
(1975) 11 MAD CK 0009
In the Madras High Court

Srila Sri Ramanathagnana Desikar Swamigal, Matathipathi of
Kovilur Mutt, through Power agent Amirthalingaswamigal

APPELLANT

Vs

Gani Rowther

RESPONDENT

Date of Decision : 05-11-1975

Acts Referred:

Evidence Act, 1872 — Section 58

Citation : (1976) ILR (Mad) 82 : (1977) 90 LW 69 : (1977) 1 MLJ 533

Hon'ble Judges : A. Varadarajan, J

Bench : Division Bench

Judgement

A. Varadarajan, J.—The defendant who succeeded in the trial Court, but failed in the lower appellate Court, is the appellant. The

respondent filed the suit for a declaration that the consent order for eviction passed in R.C.O.P. No. 4 of 1968 on the file of the Rent Controller

(District Munsif, Manamadurai) is not valid and binding on him, for three reasons, namely, that he was not aware of the contents of the

endorsement made by him on the petition for eviction; that he signed the endorsement without knowing the implications and that the Rent

Controller has not applied his mind before he passed the order of eviction on the basis of the endorsement made on the petition for eviction. The

appellant's defence was that the respondent signed the joint endorsement knowing its contents and implications and that the Rent Controller

applied his mind and found that the order of eviction was called, for and ordered the eviction.

2. The trial Court found that the order of the Rent Controller was not void or a nullity and dismissed the suit. But, on appeal the finding of the trial

Court was reversed and the suit was, decreed.

3. The parties did not adduce any oral evidence. So the first two grounds had not been made out. The respondent produced only the certified

copy of the decretal order made in the eviction petition on his side, while the appellant produced the certified copy of the eviction petition and the

orders passed thereon by the Rent Controller.

4. It is seen from Ex.B-1 that the eviction of the respondent was sought by the appellant in the said R.C.O.P. No. 4 of 1968 on two grounds,

namely, that the respondent was running a grocery shop in the premises, that either because of want of diligence on the part of the respondent or

due to natural causes, the premises had become badly damaged thereby requiring substantial repairs to be done for rectifying the same, that the

appellant felt that unless the whole premises was brought down as quickly as possible and major repairs effected, there was every likelihood of the

structure falling down, that secondly, contrary to the understanding between the parties, the respondent has been storing grocery in bulk in the

premises and it has resulted in rats getting into the premises and making holes and that the respondent thereby committed acts of waste which were

certain to impair materially the value and utility of the premises. These are some of the grounds on the basis of which, according to the Tamil Nadu

Buildings (Lease and Rent Control) Act (XVIII of 1960), a landlord can ask for the eviction of his tenant before the Rent Controller. The

respondent appears to have opposed the petition by filing a counter statement which has not been produced in this suit. But, he had made an

endorsement on the petition on 1st November, 1968 evidently when the petition for eviction was about to be taken up for enquiry by the Rent

Controller. The endorsement is to the effect that the respondent in this appeal was to vacate the premises before the expiry of 2 years and 3

months, that is by 1st February, 1971. and hand over vacant possession of the same to the appellant and that he was agreeable to such an order

being made by the Rent Controller. It is also to the effect that if the respondent did not vacate the premises as aforesaid, the appellant could obtain

delivery of possession of the premises by executing the order which may be passed by the Rent Controller in the eviction petition. The order

passed on the petition by the Rent Controller reads thus:

Parties made joint endorsement in the petition and the respondent agrees to

vacate within a period of 2 years and 3 months from this date. The grounds alleged in the petition are true and bona fide and an order of eviction, is ordered. Petition is allowed. Each party is to bear his own costs.

Time to vacate 2 years and 3 months from this date.

5. It may not be possible to agree with the learned District Munsif that the Rent Controller applied his mind and passed the order, merely on the

basis that the Rent Controller has stated in the order that the grounds alleged in the petition are true and bona fide. The parties do not appear to

have adduced any evidence before the Rent Controller before the respondent made the said endorsement on the; petition. Therefore, there were

before the Rent Controller only the appellant's petition for eviction mentioning the two grounds and the respondent's counter statement in which,

probably, those grounds have been denied as false and there was no other material on the basis of which he could hold that the grounds alleged by

the appellant are true and bona fide.

6. Now, the question for consideration is whether in a case like this, where the petition for eviction based on two grounds, which are grounds for

eviction in the Act, had been opposed by the counter, in which it was probably contended that the grounds are not true and bona fide, an

endorsement had been made by the tenant consenting to an order for eviction being passed and time being granted to him to vacate the premises,

failing which the landlord was to take possession of the premises in execution on the basis of the consent order for eviction, the order of the Rent

Controller can be sustained. The learned Counsel for the appellant invited my attention to two decisions of the Supreme Court reported in K.K.

Chari Vs. R.M. Seshadri, and Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, . In the first case, the appellant before the

Supreme Court was occupying a premises in Madras as a tenant. His landlady filed an application for eviction on the ground that she bona fide

required the premises for her own occupation. After the appellant purchased the premises, there was exchange of notices, as a result of the

landlord's request made in his notice for vacant possession from 29th February, 1968. The enquiry before the Rent Controller commenced on

16th January, 1969 and the appellant before the Supreme Court was examined on that day as P.W. 1, and his evidence continued to be recorded

till 20th February, 1969. In the course of his evidence, he has spoken to his being a tenant of the house belonging to one Seethalakshmi, and to her

having filed an application for eviction against him. and about his purchasing the premises in question for his. own occupation on 23rd October,

1967 and about his requiring the premises for his occupation. He had also filed a number of documents in respect of the matters spoken to before

the Rent Controller. The tenant had not chosen to cross-examine the appellant. But, on 31st March, 1969 both parties entered into a compromise,

whereby the tenant agreed to vacate the premises by a particular date and the Rent Controller passed the following order of eviction:

Compromise memo, filed and recorded. By consent eviction is ordered granting time to vacate till 5th June, 1969. No costs.

The learned Judges have observed in paragraph 24 of their judgment thus:

It is no doubt true that the order on the face of it does not show that the Court has expressed its satisfaction that the requirement of the landlord is

bona fide. If the Court had expressed its satisfaction in the order itself, that will conclude the matter. That the Court was so satisfied can also be

considered from the point of view whether a stage has been reached in the proceedings for the Court to apply its mind to the relevant question?

Other materials on record can also be taken Into account to find out if the Court was so satisfied....The land-lord gave evidence on various matters

with particular reference to his requiring the house bona fide for his own occupation. He had also filed as referred to by us earlier as many as 45

Exhibits, one of which was the order of eviction obtained against him, being Exhibit A-45. The respondent did not cross-examine the appellant.

When the evidence of the landlord was before the Court supported, as it was, by the innumerable exhibits filed by him it can surely be stated that a

stage had been reached when the Controller, was called upon to apply his mind to the question whether the plea of the landlord that he required

the premises for his own occupation was bona fide. There is the further circumstance that the tenant did not cross examine the" plaintiff. On the

other hand, he entered into a compromise in and by which he withdrew his defence and submitted to a decree for eviction unconditionally. His

withdrawal of the defence, after the plaintiff had given evidence and filed exhibits in support of his plea; Clearly shows that he accepted as true the

claim of the landlord that he requires the premises bona fide for his own occupation. He has accepted the position that the landlord has made out

the statutory requirement, entitling him to ask for possession of the premises. It is this unconditional withdrawal of the defence regarding the

statutory condition pleaded by the landlord, and the compromise following it, that was accepted by the Court and a decree for eviction passed

thereon. Under those circumstances, when the tenant has accepted the plea of the landlord in our opinion, it is futile to hold that the Rent Controller

must again embark upon an enquiry regarding the requirement of the landlord being bona fide and adjudicate upon the same. Of course, if there is

a dispute between the landlord and tenant, the Court must decide the matter and adjudicate upon the plea of the landlord....It is no doubt . true that

before making an order for possession the Court is under a duty to satisfy itself as to the truth of the landlord's claim if there is a dispute between

the landlord and tenant. But if the tenant in fact admits that the landlord is entitled to possession on one or other of the statutory grounds mentioned

in the Act, it is open to the Court to act on that admission and make an order for possession in favour of the landlord without further enquiry.

Alagiriswami, J., who agreed with the order passed by the other two learned Judges who constituted the Bench along with him, had referred in this

judgment to some English decisions and observed:

These observations very clearly show that the fact that the Court had to satisfy itself did not prevent a consent order. It also shows clearly that a

compromise or arrangement as long as it is not inconsistent with the provisions of the Act would not be objectionable....All these decisions amply

support the proposition that I have put forward that an eviction order based on a compromise where the landlord has asked for possession on any

one of the grounds on the basis of which he could ask for possession would be valid.

In the subsequent decision Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, in which reference is made to the said earlier

decision, the only question for consideration was whether an order passed by the trial Judge in a proceeding filed under the Bombay Rent Control

Act, 1947 directing the eviction of the appellant before the Supreme Court was a nullity, and as such inexecutable. There, the learned Judges have

observed thus:

From a conspectus of the cases cited at the Bar, the principle that emerges is, that if at the time of the passing of the decree, there was some

material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it

will be presumed that the Court was so satisfied and the decree for eviction apparently passed on the basis of a compromise, would be valid. Such

material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or

implied admission made in the compromise agreement itself. Admissions, if true and clear, are by far the best proof of the facts admitted.

Admissions in pleadings or judicial admissions admissible u/s 58 of the Evidence Act, made by the parties or their agents at or before the hearing of

the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and

constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions

which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong....Since in the present case, there

was a clear admission in the compromise, incorporated in the decree, of the fundamental facts that could constitute a ground for eviction u/s 12 (3)

(a), the executing Court was not competent to go behind the decree and question its validity.

In view of the endorsement referred to above, it is not possible to accept the contention of the learned Counsel for the respondent that there was

no consent in the eviction petition which was followed by an order of eviction being passed against the respondent. I find that the respondent had.

consented to an order of eviction in the petition based on two grounds which are grounds for eviction under the Tamil Nadu Act XVIII of 1960.

7. Therefore, having regard to the aforesaid two decisions of the Supreme Court, I hold that the order made in such a petition on the consent of the

respondent is valid. The appeal is, therefore, allowed with costs. No leave.