

(1946) 04 MAD CK 0018
In the Madras High Court

S. Murugesu Gramani

APPELLANT

Vs

The Province of Madras

RESPONDENT

Date of Decision : 02-04-1946

Acts Referred:

Citation : AIR 1947 Mad 74 : (1946) 59 LW 470 : (1946) 2 MLJ 171

Hon'ble Judges : Somayya, J

Bench : Division Bench

Judgement

Somayya, J.—This appeal arises out of a suit filed by the appellant for a decree restraining the defendant-respondent by an injunction from

interfering with the appellant's right to the suit land and for a declaration that he is entitled to the reliefs provided under Madras Act III of 1922

(Madras City Tenants Protection Act). The appellant's father was granted a lease of a plot of land measuring 180 square feet in Perambur within

the city of Madras. This was in the year 1917 and the monthly rent was Rs. 5. After the death of the father successive leases were granted by the

respondent from time to time. In 1934, the appellant requested the Government to assign the land to him but the Government refused. A similar

request was made in 1935 and that again was turned down. In May, 1941, the respondent terminated the lease on the ground that one of the

conditions of the lease was violated and that the lease contained a provision for forfeiture and re-entry. The lease that was current at that time was

that under Ex. D-23 which ran from 1st July, 1938, up to the 30th June, 1941 A notice informing the appellant that his lease was forfeited and

asking him to quit was given on the 14th May, 1941, Ex. D-24. The Collector also ordered the Tahsildar to take immediate action to evict the

lessee and to re-enter upon the land. The Tahsildar took possession of the land on the 27th July, 1941. The Tahsildar has given evidence to this

effect and his evidence has been accepted by the lower Court. Though the appellant denies that the Tahsildar took possession on the 27th July,

1941, I see no reason to differ from the finding of the lower Court on this question.

2. On the 30th July, 1941, the karnam accepted a sum of Rs. 5 and gave a receipt Ex. P-13 (b). It purports to be a receipt for the lease rent for

the month of July, 1941. Subsequently there were proceedings under the Land Encroachment Act and when the proceedings were going on, the

suit under appeal was started on the 1st July, 1941, for the reliefs mentioned above. It would appear that subsequent to the date of the plaint, the

superstructure put up by the appellant was removed by the respondent and thereafter damages were asked as regards the value of the buildings.

3. Various claims were put forward in the plaint; one is that the appellant is a tenant under the Madras City Tenants Protection Act and therefore

entitled to the benefits conferred by that Act. u/s 2(4) of the Act, a tenant means tenant of land liable to pay rent on it, every other person deriving title from him, and includes persons who continue in possession after the termination of the tenancy.

If this Act applies, then the appellant cannot be evicted except in accordance with the provisions of that Act and he would be entitled to a

declaration that the respondent should not disturb his possession except by proceedings under that Act. But the respondent relies upon Section 3

of the Crown Grants Act which says-that notwithstanding anything contained in any statute or enactment of the Legislature, the terms of the grant

should be given effect to. The section runs thus:

All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect

according to their tenor any rule of law, statute or enactment of the legislature to the contrary notwithstanding.

4. It is clear therefore that the Crown Grants Act prevails over the City Tenants Protection Act and that being so, the terms of the grant Ex. D-23

have to be enforced. Ex. D-23 provides that the lease comes to an end on the expiry of the three years from that date. It contains this stipulation:

Clause 2, Sub-clause (9). ""And at the expiration or sooner determination of the said vacancy to yield up the demised premises with the fixtures and

additions thereto in good and tenantable repair and condition in accordance with the covenants hereinbefore contained.

Therefore, the lessee-appellant is bound by the covenant I have set out and he has no right to be in possession after the expiry of the period fixed under the document.

5. Mr. P. B. Ananthachari, the learned Advocate for the appellant, then urges that rent was collected from his client for the month of July, 1941,

that is, for a period after the expiry of the lease Ex. D-23. And the argument is that acceptance of rent for a period after the expiry of the term

creates at least a tenancy from month to month. If so the respondent cannot evict him unless due notice was given. My attention has not been

drawn to any notice given subsequent to the 30th July, 1941, which would conform to the requirements of the law on this point. 15 days notice

evidently has to be given under the general law in the case of monthly tenancies. There is no such notice in this case. The learned Government

Pleader replies that though the karnam received the rent for July, 1941, and gave the receipt Ex. P-13 (b), his act cannot prejudice the rights of the

respondent and reliance is placed on the decision of this Court in *The Secretary of State for India in Council Vs. Kasturi Reddi*, where the

distinction between private agents and public agents are discussed at length. The learned Judges said this:

The distinction as to the extent to which acts and declarations of a private agent bind his principal and those of public agents bind the Government

is well pointed out by Story in his " Law of Agency " (Ninth edn., 1882), Section 307(a) in the following terms:

In respect to the acts and declarations and representations of public agents it would seem that the same rule does not prevail which ordinarily

governs in relation to mere private agents. As to the latter the principals are in many cases bound where they have not authorised the declarations

and representations to be made. But in the case of public agents, the Government or other public authority is not bound unless it manifestly appears

that the agent is acting within the scope of his authority or he is held out as having authority to do the act or is employed in his capacity as public

agent to make the declaration or representation for the Government. Indeed this rule seems indispensable in order to guard the public against

losses and injuries arising from the fraud or mistake or rashness and indiscretion of their agents. " By the law of agency at the common law there is

difference between individuals and the Government-the former are liable to the extent of the power they have apparently given to their agents,

while the Government is liable only to the extent of the power it has actually given to its officer." (footnote). And there is no hardship in requiring

from private persons dealing with public officers, the duty of inquiry as to their real or apparent power and authority to bind the Government....

Applying the rule laid down in this decision I must hold that the karnam had no right to bind the respondent by his act of collecting the rent for July,

1941. Even if the Tahsildar himself had collected the rent, his act would not bind the Government particularly after he was told by the Collector in

Ex. D-24, to re-enter upon the land and to take possession of it. He was distinctly told that the lease had been cancelled and that he should re-

enter upon the land and take immediate steps to evict the lessee from the site. Even if the Tahsildar was a private agent, if the agent was distinctly

told to take possession and to re-enter upon the land on the ground that the lease had been cancelled by the principal, if the agent subsequently

accepts rent, it would not bind the principal as the agent's power to collect rent from the lessee would stand put an end to by such a direction

given by the principal.

6. Lastly it is urged that the amount realised by the sale of the building materials may at least be refunded. But the clause in the lease deed set out

above entitles the respondent to the fixtures and additions to the property. No doubt the respondent had asked the appellant to remove those

materials, but the appellant did not choose to do so. Now it is too late to ask for this relief in the face of the covenant contained in the document.

Though the plaintiff averred that by receipt of rent on the 30th July, the tenancy of the appellant still continued, the respondent did not in his written

statement plead that the Karnam's act was not binding on the respondent. But that being a pure question of law, I allowed it to be raised here. The

appeal is therefore dismissed; but under the circumstances I do not make any order as to costs of the appeal. The order as to costs made by the

lower Court will stand.