

(1956) 07 MAD CK 0003
In the Madras High Court

S.M.A. Abdul Fatha and Others

APPELLANT

Vs

Mohammad Jabbar and Others

RESPONDENT

Date of Decision : 13-07-1956

Acts Referred:

Madras Buildings (Lease and Rent Control) Act, 1949 — Section 9

Citation : (1956) 2 MLJ 475

Hon'ble Judges : Govinda Menon, J

Bench : Division Bench

Judgement

Govinda Menon, J.—The petitioner in this Civil Revision Petition is the legal representative of a mortgagor-lessee against whom an

application for eviction under the Madras Buildings (Lease and Rent Control) Act, 1949, had been filed in the Court of the House Rent Controller,

Nagapattinam. By an order dated 12th September, 1949, the House Rent Controller directed eviction. The mortgagor-lessee died on 17th

November, 1949 and an application to bring on record his legal representative and continue execution against him was filed only in 1954. Before

the appellate Court, the only question raised was as to whether the order for eviction was illegal, irregular and improper and is liable to be set

aside. The learned Judge found that there was no illegality, irregularity or impropriety and dismissed the revision petition. The mortgagor-lessee's

legal representative has filed this revision petition.

2. Mr. K.S. Naidu on behalf of the petitioner contends that as it was Admitted in the petition for eviction that the mortgage and the lease-back

were of even date, viz., 1st January, 1943, the two documents should be read as part and parcel of one and the same transaction with the result

that there is no relationship of the lessor and lessee existing between the parties. The so-called "rent" under the lease deed should be deemed to be

"interest" on the mortgage and the lease deed is only a device for collecting such interest. He relies upon the well-known Privy Council decision in

17 CWN 233 (Privy Council) . The answer to this contention is that neither the mortgage nor the lease deed has been filed in the Courts below;

nor were they produced in this Court. A large body of case law has sprung up in this Court subsequent to this Privy Council decision, where this

Court has come to the conclusion that in certain circumstances the two documents should be read as different transactions; e.g., see the decisions

in Abdul Khadir and Others Vs. V. Subramanya Pattar, and Muthilakath Krishna Menon Vs. Chathankandath Chamunni's son Kunjandi, . There

are other cases also on the point. In the absence of any evidence adduced by the production of the mortgage deed and the lease deed, it will not

be advisable to allow the petitioner to raise that point in this Court. The contention is therefore overruled.

3. The second contention of the learned Counsel is that execution of the order for eviction cannot be had against the legal representative because

under the Act as it stood at the time the order was made, the provisions of Order 22, CPC had not been made applicable. Learned Counsel relied

upon the decision in Sha Devichand Moolchand Vs. Sha Dhanraj Kantilal, , where the learned Chief Justice has held that the provisions of the

CPC have not been made applicable to proceedings before the House Rent Controller. But it is clearly stated there that the question whether an

application for bringing on record the legal representative of a deceased petitioner or respondent before the Rent Controller would be competent

need not be decided. Section 9 of the Madras Buildings (Lease and Rent Control) Act, 1949, definitely lays down that an order for eviction can

be executed before a civil Court as if it is a decree. This means that in the execution of such an order, all the provisions of Section 47 and Order

21 are attracted. If that is so, Order 21 allows a decree to be executed against the legal representative apart from Order 22 of Code of Civil

Procedure. In these circumstances, I do not think that any interference is called for, especially since the mortgagor-lessee is a recalcitrant person

who squats upon the property without paying any rent.

4. The Civil Revision Petition is dismissed with costs.