

(1993) 01 MAD CK 0060
In the Madras High Court

T.P. Ratnam (died) and Others

APPELLANT

Vs

Pandurangan and Others

RESPONDENT

Date of Decision : 17-01-1993

Acts Referred:

Citation : (1994) 1 MLJ 512

Hon'ble Judges : Swamidurai, J

Bench : Division Bench

Judgement

Swamidurai, J.—The first defendant in O.S. No. 17 of 1978 on the file of learned I Additional District Munsif, Tiruchirapalli has filed this second appeal. The plaintiffs have filed a suit for declaration of their title over the superstructure mentioned in the plaint schedule property and also for a declaration that the decree passed in H.R.C.O.Ps. 334, 335 and 336 of 1973 have become inexecutable and for permanent injunction restraining the first defendant and his men from interfering with the possession of the plaintiffs upon the said superstructures by executing the orders passed in the said H.R.C.O.Ps. It is the case of the plaintiffs that all the superstructures originally belonged to the first defendant have been washed away in floods in 1977 and that they had received subsidies from the Government and put up new superstructures over, the same. Therefore, it is their case that the superstructures do not belong to the defendants at all and so the decrees in the H.R.C.O.Ps. have become inexecutable and the defendants have to file only the suits for getting possession of the suit land from them. The fact that the superstructures were washed away by floods is not disputed by the defendants. Originally, the first defendant was the landlord in respect of the superstructures in which these plaintiffs have become tenants. It is also admitted that the abovesaid H.R.C.O.Ps. were filed for eviction and that learned Rent Controller ordered eviction in all the three H.R.C.O.Ps. on 23.12.1974 after contest. Against such orders, appeals were preferred by the plaintiffs and they were also dismissed. It appears, at the request of the plaintiffs, the appellate authority granted further time for evicting tenants. Only under these circumstances, the suits have been filed. The trial

court accepted the case of the plaintiffs and decreed the suit with costs as against the first defendant. The suit was dismissed against the second defendant without costs. The first defendant filed A.S. No. 148 of 1980 before learned II Additional Sub Judge, Tiruchirapalli who also confirmed the view taken by the trial Court and dismissed the appeal. Learned appellate Judge has relied upon the decision in K. Mohamed Sheriff Vs. P.S. Mohamed Thasim Sahib, , for the proposition that the superstructures do not belong to the first defendant as on the date of filing of the suit and so the first defendant as landlord cannot execute the decree obtained by him in the abovesaid three H.R.C.O.Ps. Learned Counsel for the respondents contended that the three superstructures admittedly have been washed away by floods and these superstructures do not belong to the first defendant and that the decree in the three H.R.C.O.Ps., have become inexecutable.

2. I have gone through the judgment cited supra equivalent to K. Mohamed Sheriff Vs. P.S. Mohamed Thasim Sahib, . Learned Judge (Venkatadri, J.) has referred to two judgments reported in Ellis and Sons Amalgamated Properties Limited v. Sisman L.R. (1948) 1 K.B. 653 and Morles Limited v. Slater (1950) 1 All E.R. 331. After going through the judgments carefully, I am of the opinion that the judgment rendered in (1950) 1 All E.R. 331, is under the following circumstances:

In this case, the premises were damaged by enemy action and become uninhabitable but the tenant was able and continued to use them for the purpose of his business. The landlords gave the tenant a notice in writing to quit the premises and claimed possession. It was held by the court of appeal that the premises were originally let as a dwelling house within the Rent Acts; they remained the same identifiable premises; the fact that owing to the damage the tenant was prevented from living in the premises did not change the character of the letting. What they pointed out is that the premises are still identifiable and still habitable and the tenant has got the right to live in the premises.

In Ellis and Sons Amalgamated Properties Limited v. Sisman L.R. (1948) 1 K.B. 653, the facts of the case are briefly stated as follows:

The original house having ceased to exist, and the tenant not being entitled to claim that the protection of the Acts and throughout attached to the plot of land, he has also failed in his contention that the building in the course of erection on these premises was at the material date a dwelling house let as a separate dwelling. That being so, it seems to me that, however, unfortunately it may be for him, he has no claim to occupy these premises now or at any future time. If this is a matter which calls for remedy in view of the unfortunate position of tenants whose houses have been destroyed, the remedy must be provided by the legislature. It is not for these courts, in an attempt to do what may appear to be justice to tenants, to put a strained and unnatural interpretation upon the language of these Acts of Parliament.

3. I am of the opinion that the decision rendered by learned single Judge of this Court, cited *supra*, will apply to the facts of this case. If the contention of learned Counsel for the respondents is accepted that the superstructures do not belong to the first defendant at present, then it will be open to the tenants to destroy the house by themselves (or) allow the house to be destroyed and put up a house of their own and later on claim that the superstructure does not belong to the landlord and that it belongs to them and so that they are not liable to be evicted under the Tamil Nadu Buildings Lease and Rent Control Act. I am unable to accept the submission made by learned Counsel for the respondents. Even if the tenants obtained any subsidy from the Government for the loss of superstructures it is given only for the loss of the superstructures and not to loss of the person. In this case, the plaintiffs received the subsidy from the Government. Therefore, whatever subsidy was given by the Government, it was for the loss sustained by the owner of the superstructure. Admittedly, plaintiffs are not the owners of the superstructures and therefore the amount received from the Government is towards loss of the superstructure which admittedly does not belong to the plaintiffs. In the circumstances, the plaintiffs remain as tenants of the superstructures only. The character of the tenants does not change even if the superstructure is put up by them from the subsidies received from the Government. In the circumstances, I am unable to accept the view taken by the lower courts. Hence, the decree and judgments of the courts below are set aside. The second defendant has stated in the written statement that if the plaintiffs are deserved persons, they will be allotted house sites in the northern half. There is no representation on behalf of the fourth respondent herein. In view of the admission made by the second defendant in the written statement before the trial court, I direct that the second defendant may accommodate the plaintiffs by allotting house sites at the northern half of the suit survey No. as admitted by them in the written statement.

4. In the result, the second appeal is allowed. No costs.