

(1955) 07 MAD CK 0017
In the Madras High Court
Case No : C.R.P. No. 157 of 1953

Shenbagavalli Ammal

APPELLANT

Vs

Dhanalakshmi Ammal and others

RESPONDENT

Date of Decision : 11-07-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 98

Citation : (1955) 07 MAD CK 0017

Hon'ble Judges : Ramaswami Gounder, J

Bench : Single Bench

Advocate : S. Ramaehandra Ayyar, for the Appellant; R. Ramamurthi Ayyar, for the Respondent

Judgement

Ramaswami Gounder, J.—This is a revision filed against the order of the District Judge of Tirunelveli declining to exercise his revisional powers under S. 12-B of the Madras Buildings (Lease and Rent Control) Act, in respect of execution proceedings taken by the landlord to enforce an eviction order. He filed an application E.A. No. 426 of 1951 before the District Munsif, Tirunelveli, under O. 21, R. 98, Civil Procedure Code, to remove the obstruction of the respondents and deliver possession of the house. The eviction order was obtained only against the first respondent and the other respondents 2 to 4 were impleaded as obstructors. The learned District Munsif held that those respondents were in possession of the house in their own account and dismissed the petition. As against that order a revision was taken to the District Judge. But the learned District Judge held that the revisional powers can be exercised only by the High Court and directed the return of the papers to be presented to the High Court, if so advised. It is against that order the present revision petition is filed. The only question therefore that was debated in this revision was whether under S. 12-B of the Act the District Judge has or has no revisional powers in respect of execution proceedings taken to enforce the eviction order. It was contended for the petitioner that the District judge has got such revisional powers, whereas the learned Counsel for the respondent maintained that the view expressed by the

learned District Judge WAS correct. It will be seen that under S. 7 of the Act the Rent Controller has to pass the order of eviction, under the circumstances enumerated in that section. S. 12 provides for appeals against such orders and it is left to the State Government to confer on such officers and authorities as they think fit the powers of appellate authorities for the purposes of the Act. S. 9 provides for execution of the orders of eviction. In the City of Madras such orders have to be executed by the Principal Judge of the City Civil Court and elsewhere by the District Munsif or if there is no such District Munsif by the Subordinate Judge or if there is no such District Munsif or Subordinate Judge then by the District Judge having jurisdiction. Thus it will be seen that sufficient provisions are made in the Act for appeals against the eviction orders as well as for execution of such orders, under Ss. 9 and 12 of the Act. Then comes S. 12 B which provides for revisional powers being exercised by the High Court and by the District Court. That section runs thus :

The High Court, in the case of an authority empowered by S. 9 to execute an order, or of an appellate authority empowered under S. 12, and functioning in the presidency town and the District Court concerned in the case of any such authority so empowered land functioning in a district, may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceeding taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceeding, and may pass such order in reference thereto as it thinks fit.

2. The contention of the respondent's learned Counsel is that the expression "and functioning in the presidency town" governs only "an appellate authority empowered under S. 12" and not "an authority empowered by S. 9 that is to say, the revisional powers are given to the High Court in the case of authority empowered by S. 9 to execute the order, whether that authority functions in the presidency town or in a District and also in respect of authority empowered under S. 12 and functioning in the presidency town. His further contention is that the District Court has revisional powers in the case of any authority "so empowered and functioning in a district" which according to the learned Counsel means "empowered under S. 12 and functioning in the district" that is to say, the revisional powers of the District Court are confined only to orders passed in appeal by any authority empowered under S. 12. The contention means that in respect of execution orders passed by any authority in a District, the District Judge has no revisional powers and that in such cases the powers are conferred only upon the High Court. In fact it was that view which prevailed with the learned District Judge who refused to interfere in this matter. On the other hand, the contention for the petitioner is that the expression "and functioning in the presidency town" occurring in the section governs not only "an appellate authority empowered under S. 12" but also "an authority empowered by S. 9 to execute an order" It will be seen that after "S. 12" there is a comma, and I am unable to find any reason why the expression "and functioning in the presidency town" should be construed as having reference only to "an appellate authority

empowered under S. 12." The further contention of the learned Counsel for the respondent is that in the expression ""any such authority so empowered and functioning in a district" the words "such authority" can have reference only to the authority empowered under S. 12. There is again no warrant for this interpretation. His only argument was that the expression ""of an appellate authority empowered under S. 12, and functioning in the presidency town" and the expression "any such authority so empowered and functioning in a district" have a striking similarity in their collocation of words, so that the District Court's revisional power must be confined only to an appellate authority empowered under S. 12 and functioning in a District, and does not extend to the authority empowered under S. 9. I am not impressed with this line of reasoning. It seems to me that the expression "and functioning in the presidency town" clearly refers to both classes of authorities, and so does the expression "any such authority so empowered and functioning in a district." In my view, S. 12-B seeks to confer revisional powers on the High Court in respect of an authority functioning in the presidency town and on the District Court in respect of an authority functioning in a District, in regard to both the classes of authorities, viz., the one empowered by S. 9 to execute an order and the other an appellate authority empowered under S. 12. That appears to me to be the natural meaning to be given to the expressions used in S. 12-B. But the learned Counsel for the respondent pointed out that S. 9. Cl. (ii), Sub-Cl (c) provides that if there is no such District Munsif or Subordinate Judge, the eviction order has to be executed by the District Judge having jurisdiction and contended that if the District Judge should have revisional powers even in execution proceedings, in a district where there is no District Munsif or Subordinate Judge, then the District Judge will be the executing Court and there will be no revisional authority under S. 12-B. He contended that that position would be anomalous and inconsistent with the proviso to that clause which states ""that an order passed in execution under this section shall not be subject to an appeal, but shall be subject to revision under S. 12-B." So far as our State is concerned it may be safely asserted that the contingency of there being no, District Munsif or Subordinate Judge in a District would never arise. But if it should arise," the position would be that the powers of execution as well as powers of revision. Would be merged in one and the same Court, with the result that in such cases the District Judge will not exercise revisional powers over his own orders passed in execution. That provision merely states "shall be subject to revision under S. 12-B" and that section obviously means that where the executing Court is the District Court there will be no revision under that section. That situation, which may never happen, need not prevent us from giving a natural interpretation to the language of S. 12-B of the Act. Further the section enables the District Court to call for and examine the records relating to "any order passed or proceeding taken under this Act" and those words are comprehensive enough to take in execution proceedings.

3. There has been no decision of our Court on this point. But my attention was drawn to a precedent in S.R. No. 4403 wherein this question was raised by the

office, and Balakrishna Aiyar, J., held that that view was correct and directed the return of the civil revision petition for presentation to the District Court. I therefore consider that the refusal of the learned District Judge to exercise his jurisdiction was unjustified. So this revision is allowed and his order is set aside and the case remitted to his file for a proper disposal In the circumstances, there will be no order as to the costs of this revision petition.