
(1965) 02 MAD CK 0025
In the Madras High Court
Case No : C.R.P. No. 205 of 1965

V. Lakshmana Konar and others

APPELLANT

Vs

Lakshmana Chettiar

RESPONDENT

Date of Decision : 15-02-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35, Order 21 Rule 36, 115

Citation : (1965) 02 MAD CK 0025

Hon'ble Judges : Venkataraman, J

Bench : Single Bench

Advocate : P.V. Subramaniam, for the Appellant;

Final Decision : Dismissed

Judgement

Venkataraman, J.—This revision petition under S. 115, C.P.C., has been filed under the following circumstances. One Lakshmana Chettiar obtained a decree in O.S. No. 22 of 1958 on the file of the Subordinate Judge, Madurai, for specific performance of a contract of sale and for recovery of possession of the property involved from the vendor Muthuswami Chettiar, the defendant in that suit. This decree was obtained on 11th December, 1958. In execution of this decree, after obtaining the sale deed, the decree holder filed an execution petition for taking possession. He was then resisted by two persons, Lakshmana Konar and Kesavan (petitioners herein). He filed E.A. No. 410 of 1964 in E.P. No. 94 of 1964 for removal of the obstruction caused. It is common ground that Lakshmana Konar and Kesavan were inducted as tenants into the property (a house in Madurai) by the judgment debtor Muthuswami Chettiar after the decree. Lakshmana Konar and Kesavan contended that they had acquired rights under the Madras Buildings (Lease and Rent Control) Act, 1949, later 1960, and that they were not liable to be evicted so long as they paid the rent etc. The learned Subordinate Judge rejected this contention pointing out that since they had been inducted as tenants after the decree and there was no relationship of landlord and tenant between the decree-holder and them, they could not claim the benefits of the

said Acts. He directed delivery. This petition has been filed against that order. The matter is governed by O. 21, R. 35, C.P.C., which says that where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, and, if necessary, by removing any person bound by the decree who refused to vacate the property. O. 21, R. 36, C.P.C., prescribes the procedure where the immovable property sought to be delivered is in the possession of a tenant or other persons entitled to occupy the same, and not bound by the decree ; in such a case, only what is called "symbolical possession" can be given to the decree holder. The question, therefore, is whether the petitioners herein are persons bound by the said decree.

2. The answer can only be in the affirmative, because, the petitioners were inducted into the property only after the decree, that is, after the rights arose to the decree holder under the decree. Those rights cannot be prejudiced by anything done by the judgment debtor after that date. If the petitioners had been inducted as tenants before the date of the decree, possibly they could have set up their rights under the Madras Buildings (Lease and Rent Control) Act though, even there, a further question might arise whether, to claim the benefits of the Act, they should have been inducted as tenants before the institution of the suit for specific performance and it might be argued that on the doctrine of *lis pendens*, any act of the defendant-vendor inducting the tenants after the institution of the suit would not affect the decree holder. But, whatever the position on that may be, it is clear that where, as in this case, a judgment debtor inducted the tenants after the date of the decree, those persons also would be bound by the decree. To hold otherwise would be to stultify and defeat the decree.

3. The decision of the Calcutta High Court in *Yusuf v. Jyotischandra Banerji* 59 Cal. 739 and even the decision brought to my notice in fairness by Sri P.V. Subramaniam, Learned Counsel for the petitioner, namely, *Jaygopal v. Daivaram* AIR 1957 M.B. 99 confirm the view which I have expressed above. Reference may also be made to a decision of mine in *Ayyappa v. Pechi* 77 L.W. 148 wherein I have referred to some other decisions also.

4. Learned Counsel for the petitioners has not been able to cite any decision which will invalidate the view expressed above. The decision in *Subbaraju v. Seetharamaraju* 39 Mad. 283 does not deal with this question. It merely lays down the right of an agriculturist judgment debtor to lease out a land for a period not exceeding one year, even during the pendency of the suit for possession of the property. The decision says that this is an ordinary act which can be done by the judgment debtor and cannot be affected by the doctrine of *lis pendens*. But only to that extent the decision will apply. But, here the petitioners seek to set up permanent rights of tenancy under the Rent Control Act. This claim cannot receive any support from the decision cited.

5. The decision in *Smt. Kanso Devi Vs. Kishan Chand and Others*, cited by the Learned Counsel for the petitioners is again distinguishable on the ground that

Brijlal, the person concerned there, had been inducted as a tenant even prior to the institution of the pre-emption suit, and, therefore, had statutory rights of tenancy under the East Punjab Rent Restriction Act, corresponding to our Madras Buildings (Lease and Rent Control) Act, 1949, and 1960. It was subject to those rights that the pre-emptor had to take. Accordingly this petition is dismissed.