carry on business in partnership, they require the premises in question. But, the learned counsel for the respondent puts forth a contention that the business is a partnership business and such a business is not carried on by the landlords themselves and it is being carried on only by their husbands. In my view, this contention is also without substance. Once it is taken that the requirements of the husbands of the landlords are equally the requirements of the landlords as recognised by Ramaprasada Rao J., as he then was, in the decision referred to above, the language of the section is quite comprehensive to enable the landlords to recover possession of the premises concerned for the purpose of the partnership business of their husbands. A firm is not legal entity and the partners composing the same are principals and agents mutually, each partner is carrying on business on behalf of the others. It would not be proper to discountenance the plea of the landlords on the ground that the business admittedly carried on by their husbands is a partnership business in which another or others may also have interests.

Partnership business is the business of the partners. In a collective sense, the business is that of the partners as a whole, viz. all the members of the firm. May be, each of them holds a fractional interest. By reading Section 10(3)(a)(iii) of the Act, it is not possible to spell out any limitation as to the extent of the interest in the business carried on by the landlords or by their husbands. The

business could be carried on either as a proprietary concern or in partnership with others. Such a construction alone will be a reasonable one and will serve the object of the provision. The requirements for the business carried on by the landlords in partnership with others can be equated to the requirement of the landlords themselves. This has been recognised by a Division Bench of this court consisting of Srinivasan and Sadasivam JJ. in *V. Danmull Sowcar Vs. Syed Ali Mohamed*, . That requirement need not necessarily be that of the landlord alone and it can even be that of a member of his family, whose interests the landlord is bound to serve.

7. Learned counsel for the respondent relied on the decision of another Bench of this Court consisting of Kailasam J. as he then was, and N. S. Ramaswami J. in *Jayaraman v. Ramalinga*, 1973 TNLJ 393 for his proposition that the business being only a partnership business of the husbands of the landlords, such a requirement cannot be served by invoking S. 10(3)(a)(iii) of the Act. But, as rightly pointed out by v. Ramaswami J., in *Annamalai and Company Vs. Sital Achi*, , the learned Judges of the Bench were not expressing any definite expression on the question whether the landlord could ask for possession of a non-residential building for purpose of a business in which either he or any member of his family was only a partner and the decision of the Bench was rendered on the peculiar facts of the case concerned.

8. In the present case, there is no dispute that the business is being carried on by the husbands of the landlords in partnership with another. It has not been brought out in evidence that the carrying on of the said partnership business is only a ruse to seek the process of eviction of the respondent-tenant and that the husbands of the landlords have to substantial, direct or active interest in the said circumstances, I find that the appellate authority has acted with impropriety and irregularity when it set aside the orders of eviction passed by the Rent Controller, and in my view, there is a warrant for interference in revision. Accordingly, this revision is allowed and the orders of the appellate authority are set aside and those of the Rent Controller are restored. There will be no order as to costs in this revision. Time for vacating, three months.

9. Revision allowed.