

(2013) 01 MAD CK 0216

In the Madras High Court

Case No : C.R.P. (NPD) No. 961 of 2003 and C.M.P. No. 9981 of 2003

Sundaram

APPELLANT

Vs

Parvarthy

RESPONDENT

Date of Decision : 29-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10, 10(1)
Transfer of Property Act, 1882 — Section 76, 76(1), 76(a)

Citation : (2013) 3 LW 229

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : D. Rajagopal, for the Appellant; S. Ramesh for V. Raghavachari, for the Respondent

Judgement

G. Rajasuria, J.—This Civil Revision Petition has been filed to get set aside the order dated 30.04.2003 passed in E.P. No. 11 of 2002 in O.S. No. 503 of 1982 by the learned Principal District Munsif, Nagercoil. Heard both sides.

2. A "resume" of facts absolutely necessary and germane for the disposal of this Civil Revision Petition would run thus:

(i) Indubitably and indisputably, the revision petitioner herein obtained a judgment dated 29.08.1998 in S.A. No. 519 of 1986, wherein this Court ordered thus:

18. In the result, the appeal is allowed partly by setting aside the judgment and decree of the courts below and the plaintiff is entitled to recovery of "A" Schedule property with past and future mesne profits as prayed for. The appeal is dismissed in so far as "B" Schedule property is concerned. The plaintiff is entitled to proportionate costs throughout.

Consequently, for the purpose of taking delivery of the said "A" Schedule property, E.P. No. 11 of 2002 in O.S. No. 503 of 1982 was filed.

(ii) The counter affidavit was filed by the respondent herein contending that the said decree of this Court was inexecutable in the sense that the civil Court had no jurisdiction to order eviction of the respondent who is a statutory tenant under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, on the ground that there was denial of title by the respondent as against the revision petitioner/decreed holder; such a finding cannot be given by directly by a civil Court, i.e. the High Court; the revision petitioner was enjoined to approach the Rent Controller in view of the fact that the respondent is a statutory tenant under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, and after getting a finding from the Rent Controller that there was bona fide title dispute between the landlord and the tenant, the civil Court's jurisdiction should have been involved, but, in this case, the High Court in its finding simply held as though the respondent denied the title of the revision petitioner, and whereby she attracted eviction order as against her.

(iii) The Executing Court decided the point in favour of the respondent/judgment debtor holding that the said decree of the High Court was inexecutable.

3. Being aggrieved by and dissatisfied with the same, this Civil Revision Petition has been filed.

4. The learned Counsel for the revision petitioner/plaintiff would detail and delineate the following facts:

Earlier, there was one suit in O.S. No. 261 of 1980 filed by the same plaintiff and in that suit, the contention of the respondent herein namely Parvathy, was that she was one of the co-sharers of the suit properties including the "A" Schedule property herein. However, her claim was negatived in respect of "A" Schedule property herein. Thereafter alone, the separate present suit in O.S. No. 503 of 1982 was filed for evicting the respondent herein and ultimately, the High Court in S.A. No. 519 of 1986 ordered eviction. In such a case, the question of applying the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, in favour of the respondent herein-Parvathy is a well-nigh impossibility. Only for the purpose of stalling the proceedings, the respondent herein-Parvathy, took such stand before the Executing Court which passed such a wrong order. Accordingly, he would pray for setting aside the order of the lower Court and for ordering delivery.

5. Per contra, in a bid to slap down and pulverise the arguments of the learned Counsel for the revision petitioner/decreed holder, the learned Counsel for the respondent/judgment debtor would pyramid his arguments thus:

6(a) The Executing Court was justified in refusing to execute the order of the High Court because of the foregoing reasons:

The revision petitioner did not approach the Rent Controller even though the respondent happened to be the statutory tenant under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. As such, it is quite obvious and axiomatic that the revision petitioner/plaintiff did not obtain any finding from the Rent

Controller about the bona fide nature of the plea of the respondent relating to the title. In such a case, the finding of the Executing Court in favour of the respondent cannot be found fault with. The High Court also in its judgment, did not advert to all these facts. The High Court in paragraph No. 11, of its judgment simply pointed out thus:

11. Point: The suit is for recovery of a building bearing Door No. 9/3/2 in S.No. 1382/347 having an extent of 23/4 cents. The Plaintiff claim for recovery is based on his title and that the defendant who was inducted into possession as a tenant has denied his title and therefore he is entitled for recovery with mesne profits.

As such, the High Court ordered eviction on the main ground that there was denial of title by the tenant namely Parvathy. Over and above that, the said Parvathy happened to be the tenant under the mortgagee-Muthiah Nadar who got the said "A" Schedule property under a mortgage from Antony Nadar, the father of Lakshmi, the vendor of the revision petitioner. Even though the mortgage might have been redeemed by Lakshmi, yet the lease created by Muthiah Nadar cannot be taken as the one got extinguished. As such, the revision petitioner ought to have approached the Rent Controller for eviction.

6. In support of his contentions, the learned Counsel for the respondent, would place reliance on the following decisions:

(i) M/s. East India Corporation Ltd. Vs. Shree Meenakshi Mills Ltd., (ii) Ramasamy @ Solaiyapillai Vs. Vengatachalam @ Kanagaraj .

(iii) Sarwan Kumar and Another Vs. Madan Lal Aggarwal, .

(iv) Devasahayam (D) by LRs. Vs. P. Savithramma and Others, .

7. The point for consideration is as to whether the Executing Court based on the reasons found set out in its order, was justified in refusing to execute the order of the High Court dated 29.08.1998 passed in S.A. No. 519 of 1986?

The Point:

8. In fact, both sides in unison would narrate the fact that originally, the "A" Schedule property belonged to Antony Nadar who mortgaged an immovable property in favour of Muthiah Nadar-the mortgagee, who constructed a building thereon and leased it out in favour of the respondent-Parvathy. Subsequently, Antony Nadar died and his daughter-Lakshmi redeemed the mortgage from Muthiah Nadar and thereafter, Lakshmi sold in favour of the revision petitioner-Sundaram.

9. A mere running of the eye over the order of the lower Court would demonstrate and display that the lower Court assumed and presumed as though there was statutory tenancy which enured in favour of the respondent-Parvathy and that no Rent Controller had ever given any finding u/s 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, that there was a bona fide title

dispute between the revision petitioner and the respondent. As such, based on that alone, simply the lower Court as per Section 10(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, refused to execute the same.

10. I would like to point out that there are apparent mistakes in the order of the lower Court as under:

In order to give a finding by the Executing Court, there should have been a clear finding by some authority that there was landlord-tenant relationship between the revision petitioner and the respondent, under the statutory provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

11. My mind is redolent of the legal maxim "Parum est latam esse sententiam nisi mandetur executioni." [It is not enough that judgment has been given if it is not committed to execution.]

12. Accordingly, if viewed, it is the duty of the Executing Court to execute the decree of the High Court and it cannot sit in judgment over it.

13. Absolutely, there is no iota or shred, jot or pint of evidence to show up and point up that there was any statutory tenancy emerged between the revision petitioner and the respondent at any point of time. In such a case, at the execution stage, while the decree holder was attempting to execute the decree emerged in S.A. No. 519 of 1986, the question of the judgment debtor pitting against such execution certain pleas to cut at the root of the very decree passed in second appeal, would be a well-nigh impossibility.

14. A poring over and perusal of the judgment in S.A. No. 519 of 1986 would display and convey that this Court adverted to the fact that there was an earlier litigation in O.S. No. 261 of 1980 and in that itself, the judgment debtor claimed her right as a co-sharer over the "A" Schedule property herein and other properties, but that was negatived and thereafter alone, the present suit in O.S. No. 503 of 1982 was filed seeking eviction in respect of the "A" Schedule property and one other property; however, eviction was ordered in respect of the "A" Schedule property. It was not pleaded in the suit proceedings in O.S. No. 503 of 1982 that the respondent happened to be a statutory tenant under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and she should not be evicted. However, in paragraph No. 14 of the written statement filed in the present suit, she pleaded thus:

14. This court has no jurisdiction to entertain the suit as this matter is for recovery of building under lease.

Even here, she never pleaded that she was a statutory tenant. However, the revision petitioner in the plaint in paragraph No. 7, would plead thus:

(7) The arrears of rent now comes to Rs. 480/-; But Plaintiff can claim only 3 years rent, and the claim is restricted to 3 years in this suit. Plaintiff wants to recover the building; The defendant, having been inducted into possession as a

tenant by the mortgagee, she cannot claim any protection under the building lease and Rent Control Act, as a statutory tenant; and this suit is filed.

(emphasis supplied.)

15. As such, the revision petitioner/plaintiff in the plaint itself specifically took a stand that the respondent/defendant cannot claim statutory tenancy under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, because according to the revision petitioner, his vendor namely, Lakshmi, the daughter of Antony Nadar redeemed the mortgage; whereby the respondent/defendant who was inducted as a tenant by Muthiah Nadar lost her status as tenant consequent upon the redemption of mortgage by Lakshmi.

16. The learned Counsel for the revision petitioner would make a supine submission that the fact of redemption is not in dispute and it is not the contention of the respondent herein that the mortgage still continues.

17. At this juncture, I would like to refer to the decision of the Honourable Apex Court in *Om Prakash Garg Vs. Ganga Sahai and Others*, . An excerpt from it, would run thus:

After hearing learned counsel for the appellant, we are satisfied that the order passed by the High Court does not call for any interference. The appellant who claims to be a tenant of the mortgagee Narain Prasad resisted the application made by the respondent-decree-holder Ganga Sahai under Order XXI, R.35 of the Code of Civil Procedure, 1908 pleading inter alia that being a tenant of the mortgagee he was entitled to the protection of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, That objection of his was not sustained by the Executing Court and it accordingly issued a warrant of possession in favour of the decree-holder. The appellant went up in appeal against the order of the executing Court. The Additional District Judge differed from the executing Court and held that the appellant being a tenant inducted into possession by the mortgagee was entitled to the protection of the Act and therefore could not be evicted in execution of the final decree for redemption, and further held that the respondent was only entitled to symbolical possession. Aggrieved, the respondent preferred an appeal to the High Court. By the order under appeal, a learned single Judge following the decision of this Court in *Sachmal Parasram Vs. Ratnabai and Others*, held that the lease was not an act of prudent management on the part of the mortgagee Narain Prasad within the meaning of S. 76(a) of the Transfer of Property Act, 1882 and therefore, the alleged lease could not subsist after the extinction of the mortgage by the passing of the final decree for redemption and thus the appellant could not take advantage of the Act, as there was no subsisting lease in his favour.

18. The learned Counsel for the respondent would cite the decision of the Honourable Apex Court in *Mahabir Gope and Others Vs. Harbans Narain Singh and Others*, Certain excerpts from it, would run thus:

(6).....Further, the mortgagee, who takes possession of the mortgaged property, must manage it as a person of ordinary prudence would manage it if it were his own; & he must not commit any act which is destructive or permanently injurious to the property; see S. 76 sub-clauses (a) & (e) of the Transfer of Property Act. It follows that he may grant leases not extending beyond the period of the mortgage; any leases granted by him must come to an end at redemption. A mortgagee cannot during the subsistence of the mortgage act in a manner detrimental to the mortgagor's interests such as by giving a lease which may enable the tenant to acquire permanent or occupancy rights in the land thereby defeating the mortgagor's right to "khas" possession; it would be an act which would fall within the provisions of S. 76, sub-clause(e) of the Transfer of Property Act.

(7) A permissible settlement by a mortgagee in possession with a tenant in the course of prudent management and the springing up of rights in the tenant conferred or created by statute based on the nature of the land and possession for the requisite period is a different matter altogether. It is an exception to the general rule. The tenant cannot be ejected by the mortgagor even after the redemption of the mortgage. He may become an occupancy "raiyat" in some cases and a non-occupancy "raiyat" in other cases. But the settlement of the tenant by the mortgagee must have been a "bona fide" one. This exception will not apply in a case where the terms of the mortgage prohibit the mortgagee from making any settlement of tenants on the land either expressly or by necessary implication.

(8) Where all the "zamindari" rights are given to the mortgagee, it may be possible to infer on the proper construction of the document that he can settle lands with tenants in the ordinary course of management and the tenants might acquire certain rights in the land in their capacity as tenants.....

19. On a mere perusal of the aforesaid precedent of the Honourable Apex Court, what one could understand is that if at all, there is any fact established before the Court that the person who is in occupation of the property, entered into the possession of it as a lessee, under a mortgagee, who for the prudent management of the mortgaged property, had let the said lease holder in possession, then the question of invoking Section 76(1) of the Transfer of Property Act, would arise and whereupon, such lessee could try to attract the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. But, the plea of the respondent/defendant as already set out supra, is not at all to that effect and no specific plea on the above line was taken also.

20. The rest of the decisions cited supra by the learned Counsel for the respondent, in my considered opinion, are at all germane here as precedents are applicable in consimili casu, but not in a case where the factual matrix differs.

21. There could be no quarrel over the proposition as put forth by the learned Counsel for the respondent that the landlord, it at all faced with a finding from

the Rent Controller regarding the bona fide nature of the title dispute raised by the tenant, could approach the civil Court for evicting such tenant. A fortiori, the factual matrix as held by me above is entirely different from the ones involved in those precedents.

22. Not to put too fine a point on it, in the previous litigation itself, as has been found by me supra, the rights of the parties got finally settled and the same respondent herein-Parvathy who happened to be the defendant therein claimed her right as a co-sharer and that was negated. In such a case, her vague plea in the subsequent suit would not in any way attract Section 10(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, in her favour; wherefore, no more elaboration in this regard, is required.

23. As such, the lower Court is at fault in passing the impugned order and therefore, it is liable to be set aside. The point is answered accordingly. On balance, this Civil Revision Petition is allowed, by setting aside the order dated 30.04.2003 passed in E.P. No. 11 of 2002 in O.S. No. 503 of 1982 by the learned Principal District Munsif, Nagercoil, and mandating the lower Court to execute the decree for delivery as per law. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.