
(1983) 12 MAD CK 0029
In the Madras High Court

Saroja Varadarajan

APPELLANT

Vs

Kondah Kasi Seetharaman

RESPONDENT

Date of Decision : 06-12-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(11)

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 2(8)

Citation : (1984) 97 LW 397 : (1984) 2 MLJ 97

Hon'ble Judges : K. Shanmukham, J; K. Shanmugham, J

Bench : Division Bench

Judgement

K. Shanmukham, J.—This second appeal was admitted on the following substantial questions of law:

- 1 Whether the definition of "tenant" under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, in case of death of the "tenant" will include any one of the legal representatives or all the legal representatives of the deceased tenant?.
 2. Whether the definition of "tenant" in so far as the deceased tenant will mean only his spouse or only his son or his daughter or all?
 3. Whether the word "or" given in Section 2(8) of the Tamil Nadu Buildings (Lease and Rent Control) Act has to be read as "or" or as "and"?
 4. Is not the appellant entitled to have declaration that she is a tenant of the respondent by virtue of Section 2(8) of Act XVIII of 1960 as amended in 1973?
 5. Whether it will not be open for the landlord to take eviction proceedings against one of the legal representatives of the deceased tenant ignoring the widow and can he execute the same against the other legal representatives?
2. The plaintiff, who lost in both the courts below, is the appellant. In O.S. No. 7582 of 1980, on the file of the City Civil Court, Madras, she claimed a declaration that she is a tenant under the defendant in respect of a portion in premises No. 6, Lakshmikanthan Street, T. Nagar, Madras-17 and consequential

injunction restraining the defendant (respondent herein) from executing the order of eviction in H.R.C. No. 273 of 1979, Small Causes Court, Madras. In the earlier part of the plaint, she has alleged that her husband was a tenant, that after her husband she became the tenant under the defendant's vendor Kondiah and that she had been paying the rents regularly. In the later portion, she has stated that the tenancy has survived to her after the death of her husband and that under the Tamil Nadu Buildings (Lease and Rent Control) Act, the definition of the tenant includes "surviving spouse or any son or daughter, or the legal representatives of a deceased tenant, who in the case of a residential building (in the instant case a residential building) had been living with the tenant in the building as a member of the tenant's family upto the death of the tenant and that, therefore, the order of eviction will not affect her above right. Thus, the plaintiff has rested her claim on two bases (1) after the death of her husband she became the tenant and (ii) by virtue of the definition of the tenant, quoted above, the statutory protection guaranteed under the Act is available to her. It is necessary to notice that the said eviction petition was laid by the respondent's purchaser against her son. Thus, it turns out that she has come forward with two inconsistent bases. If she had become the tenant after her husband's demise it would mean that his son was not a tenant but such a position is opposed to the other basis. The significance of such an inconsistent plea will be referred to at the appropriate place.

3. Immediately, it is relevant to notice that the respondent's vendor represented to the respondent that the defendant's son alone was the tenant as borne out from the sale deed Exhibit B. 1 dated 30th November, 1977. It is also seen from Exhibit A-2 dated 12th December, 1977, Exhibit A-5 dated 11th January, 1978 Exhibit A-6 dated 24th January, 1978 Exhibit A-7 dated 24th January, 1978 and Exhibit A-9 dated 6th February, 1978, all written by the plaintiff's son, that her son never stated that his mother also is entitled to the statutory tenancy. Above all it is revealing to note that in Exhibit A-10 dated 9th February, 1978, which is very much pressed into service by the learned Counsel for the appellant; it was not alleged that the appellant is claiming her right as one of the legal representatives of her husband, the deceased statutory tenant, on other hand what was alleged is that both herself and her son are tenants. Quite rightly the respondent was bona fide carried away by his vendor's statement, reinforced by the conduct of the appellant, as explicit from Exhibits. A-2, A-5 to A-7 and A-9. These apart, the appellant remained mute spectator till the order of eviction was passed and such order was confirmed on 22nd August, 1980, on the appeal preferred by her son. It is relevant to notice that the present suit was filed on 29th November, 1980. Nothing prevented the appellant from impleading herself in rent control proceeding instituted by the respondent as against her son alone or at least from filing the suit as soon as she came to know of the said eviction proceeding. It is not her case that she became aware of the said proceeding just before the presentation of the present action. The fact that she was able to produce the correspondence between her son and the then landlord is ample

evidence to suggest that this is a concerted action brought out by the mother in collusion with her son and the sole purpose is to thwart the respondent from reaping the fruits of the rent control proceeding which was fought, but lost by her son is all the three Courts" including this Court. After all, what is claimed is a statutory guarantee of the deceased tenant. It is relevant to notice that eviction was sought for by the respondent u/s 10(3)(i) of the Act. It is already noticed that the appellant's son challenged such claim of the respondent in all the three Courts. If so, I am unable to comprehend what prejudice was caused to the appellant. In the above circumstances, I am clearly of the opinion that to accept the appellant's claim will but breed abuse of process of law. It is here the inconsistent plea plays a vital role. This Court is entitled to take advantage of such a vital defect in the appellant's claim to non-suit her to avoid abuse of process of law and to promote justice instead.

4. It could also be inferred from the foregoing circumstances that the appellant was content in her son contesting the landlord's claim in the eviction proceeding. Thus she is estopped from challenging the order of eviction on the ground that she was not impleaded as a party in that case.

5. The appellant stands in no better position as regards the point of law urged by the appellant on the strength of Section 2(8) of the Act", The said provision defines the "tenant".

"tenant" means any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son or daughter, or the legal representatives of a deceased tenant who.

(i) in the case of a residential building had been living with the tenant in the building as a member of the tenant's family upto the death of the tenant, and

(ii) In the case of a non-residential building had been in continuous association with the tenant for the purpose of carrying on the business of the tenant upto death of the tenant and continues to carry on such business thereafter, and a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building by its tenant or a person to whom the collection of rents or fees in a public market, cart stand or slaughter-house or of rents for shops has been farmed out or leased by a Municipal Council or a Panchayat Union Council or the Municipal Corporation of Madras or the Municipal Corporation of Madurai.

At once, I shall advert to the two decisions of this Court cited by the learned Counsel for the appellant, viz., Dr. N. Natesan Vs. Mrs. S. Santhalakshmi, and (ii) M.A.B. Mohd. Sultan Mohideen and Others Vs. Official Trustee and Another, . In neither the question posed before me did arise nor the problem as such was considered in both.

6. In the former decision, the sons of the tenant claimed protection even during the lifetime of the tenant and in that context it was contended on their behalf

that the word "surviving" would only qualify the spouse, but not the son or daughter. It was this interpretation that was rejected by Ramanujam, J., in the former decision. With reference to Section 2(8) what was noticed by the Division Bench is obvious from the following:

It appears to us that even after the amendment of the definition of "tenant" in Section 2(8), the Legislature maintained its legislative intent to ensure that only heirs and legal representatives who were living with or in association with the deceased tenant in the case of residential or non-residential buildings, as the case may be, can claim the benefits of continuing as statutory tenants. This primordial requirement has to be complied with and if there is no proof of nexus in the matter of living or in the matter of the continued association in the quondam mercantile activity of the deceased tenant, then the heirs or legal representatives, in each of those cases, would not be entitled to the benefits of Act XVIII of 1960.

On the other hand, the three authorities, viz., (1) *Deivanai Ammal v. F.B. Ajit Babu* (1981) T.L.N.J. 551 (ii) *Punithammal and Others Vs. Krishna Mudaliar*, (iii) *M.R.S. Sankara Mudaliar and Others Vs. B.M. Haji Abubacker Maricar*, do support the respondent. Singaravelu, J., in the first decision, *Deivanai Ammal v. P.B. Ajit Babu* held that in a proceeding having been instituted against the widow of the deceased tenant, the order passed against the widow will bind the other heirs of the deceased, because there was valid representation of the estate by the widow. Learned Judge also laid stress on the fact that the rent was being paid only by the widow. In the instant case, the son has validly represented the estate. At least the mother was perfectly aware of the eviction proceeding and she was obviously confident that her son would effectively fight the case of the other legal representatives of the deceased tenant, as set out in Section 2(8) of the Act. I have further pointed out that it is the son who had been corresponding with the respondent's vendor and the respondent indicating that he is the tenant. Thus, I find that the above position is on all fours to the facts of the instant case. Mohan, J., in the second decision, *Punithammal and Others Vs. Krishna Mudaliar*, held that inasmuch as the majority of the legal representatives were eager to prosecute the application for eviction, it was not open to the tenant to say that the failure to implead one or two legal representatives would be fatal to the petition for eviction instituted by the landlord. In the last citation, *M.R.S. Sankara Mudaliar and Others Vs. B.M. Haji Abubacker Maricar*, *Ra(sic)nam*, J. made the following observations:

Pending a petition for eviction on the grounds of wilful default and sub-letting without consent the main tenant vacated the premises and later on died. The landlord continued the proceedings against the sub-tenants. The Rent Controller directed eviction of the sub-tenants after overruling their objections that the proceeding could not be continued as against them, and it was affirmed by the Appellate Authority. It: was contended in this revision by the sub-tenants (petitioners) that in the absence of the legal representatives of the main tenant

as parties to the proceedings, the eviction application could not have been continued or proceeded against with the petitioners alone on record and, therefore, the eviction order passed by the authorities below is sustainable.

Held, rejecting the contention, the provisions of the Tamil Nadu Act XVIII of 1960 do not contain any definition of the term "Legal representative". A consideration of the component parts of Section 2(b) of the Act which defines a "tenant" indicates that apart from the surviving spouse, son or daughter of a second tenant, other categories or persons are also contemplated as legal representatives. The wide definition of the expression, "tenant" as comprehending and including a legal representative of a deceased tenant not being the spouse, son or daughter, is not without significance, and so far as the provisions of the Act are concerned, it is not only heritable relationship that matters, but even other considerations. The definition of the expression "legal representative" u/s 2(11), Civil Procedure Code, which includes a person who intermeddles with the estate of the deceased person would also point the wider amplitude of the expression "legal representative".

The object of the Legislature would only be furthered and fulfilled by enabling a landlord to recover possession of the premises even as against the sub-tenants after the death of the main tenant on the footing that the sub-tenants represent the interest of the main tenant. Even for the purpose of Section 2(11), Civil Procedure Code, it has been held that it is not always a legal requisite that inevitably only the heirs, all of them or any of them, should figure as legal representatives and that the procedural law requiring representation will stand satisfied if there is substantial representation in the sense that all could be done in defence is done by some one interested in the issue (vide: Subramania Pillai Vs. Masterly, The authorities below were, therefore, quite right in having ordered the eviction of the petitioners.

In this case there was effective representation of the deceased tenant by his son; then the order of eviction suffered by the son is binding on all those who could be brought within the said definition.

7. Further, the contrast between Section 2(11), Civil Procedure Code, and Section 2(8) of the Act will amply support a conclusion that a proceeding under the Act instituted against any one of those such as surviving spouse, or any son or daughter, or the legal representative of a deceased tenant, is enough compliance of this provision. For, legal representative as per Section 2(11), Civil Procedure Code, means all those on whom the whole estate devolved including an intermeddler. But that is not the language employed in Section 2(8) of the Act. It can safely be assumed that the legislature deliberately employed the disjunctive word "or" in Section 2(8) of the Act. Even in a proceeding governed by the Civil Procedure Code, the law is well-settled that any proceeding instituted and pursued against one or other of the legal representative with the bona fide belief that he or they alone are the legal representatives of the deceased, the decree or order will bind the estate and other legal representatives, (vide N.K. Mohammad

Sulaiman Vs. N.C. Mohammad Ismail and Others, . A fortiori, the eviction order suffered by the son will bind the others enumerated u/s 2(8) of the Act.

8. In the result, the second appeal fails and is dismissed with costs.