
(2015) 04 MAD CK 0284

In the Madras High Court

Case No : C.R.P.(NPD)(MD) No. 70 of 2014 and M.P.(MD) No. 1 of 2014

Velu

APPELLANT

Vs

Pownraj and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 25

Citation : (2015) 04 MAD CK 0284

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : A. Arumugam for Ajmal Associates, for the Appellant

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J—The petitioner filed eviction petition in R.C.O.P. No. 18 of 2004 before the Rent Controller against the predecessor-in-interest of the respondents. The petitioner alleged willful default and denial of title. The Trial Court passed an ex-parte decree of eviction. Thiru. Pownraj, the predecessor-in-interest of the respondents filed an application in I.A. No. 83 of 2005 to set aside the ex-parte decree. The application in I.A. No. 83 of 2005 got abated, on account of the death of the petitioner therein. The death took place on 30 October, 2005. The petitioner herein informed the Trial Court about the death of the petitioner in I.A. No. 83 of 2005. The learned Trial Judge dismissed the application in I.A. No. 83 of 2005 on 19 March, 2009.

2. The respondents herein filed an application in I.A. No. 61 of 2010 before the Trial Court to condone the delay of 430 days in filing the petition to set aside the abatement. The respondents wanted to restore the application in I.A. No. 83 of 2005. The application was opposed by the petitioner.

3. The learned Rent Controller, Thoothukudi, dismissed the application, by order dated 14 March, 2012. The unsuccessful petitioners in I.A. No. 61 of 2010 filed an appeal before the Rent Control Appellate Authority, Thoothukudi, in R.C.A. No.

7 of 2012. The appeal was allowed by the appellate authority. The order condoning the delay is challenged in this Civil Revision Petition.

4. The learned counsel for the petitioner contended that the respondents were aware of the death of Thiru. Pownraj and as such, they should have filed an application within the statutory period to make them as parties to the proceedings. According to the learned counsel, the limitation would start from the date of death. The learned counsel further contended that in view of the judgment and decree dated 26 November, 2010 in S.A.(MD) No. 21 of 2004, there is absolutely no defence to the respondents and as such, it is a futile exercise to continue the proceedings before the lower Court.

5. The learned counsel for the respondents 2 to 8 justified the impugned order. According to the learned counsel, the Rent Controller allowed the eviction petition in R.C.O.P. No. 18 of 2004 only on the basis of the decree dated 12 December, 2003 in A.S. No. 5 of 2003. The learned counsel, by placing reliance on the judgment in S.A.(MD) No. 21 of 2004, contended that this Court reserved the respondents' right to agitate the question as to whether there is any tenancy agreement between the petitioner and the respondents.

6. The predecessor-in-interest of the respondents filed a suit in O.S. No. 91 of 2001 before the learned District Munsif, Tuticorin. The suit was one for permanent injunction restraining the petitioner herein from interfering with his peaceful possession and enjoyment of the suit property, besides a decree for permanent injunction restraining the petitioner from alienating the suit property. The plaintiff in O.S. No. 91 of 2001 contended that the suit property originally belonged to Thiru. Rathnasamy Nadar. The plaintiff got the property by way of a document dated 07 June, 1981. He was put in possession of the property.

7. The petitioner filed a detailed written statement in O.S. No. 91 of 2001. According to the petitioner, the suit property originally belonged to Thiru. Rathnasamy Nadar. The petitioner denied the execution of sale deed dated 07 June, 1981. The petitioner contended that the plaintiff in the said suit has been enjoying the suit property only as a tenant.

8. The Trial Court partly decreed the suit, by judgment and decree dated 26 June, 2002. The petitioner filed an appeal in A.S. No. 5 of 2003. During the currency of the appeal, the petitioner filed R.C.O.P. No. 18 of 2004, alleging willful default and denial of title. The petitioner appears to have produced a copy of the judgment and decree in A.S. No. 5 of 2003. The learned Rent Controller, having found that the suit filed by the predecessor-in-interest of the respondents was dismissed, allowed the application for eviction. It was essentially an ex-parte order.

9. The predecessor-in-interest of the respondents filed an application in I.A. No. 83 of 2005 to set aside the ex-parte order. During the currency of the said application, Thiru. Pownraj died. The respondents have taken up a contention that they were not aware of the pendency of the proceedings in I.A. No. 83 of

2005. The respondents filed an application in I.A. No. 61 of 2010 to condone the delay in filing the petition to set aside the abatement.

10. The learned Rent Controller dismissed the application in I.A. No. 61 of 2010. The respondents filed R.C.A. No. 7 of 2012. The Rent Control Appellate Authority allowed the said appeal.

11. The only question that arises for consideration is as to whether the order passed by the appellate authority is liable to be set aside, by invoking the revisional jurisdiction under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

12. The revisional jurisdiction under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is not in the nature of an appellate jurisdiction. It is true that the High Court is given jurisdiction to consider the regularity, propriety, legality and correctness of the proceedings. The revisional authority is not normally expected to re-appreciate the materials considered by the Rent Control Appellate Authority for the purpose of taking a different view in the matter. The appellate authority scanned the materials and arrived at a conclusion that the respondents have made out a case to restore the application in I.A. No. 83 of 2005. The learned Appellate Judge exercised the discretion in accordance with the settled legal principles. The petitioner miserably failed to plead and prove that the respondents were having knowledge of the pendency of the application in I.A. No. 83 of 2005 and its dismissal consequent to the death of Thiru. Pownraj.

13. The learned counsel for the petitioner has taken up a contention regarding futile exercise on the strength of the judgment in S.A.(MD) No. 21 of 2004. The learned counsel wanted this Court to place reliance on the judgment in S.A.(MD) No. 21 of 2004 to arrive at a finding that even after remand, no useful purpose would be served by taking up the matter by the Court below. I am not inclined to accept the said submission. This Court has made certain observations in its judgment in S.A.(MD) No. 21 of 2004. It is for the Court below to consider those observations, in the light of the background facts. I am, therefore, of the view that no interference is called for in the order impugned in this Civil Revision Petition.

14. In the upshot, I dismiss the Civil Revision Petition. No costs. Consequently, the connected miscellaneous petition is also dismissed.