

(1991) 04 MAD CK 0031

In the Madras High Court

Case No : C.R.Ps. No's. 2642 and 2643 of 1984

S.A. Kuppammal

APPELLANT

Vs

Parthasarathy @ Govindaswamy (died) and others

RESPONDENT

Date of Decision : 05-04-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 115
Evidence Act, 1872 — Section 40, 41, 42, 43, 44
Slum Areas (Improvement and Clearance) Act, 1956 — Section 29
Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 — Section 3

Citation : AIR 1992 Mad 61 : (1991) 2 MLJ 106

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : N. Kannadasan, for the Appellant; P. Venkatachalapathy, for the Respondent

Judgement

1. The above revision petitions are dealt with in common, since they concern a common property and have been dealt with at all relevant points of time in common.

2. The petitioner herein has filed two suits, O.S. Nos. 6070 and 6071 of 1971 on the file of the City Civil Court, Madras, O.S. No. 6070 of 1971

was filed for a declaration that the first defendant (Pandurangan) was a tenant under the plaintiff in respect of the suit land for recovery of

possession of the same from the defendants and also for recovery of a sum of Rs. 430/- towards arrears of rent and damages for use and

occupation and also for future damages. O.S. No. 6071 of 1971 was filed for a declaration that the first defendant (Parthasarathy alias

Govindasamy) was a tenant under the plaintiff of the suit land and also for recovery of Rs. 430/- being the arrears of rent and damages for use and

occupation and for recovery of future damages at Re. 1/- per day from 1-6-1971. It is not necessary at this stage to dwell into the details of the

claims of parties on merits. Suffice it to state that on 22-3-1974 (a) O.S. No. 6070 of 1971 was decreed with a declaration that the first defendant

was a tenant under the plaintiff of the plaint schedule land marked in red colour in the plan and for recovery of possession of the same from the

defendants and (b) O.S. No. 6071 of 1971 was also decreed granting a declaration that the first defendant was a tenant under the plaintiff of the

plaint schedule land marked in red colour in the plan and for recovery of possession of the same from the defendants. In both the suits, the decrees

also granted means profits, past and future. As against the same, the respective first defendants filed A. S. Nos. 18 and 34 of 1975 and by a

judgment and decree dated 18-9-1976, the appeals came to be dismissed. It appears that the second appeals filed thereafter also failed and were

rejected.

3. While matters stood thus, it appears that a declaration was made under S. 3 of the Tamil Nadu Slum Area (Improvement and Clearance) Act,

1971 declaring the suit property as a slum area. When execution petition petitions were filed to execute the decree in the year 1977, objections

were raised that the decrees are not executable in view of the said notification and having regard to the provisions contained in S. No. 29 of the

said Act, which inhibited such dispossession unless the decree-holder obtained the permission of the prescribed authority under the Act as notified

by the Government. The objections were overruled and the execution of the decree was ordered to go on further. The first defendant in each of the

suit filed CRP Nos. 309 and 334 of 1979 before this Court and a Division Bench of this Court, in its decision made on 17-10-1979 : (reported in

Parthasarathy and Another Vs. Kuppammal,), set aside the order of the executing Court directing delivery of the property holding at the same

time ""It is however, made clear that the respondent can levy execution of the decree obtained by him after obtaining the requisite permission of the

prescribed authority as required under S. 29. With these observations, both the Civil revision petitions are allowed. No costs.

4. While so, W.P. No. 1230 of 1982 was filed in this Court by One Naziruddin, Muthavalli of the Diwan Sahib Burial Ground, the owner of the

property, impleading the State of Tamil Nadu and the Chairman. Tamil Nadu Slum Clearance Board as respondents praying for the issue of a writ

of Certiorari to call for and quash the proceedings in G.O.Ms. 378, Housing dated 2-11-1972, in so far as the petitioner was concerned. It may

be noticed that this was the notification which made the provisions of the Slum Clearance applicable to the case and rendered the decrees in

executable without obtaining the permission of the prescribed authority. Originally by an order dated 8-6-1982, the Court passed an order as

follows :--

It is ordered that interim suspension granted by the order of this Court, dated 19-2-1982 and made herein by and is hereby made absolute and

that the operation of the notification G.O.Ms. No. 378, Housing dated 2-11-1972 on the file of the 1st respondent do continue to be suspended

pending W.P. No. 1230 of 1982 on the file of this Court.

Taking advantage of the said orders, E.P. Nos. 948 of 1982 in O.S. No. 6071 of 1971 and 649 of 1982 in O.S. No. 6070 of 1971 were filed for

effecting delivery of possession in execution of the decrees in O.S. Nos. 6070 and 6071 of 1971. The first respondent in the execution

applications filed their counter affidavit opposing the claim of the petitioners on several grounds. The Court below, by its common order dated 27-

4-1983, dismissed the execution petitions. In substance, the view taken by the Court below was that in view of the earlier orders in C.R.P. Nos.

309 and 334 of 1979 (since reported in Parthasarathy and Another Vs. Kuppammal,). Without complying with the provisions of S. 29 of the

Slum Clearance Act by obtaining the permission of the prescribed authority, the decrees could not be executed and possession recovered and the

Court below also reserved the right of the petitioner to comply with the requirement of S. 29 and proceed thereafter. Aggrieved, the petitioner has

filed C.R.P. No. 2642 of 1984 against E.P. No. 948 of 1982 in O.S. No. 6071 of 1971 and C.R.P. No. 2643 of 1984 against E.P. No. 949 of

1982 in O.S. No. 6070 of 1971.

5. For purpose of completion of the facts and subsequent developments, it is necessary to point out also that the main writ petition No. 1230 of

1982 itself came up for final disposal before a learned single Judge of this Court and by an order dated 17-9-1988, S. Ramalingam, J., allowed

the writ petition and thereby quashed the Government Order in G.O.Ms. No. 378, Housing dated 2-11-1972. The learned Judge of course gave

liberty to the Government to follow the prescribed statutory procedure and proceed afresh, if so desired. There is no claim before this Court at this

stage that any such notification came to be issued afresh or that the order of the learned single Judge in W.P. No. 1230 of 1982 has been

superseded in any manner known to law.

6. Mr. N. Kannadasan, learned counsel appearing on behalf of the petitioner contended that the order of the Court below cannot be sustained, in

that, it has ignored the legal consequences of an order of stay granted by the High Court which has direct bearing on the matter in issue. That apart,

it was contended that this Court ultimately allowed W.P. No. 1230 of 1982 thereby quashing the notification in question as an inevitable

consequences of which the provisions of the Slum Clearance Act ceased to have application any longer and no more governed the rights of parties

in relation to the property in question. Consequently, according to the learned Counsel, having regard to the subsequent event which requires to be

taken into account in order to render effective justice as well as to avoid multiplicity of future proceedings, the order of the Court below requires to

be set aside and the Court below should be ordered to proceed with the execution. In controverting the plea of absence of knowledge on the part

of the respondents, it was submitted on behalf of the petitioner that the pendency of the proceedings have been disclosed with sufficient details in

the Court below and the pretended ignorance cannot in any manner help the respondents to get over the legal effect of the order passed in the writ

petition.

7. On behalf of the respondent, Mr. P. Venkatachalapathy, learned counsel submitted that (a) it is not open to the petitioner to ignore the effect of

the judgment rendered in Parthasarathy and Another Vs. Kuppammal, binding between the Parties; (b) the decision of this Court in W.P. No.

1230 of 1982 cannot be pressed into service as a subsequent event since the decision rendered therein is not between the parties to the present

proceedings: (c) the decision in question cannot be considered to be a subsequent event in the pending revision proceedings by taking the parties

by surprise; (d) in any event having regard to the ratio of the decision reported

in AIR 1954 TC 526 the point in question cannot be taken into account in the pending revision and that the points raised do not fall within the scope of S. 115 C.P.C.

8. I shall now refer to the various case law referred to by the counsel on either side before taking up for consideration the points raised for

determination in the above proceedings. In *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, , the Supreme Court had an occasion

to consider the question as to whether it can mould reliefs in an appeal by taking into account the facts subsequent to the institution of proceedings.

The Apex Court expressed the view that for making the right or remedy, claimed by the party just and meaningful as also legally and factually in

accord with the current realities, the Court can, and in many cases, must take cautious cognisance of events and developments subsequent to the

institution of the proceedings of course observing the rules of fairness to both sides. In *Bai Dosabai Vs. Mathurdas Govinddas and Others*, , the

Apex Court held that while it is true that events and changes in the law occurring during the pendency of an appeal require to be taken into

consideration in order to do complete justice between parties and emphasised the necessity to mould the decree so as to accord with the changed

statutory situation, at the same time, the Court observed that the right obtained by a party under a decree cannot be allowed to be defeated by

delay in the disposal of the appeal against the decree, if it is possible to save the decree by moulding it to conform to the statutes subsequently

coming into force.

9. In *M.M. Quasim Vs. Manohar Lal Sharma and others*, , the Apex Court once again considered the question regarding the taking into account

of the subsequent events, and after referring to the case law on the subject, held as follows (at p. 1119 of AIR):--

To sum up, there was a proper and regular application to meet with the requirements of Order 41, Rule 27, C.P.C. for additional evidence inviting

the Court's attention to a subsequent event of vital importance cutting at the root of the plaintiff's right to continue the action. Coupled with it, there

was evidence in the form of a certified copy of the decree showing that the plaintiff, even if they had some shade of title to commence action, they

having lost all interest in the property and the property having become one of

exclusive ownership of a person not a party to the proceedings, were not more entitled to continue the proceedings for their own benefit.

In *Hasmat Rai and Another Vs. Raghunath Prasad*, , the Apex Court once again emphasised the necessity as well as justification for taking into account the subsequent events to mould the trial Court's decree.

10. In *Suryaprakash Gupta v. The Madras Piece Goods Merchants Charitable Trust*, (1980) 93 MLW 132, a Division Bench of this Court had an

occasion to consider the effect of a Government Order issued under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 on the exe-

cutability of a Civil Court's decree for eviction. That was a case in which on the date when the suit for eviction was filed before the Civil Court, the

building under consideration was outside the scope of the Tamil Nadu Buildings (Lease and Rent Control) Act. The suit case decreed on the basis

of a compromise between the parties. But by the time execution proceedings came to be initiated to execute the decree, by virtue of an

amendment introduced by the Tamil Nadu Act 11 of 1964 the building came within the subject matter of the Rent Control Act. The execution

petition came to be rejected on the ground that the decree became inexecutable by virtue of the amended provision of law. Subsequent to this, the

Government passed G.O.Ms. No. 1998, Home, dated 12-8-1974 in exercise of its powers under S. 29 of the Rent Control Act, exempting the

buildings owned by Charitable Trusts without reference to any religion. Thereupon, execution proceedings were instituted afresh. In that context,

the Division Bench held that the moment the building in question was exempted from the provisions of the Act, the decree, which continued to

exist, became executable and, therefore, the proceedings instituted for executing the decree was not only justifiable but maintainable.

11. In *Vineet Kumar Vs. Mangal Sain Wadhera*, , the Supreme Court was considering the question of introducing new fact by means of an

amendment petition and held that the premises which was not of 10 years old on the date of the suit and, therefore, was exempted from the

operation of the Rent Act, can be held to be governed by the Rent Act on account of subsequent lapse of time and such a fact can be brought on

record irrespective of the period of limitation provided therefor.

12. Learned Counsel for the respondents referred to paragraphs 4 and 5 of the

decision reported in Pasupuleti Venkateswarlu Vs. The Motor and General Traders, , and submitted that the Court was exercising powers under the provisions of the Andhra Pradesh Rent Control Act and not under S. 115 CPC Placing reliance upon the decision reported in Rameshwar and Others Vs. Jot Ram and Another, , it was contended that where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in law and it is made applicable at any stage. This case, which is based upon a well-accepted principle that vested rights cannot be divested except where there is specific intention of law so expressed in clear terms have no relevance or application to the case on hand. Here, the question is whether there still exists any impediment in executing the decree of the competent civil Court which is rendered in-executable except with the permission of the prescribed authority by virtue of S. 29 of the Slum Clearance Act as a consequence of the notification issued thereunder. Where the said notification itself has been set at naught and nullified, the impediment has been once and for all cleared and the decision in (1980) 93 MLW 143 : MR 1980 Mad 246 which equally reserved the right of the plaintiff to secure permission and proceed further, if so permitted, does not help the respondents to preserve the notification notwithstanding the indisputable fact that the same has been set aside by a competent Court.

13. The decision in The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, , has been next referred to. That was a case where pending a challenge to an order of suspension pending enquiry interim orders of stay sought for was refused by the trial Court but granted on appeal by the appellate Court. When such an interlocutory order was challenged. The Apex Court held that so long as the first appellate Court had jurisdiction in the matter the interlocutory order passed, be it in accordance with or not in accordance with law, does not call for interference in exercise of powers under S. 115 C. P. C. There is no comparison between the case decided by the Supreme Court and the present case and this Court can on the facts and circumstances of the case, interfere in exercise of its powers under S. 115. C. P. C.

In Pappathi Animal v. Sivagannam AIR 1954 Trav-Co 526, a Full Bench of the Travancor-Cochin High Court expressed the view that sitting in

revision the Court is concerned with the correctness of the order when it was passed. This view is to be confined to the peculiar type of the case under consideration before that Court, and it cannot be said as an invariable proposition of law that in no case can the subsequent event be taken into account in a revision petition to mould the relief. If such were to be the ratio of the said decision, it will be running counter to the several decisions of the Apex Court as well as this Court referred to above and consequently cannot be of any assistance to the respondents in this case. It has since been repeatedly held that it is not only for any error of jurisdiction but also for such exercise of jurisdiction with material irregularity as well as for the rectification of any error of the Court below occasioning failure of justice or causing irreparable injury, the powers under S. 115 CPC can be resorted to. That being the position, the objection raised on behalf of the respondents does not carry much weight of significance and I am not persuaded to sustain the same.

14. Learned counsel for the respondents vehemently contended that the order of this Court in finally disposing of W.P. No. 1230 of 1982 cannot

be pressed into service or relied upon against the respondents, inasmuch as none of the respondents or their predecessor-in-interest were parties to

the said judgment. In other words, learned counsel submitted that it cannot be said to be a judgment in rem so as to bind the whole world. It is the

plea of the learned counsel that at best it is a judgment in personam and, therefore, it may be binding between parties thereto and not otherwise.

No doubt the general principle is *Res Inter Alios Judicata Rerum Inter Alios Prejudicata Facit* (A matter adjudicated upon between one set of

persons does not in any way prejudice another set of persons.) But having regard to the scheme of the provisions contained in sections 40 to 44 of

the Indian Evidence Act, Courts have often considered the efficacy as well as the relevance of judgments not *Inter Partes* in several cases. It has

been often held that the law attributes an unerring verity to the substantive as opposed to the judicial portions of the record. All judgments are

conclusive of their existence as distinguished from their truth; so every judgment conclusive evidence for or against all persons whether parties,

privies or strangers of its legal effect as distinguished from the accuracy of the decision rendered. If the object was merely to prove the existence of

the judgment, its date or legal consequences, the production of the record or a certified copy of the said judgment is conclusive evidence of the facts against the whole world, the reason being that a judgment as a public transaction of solemn nature must be presumed to be faithfully recorded.

15. In *Ramaji Batanji Vs. Manohar Chintaman and Others*, , a Division Bench of the Bombay High Court had an occasion to consider the matter

at length and Raju, J. speaking for the Bench, declared the position as hereunder (at p. 174 of AIR):--

A judgment in another suit which is not *Inter Partes* may be evidence for certain purposes, namely, to prove the fact of the judgment; to show who

the Parties to the suit were; to show what was the subject-matter of the suit; to show what was decided or declared by the judgment; to show

what documents had been filed by the parties in the proceedings to establish the transaction referred to in the judgment; as evidence to show the

conduct of the parties or particular instances of the exercise of a right or assertion of title (vide *Harihar Prasad Singh and Another Vs. Must. of*

Munshi Nath Prasad and Others, , or to identify property; or to show how property had been previously dealt with; to establish a particular

transaction in which a right is asserted and the name of the person, if any, who is declared in the judgment as entitled to possession; but the

judgment is not evidence to establish the truth of the matters decided in that judgment. In *State of Bihar Vs. Radha Krishna Singh and Others*, , the

Supreme Court had an occasion to consider the position and declared the law in the following terms;

A judgment in rem e.g. judgments or orders passed in admiralty, probate proceed-ingsetc., would always be admissible irrespective of whether

they are inter partes or not. A judgment which is not inter partes is inadmissible in evidence except for the limited purpose of proving as to "who

the parties were and what was the decree passed and" the properties which were the subject matter of the suit. The recitals in a judgment like

findings given in appreciation of evidence made or arguments or generalogy referred in the judgment would be wholly inadmissible in a case where

neither the plaintiff nor the defendant were parties." The said view was expressed in respect of matter relating to decision rendered in regular civil

proceedings.

16. So far as the decision rendered on a writ petition is concerned, a Division Bench of the Orissa High Court in decision reported in Bhupendra

Kumar Bose Vs. State of Orissa and Others, , had an occasion to directly consider the extent of the binding nature or the relevancy of such a

judgment. The Court ultimately came to the following conclusion:

(13). A judgment of a superior court or record like a High Court has effect on two classes of persons. Firstly, as between the parties to the

judgment had their privies It is binding and conclusive unless reversed by a superior Court of appeal or amended by the Court itself, according to

law. Moreover, the original cause of action on the basis of which the action commenced, is merged in the judgment and its place is taken by the

rights created between the parties by virtue of the judgment. (See Halsbury,) Third edition, Vol. 22 pages 780 and 781). But as regards persons,

who are not parties to the judgment, it becomes a valuable precedent on any disputed point of law, not merely as a guide but as an authority to be

followed by all Courts or co-ordinate or inferior jurisdiction administering the same system until it is overruled by a Court of superior jurisdiction or

by a validly enacted statute. As pointed out in Halsbury, Third Edition, Volume 22 at p. 796, ""the enunciation of the reason or principle on which

the question before a Court has been decided, is alone binding as a president. This underlying principle is often termed the "ratio decidendi", that is

to say, the general reasons given for the decision or the general grounds on which it is based, detached or abstracted from the specific peculiarities

of a particular case which gives rise to the decision. The correct decision alone is binding between the parties to it, but it is the abstract ratio

decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision which alone has the force of law.

Thus, this Court's judgment in Bhupendra Kumar Bose v. The State, O. J. C. No. 72 of 1958 reported in ILR (1959) Cut 189 is binding as

between the parties, namely, the petitioner Sri Bhupendrakumar Bosc on the one hand and the State of Orissa and the elected Councillors of

Cuttack Municipality on the other and new rights as between them were created by the judgment itself. This is irrespective of the ratio decidendi of

the judgment. But the judgment in also an authority to be followed by all Courts

in Orissa on the disputed points of law decided therein if and when they arise in any pending or future litigation." It was further held by the said Court as hereunder :--

(14) A half-hearted attempt was made to show that the aforesaid observations in Halsbury apply to "Judgments" where the rights to property are involved and not to judgments of this Court under Article 226 of the Constitution. In fact, the learned Advocate-General went to the extent of saying that the petitioner obtained no rights whatsoever by virtue of the decision in O. J. C. No. 72 of 1958 : reported in ILR (1959) Cut 189. But at page 740 of Halsbury (cited above) it was pointed out that the term "judgment" or "order" in its widest sense may be said to include any decision given by a Court on a question or questions at issue between the parties in a proceeding properly before it, and at page 741 it was further pointed out that judgments and orders considered in that title were those of the Queen's Bench and Chancery Division of the High Court and orders of the Court of Appeal.

I am in respectful agreement with the views expressed by the Bombay High Court and the Orissa High Court in the decisions referred to above. In the light of the statement of law referred to above, I am not persuaded to countenance the plea on behalf of the respondent that the order in W. P. No. 1230 of 1982 cannot be pressed into service in the present case. Having regard to what has been stated above, in my view, the judgment can be relied upon both as a precedent and also as a document to show that this Court in a proceeding instituted challenging the Government Order, which has been the basis of the claim of defence of the respondents in the Court below, came to set aside (the order of the Government and consequently the said order no longer survives to enure to the respondents the benefits of the Slum Clearance Act. Consequently, the Court is not only entitled to take into account the said judgment but also has to decide the case having regard to the legal consequences flowing from the said judgment.

17. Coming to the facts and circumstances of the case, I am of the view that the revisions have to be accepted and allowed. Having regard to the emphatic statement of law declared by the Supreme Court, the decision in W.P. No. 1230 of 1982 becomes relevant and required to be taken

into account for the purpose of noticing the vital and essential fact that G. O. Ms. No. 378, Housing, dated, 2-11-1972 stood abrogated and does not any longer grant to the property in question the coverage or protection of the provisions of the Slum Clearance Act, including the one contained in S. 29 of the said Act, since the notification issued by the Government covers other properties also, the order in the writ petition has to be necessarily restricted to the petitioner meaning thereby the properties in respect of which the petitioner sought relief. It is also to be noticed that the said writ petition seems to have been filed by the petitioner therein, as the Muthavalli of the Burial Ground in question. Not only the fact regarding the pendency of the writ petition was brought to the notice of the respondents even in the Court below, but before the hearing of the case, the copy of the order in the writ petition was also furnished to the counsel for the respondents and sufficient opportunity was accorded to the respondents to meet the situation after it was informed that the petitioner would place reliance upon the said decision of this Court, in furtherance of their claim in the revision petitions before me. Therefore, it could not be said that any real or genuine prejudice has been caused to the respondents in meeting the case projected before me at the time of hearing. The fact that there was an abortive attempt on the part of the Wakf Board also to evict the respondents does not undermine the decree obtained by the petitioner or their executability. As noticed supra, the only impediment which stood in the way of the execution of the decree was S. 29 of the Slum Clearance Act, which contemplated the obtaining of a prior permission from the prescribed authority. This contingency which was necessitated by the issue of a notification in G. O. Ms. No. 578, Housing, dated 2-11-1972. Ceased the moment the High Court granted orders of suspension of the said notification. That apart, after the writ petition has been finally disposed of and the notification itself was struck down, the question of obtaining any prior permission did not arise, since the authorities under the said Act themselves lost their control or powers contemplated under S. 29 of the Act on account of the supervening fact that the Government's notification itself has since been struck down. The reasoning of the Court below that notwithstanding the orders of this Court which suspended the operation of the notification of the Government, the execution proceedings cannot be pursued except with the permission under S. 29 of the Act and such a

consequence was the result of the decision of this Court in Parthasarathy and Another Vs. Kuppammal, itself is neither correct in law nor

appropriate but is wholly unsustainable. By virtue of the supervening fact, the obtaining of prior permission under S. 29 of the Slum Clearance Act

became necessary and rendered superfluous. Be that as it may, now that the writ petition challenging the notification itself has since been allowed

and the notification has been abrogated, there is no obstacle whatsoever in pursuing the execution proceedings on account of S. 29 or any other

provision of the Slum Clearance Act. The orders of the Court below, therefore, require to be set aside.

18. For what has been stated above, the objections on behalf of the respondents do not merit my acceptance and the orders of the Court below

are set aside and the Court below is directed to restore the execution petitions to its file and proceed further in accordance with law. The civil

revision petition consequently shall stand allowed; but in the circumstances, there will be no order as to costs.

19. Revision allowed.