
(1949) 02 MAD CK 0050
In the Madras High Court

Theruvath Vittil Muhammadunny

APPELLANT

Vs

Melepurakkal Unniri and Another

RESPONDENT

Date of Decision : 10-02-1949

Acts Referred:

Citation : (1950) ILR (Mad) 152 : (1949) 1 MLJ 452

Hon'ble Judges : P.V. Rajamannar, C.J.;Raghava Rao, J

Bench : Full Bench

Judgement

P.V. Rajamannar, C.J.—This appeal originally came on before Horwill, J., who considered it desirable that it should be heard by a Division Bench in view of the conflict between decisions of this Court.

2. The appeal is against an order of the Subordinate Judge of Ottapalam remanding a suit to the District Munsiff of Chowghat for disposal on the merits. The suit was filed by the first respondent for eviction of the appellant (first defendant) from a building that had been leased to him by the first respondent's predecessor in 1936. There were also prayers for arrears of rent and for recovery of damages in respect of an annexe to the building constructed by the first respondent. The appellant deposited into Court the entire arrears of rent and interest claimed in the suit, and therefore that part of the plaintiff's claim was satisfied. Following the decision in Mahmood H.Y. Vs. The Kerala Corporation Ltd., the District Munsiff held that the suit, so far as it related to eviction, was not maintainable, because of the provisions of the Madras Non-Residential Buildings Rent Control Order, 1942, hereinafter referred to as the Rent Control Order. On appeal, the learned Subordinate Judge, following certain decisions of this Court subsequent to Mahmood H.Y. Vs. The Kerala Corporation Ltd., held that the suit was maintainable and passed an order of remand as mentioned above.

3. The relevant provision of the Rent Control Order is Clause 8, the material portions of which are as follows:

* * * * * (i) A tenant in possession of a non-residential building shall not be

evicted therefrom, whether in execution of a decree, or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this clause.

(2) A landlord wishing to evict a tenant in possession shall apply to the Controller for a direction in that behalf.

The Controller shall make an order of eviction only if he is satisfied that one or other of the conditions mentioned is satisfied. These conditions briefly are, non-payment of rent, absence of readiness and willingness to pay a fair rent in future, sub-letting except under certain circumstances and user of the building for a purpose other than that for which it was leased, and absence of occupation of the building for a continuous period of four months without reasonable cause. Then follow provisions for execution of an order for eviction passed by the Controller.

4. Before dealing with the several decisions on the effect of this clause, let us examine its plain language. Sub-clause (1) lays down that a tenant shall not be evicted from a non-residential building of which he is in possession. "Evict" literally means "expel by legal process". Eviction consists in the physical act of throwing out the tenant from the building which he is occupying. This sub-clause therefore, prevents the tenant from being thrown out. One of the methods of such eviction is by the process of execution of a decree for possession. The sub-clause makes it clear that even this method is prohibited. The eviction can only be in accordance with the provisions of Clause 8. There is nothing in this clause, or in any of the other clauses of the Order expressly prohibiting the institution of a suit for possession, or prohibiting a Civil Court from passing a decree for possession. No doubt, even though a decree for possession is passed, it may be not be capable of execution by the Civil Court. But the passing of the decree itself is not in terms prohibited.

5. Is there any such prohibition which can be necessarily implied? Is there anything in this clause which takes away, by necessary intendment, the ordinary jurisdiction of a Civil Court to entertain a suit by a landlord for recovery of possession of his property in the occupation of a tenant? As their Lordships of the Judicial Committee pointed out in *Secretary of State for India v. Mask and Co.* (1940) 2 M.L.J. 140 : L.R. 67 IndAp 222 : ILR 1940 Mad. 599 (P.C.)

It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied.

I fail to see any such clear implication to oust the jurisdiction of the civil Courts.

6. The earliest decision dealing with this question is that of Chandrasekhara Aiyar, J., in *Mahmood H.Y. Vs. The Kerala Corporation Ltd.*, where the learned Judge held that there was an ouster of the jurisdiction of Civil Courts. His reasoning was as follows:

Mr. Venugopalachari ingeniously contended that there could be no objection to a decree being passed in this suit though after the decree it might be that he might have to go before the Controller to get possession. This argument fails to take note of two answers. One is that when a special tribunal is indicated for obtaining a particular relief, it is that tribunal that has got exclusive jurisdiction to grant that relief, and to that extent the jurisdiction of Civil Courts is ousted. Secondly, even if it is held that the Court has jurisdiction to grant a decree for eviction it cannot be called upon to indulge in a mere pastime and pass orders which would be *brutum fulmen* and which cannot be carried into effect without resort being had to other persons or tribunals in whom a discretion is vested to decide if eviction is to be ordered or not. The remedy of the plaintiff is to go before the Controller.

Neither of the two grounds on which the learned Judge based his conclusion commends itself to me. No doubt, when a special tribunal is indicated for obtaining a particular relief, that tribunal has got exclusive jurisdiction to grant that relief. But then that relief must be a relief not available to a party under general law. Further, the relief for which the special tribunal, namely, the Controller, is indicated, is the relief of eviction, that is, the actual throwing out of the tenant. That may only mean that a Court which passed the decree may not have jurisdiction to execute the decree for possession. But I fail to see how the jurisdiction of the Civil Court to entertain a suit and to pass a decree for possession is necessarily ousted. I cannot agree with the learned Judge that a decree for eviction which cannot be executed for a certain time, in this case during the continuance of the Rent Control Order, can be called *brutum fulmen* or that, passing a decree for eviction which cannot be at once executed, would be indulging in a mere pastime. One can easily give instances of cases in which the decrees duly passed by competent Courts cannot be immediately executed. But that fact has never been understood to mean that there is an implied ouster of jurisdiction of the Court to entertain and dispose of the suit. This decision of the learned Judge was expressly dissented from by Byers, J., in the two decisions in *In Re: V.R.R. Sami Ayyar, and Satyanarayana v. Satyanarayana* (1945) 1 M.L.J. 135. He held that the language was not such as to deprive the Civil Courts of their power to entertain suits for eviction and to adjudicate upon them. His conclusion is thus tersely expressed:

It cannot be said that these words are wide enough to deprive the Civil Courts of their jurisdiction to pass decrees; all that the rule contemplates is the control of the relief of eviction.

Apparently, it was in view of these latter decisions that Panchapagesa Sastri, J., observed as follows in a recent decision, *vide Thelepurath Madhavakurup Vs. K. Muhammad Sukri Sahib*,

It must now be taken to be well settled that a decree in ejectment could be passed by a Civil Court and all that the order provides is that during the subsistence of the order, the Civil Court cannot execute the decree but the

landlord will have to take appropriate steps under the provisions of the order.

There are certain general considerations which, in our opinion, support this view, namely, that the order does not take away the jurisdiction of a Civil Court to entertain a suit by a landlord against the tenant and pass a decree therein for possession. Many of these considerations are found set out in an unreported decision of Wadsworth, J., in *Sannidhi Veeraraghavalu v. Fathima Bibi Saheba* S.A. No. 80 of 1946. These are such considerations : (1) The cause of action for an application to the Controller would be quite different from the cause of action for a suit in the Civil Court; (2) The grounds on which the Controller can order an eviction may be quite different from those on the strength of which the Civil Court would grant a decree; (3) The failure by the plaintiff to claim a decree for eviction in the Civil Court on grounds which would not justify eviction by the controller might result in grave complications by way of limitation for a suit filed after the Control order ceases to operate; (4) The period during which the execution of a decree is prohibited is limited. The order itself is only for a short duration; and when it is repealed or it expires, a decree of a Civil Court can be executed in the ordinary way immediately I hereafter.

7. Having regard to all these considerations and to the language of Clause 8 of the order, I am of opinion that the jurisdiction of a Civil Court to entertain and pass a decree in a suit for eviction by a landlord against his tenant is not expressly or impliedly taken away by the provisions of the Rent Control Order.

8. The Civil Miscellaneous Appeal is therefore dismissed with costs.

Raghava Rao, J.

9. I respectfully agree with my Lord in his reasoning as well as in his conclusion. I wish only to add a few words with reference to one particular view-point expressed by Chandrasekhara Aiyar, J., in *Mahmood H.Y. Vs. The Kerala Corporation Ltd.*, Possibly, the learned Judge had in mind the observation of (1888) L.R. 15 I.A. 211 (Privy Council) which I shall presently refer to, in making his observations in the case of *Mahmood H.Y. Vs. The Kerala Corporation Ltd.*, that even if it is held that the Court has jurisdiction to grant a decree for eviction it cannot be called upon to indulge in a mere pastime and pass orders which would be brutum fulmen. The observation of Lord Hobhouse that:

It would be an inconvenient state of the law if it were found necessary for a man to institute a perfectly vain litigation under peril of losing his property if he does not.

was made in connection with the discussion of a question of limitation which arose in the case before their Lordships of the Privy Council and has since been considered in a number of later decisions of the High Courts in India. According to the interpretation placed upon that observation of the learned Lord by these later decisions it will be too much for any litigant to contend that where the rights as between himself and his adversary have been subjected to adjudication

by a competent Civil Court, limitation for other suits between the parties based on such rights should be computed from the date of their final determination. It has been further ruled by these later decisions of the High Courts as well as by decisions of the Privy Council, that Courts have, in fact, no power on considerations of hardship or equity to invent new grounds of exemption from the bar of limitation not recognised by the statute. It seems to me, therefore, that the principles laid down by these decisions are a fortiori applicable to a question of limitation which may arise, as pointed out by Wadsworth, J., in his unreported decision in S. A. No. 80 of 1946, in relation to a suit in the ordinary Civil Court based on grounds of eviction under the general law, which are by no means identical with the grounds constituting the cause of action for an application to the Controller.