
(2001) 07 MAD CK 0045
In the Madras High Court
Case No : W.A. No. 462 of 1992

V.T. Ranganayaki Anni

APPELLANT

Vs

The State of Tamil Nadu and another

RESPONDENT

Date of Decision : 09-07-2001

Acts Referred:

Tamil Nadu Cinemas (Regulation) Rules, 1957 — Rule 13

Citation : (2001) 3 LW 166

Hon'ble Judges : S. Jagadeesan, J;E. Padmanabhan, J

Bench : Division Bench

Advocate : Mrs. Nalini Chidambaram for Mr. Vijay Narayan, for the Appellant;
Mrs. N.G. Kalaiselvi, Special Government Pleader and Mr. K. Chandrasekaran, for
the Respondent

Final Decision : Allowed

Judgement

S. Jagadeesan, J.—This writ appeal has been filed against the judgment of the learned single Judge dated 18.12.91 in W. P. 10740 of 1983.

2. The short facts leading to the filing of the writ petition are:-

The appellant's predecessor in title leased out the land in favour of one P.C. Subbaraja under a registered lease deed dated 13.5.1946. The lease

period was 30 years. As per the conditions of the lease deed, the lessee is entitled to construct a cinema theatre and other buildings and enjoy the

same till the expiry of the lease i.e. 1.10.1976 and after that date, had to deliver the possession of the site together with the building to the lessor

without claiming any compensation. Pursuant to the said lease deed, the lessee Subbaraja constructed the theatre "Bharathan Talkies" and also

obtained C-Form licence in his name. On 7.5.1953 the said lessee executed a release deed of the lease in favour of Bharathan Theatres Ltd.,

without any notice or consent of the land owners. Before the expiry of the lease period, the land owner issued notice dated 25.8.76, calling upon

the lessee Subbaraja as well as M/s. Bharathan Theatres Ltd., to vacate and hand over possession on 1.10.1976. The land owners received a

reply whereunder M/s.Bharathan Theatres Ltd., the second respondent herein claimed statutory right to continue in possession.

3. After sending the reply, the second respondent herein filed the suit O.S.No.162 of 1976 on the file of the Sub-court, Tirunelveli for bare

injunction restraining the land owners from interfering with their peaceful possession. The said suit was decreed. The appeal A.S.No.171 of 1978

filed by the land owners was dismissed on 30.8.1979. Aggrieved by the same, the land owners preferred second appeal S.A.363 of 1980 before

this court which was also admittedly dismissed as early as 26.6.1986. During the pendency of the civil proceeding, the original lessee Subbaraja

died.

4. On 7.4.78 P.C. Balakrishna Raja, claiming to be one of the Directors of the second respondent theatre applied to the Collector, Tirunelveli for

transfer of C-Form licence to his name. The said application was returned. Thereafter the said Balakrishna Raja filed a fresh application on 2.7.79,

Objections were called for by the second respondent by publication. The land owners also submitted their objections. On 21.11.80 the Collector,

Tirunelveli granted C-Form licence in favour of the said Balakrishna Raja. The appellant challenged the same by way of appeal to the

Commissioner of Land Administration. By proceedings dated 8.9.1981 the Commissioner of Land Administration allowed the appeal and directed

the second respondent theatre to obtain orders of the civil court within six weeks of the communication of the order. Against the order of the

Commissioner of Land Administration, the second respondent theatre filed a revision before the first respondent. The first respondent, in their

proceedings G.O.Ms.No.424 dated 22.2.1982 dismissed the revision, however, directed the issue of E-Form permit to the second respondent

theatre till the pendency of the civil"" proceeding. As against the same, the appellant filed W.P. No.4486 of 1982 before this Court. This Court

allowed the writ petition, by setting aside the order of the government and remanded the revision petition filed by the second respondent theatre to

the government for fresh disposal. Pending the revision, the government directed the grant of E-Form permit by telex message on 30.9.82. This

was challenged by the appellant in W.P.No. 8839 of 1982. While disposing of the writ petition W.R. 8839 of 1982 by order dated 15.2.83 this

court directed the government to decide whether the revision pending before them relates to the transfer of the C-Form licence in favour of the

second respondent theatre or whether it relates to renewal of C-Form licence, by giving liberty to the parties to agitate the matter before the

Government. In G.O.Ms.No.671, Home Department, dated 29.3.83 the government found that the subject-matter of the revision is renewal of C-

Form licence, ultimately in G.O.Ms.No.843 Home dated 29.4.83 allowed the revision filed by the second respondent and directed the renewal of

the C-Form licence finding that the possession of the second respondent is lawful. This proceeding of the first respondent was challenged in the

writ petition W.P.No.10740 of 1983 before the learned single Judge. The learned single Judge after considering the contentions raised by both the

parties had agreed, with the findings recorded by the first respondent and consequently dismissed the writ petition. Hence the present writ appeal.

5. Mrs. Nalini Chidambaram, the learned senior counsel appearing for the appellant contended that the lease period expired as early as 1.10.76.

The original lessee subbaraja had transferred the lease hold right in favour of the second respondent theatre without any notice or the consent of

the appellant and other landowners. Hence the second respondent cannot seek for the transfer of the C-Form licence. The application filed by the

second respondent is to transfer the C-Form licence and not for renewal. C-Form licence cannot be transferred. Even assuming that the

application is one for renewal, as the second respondent's possession is not "lawful" as contemplated under Rule 13 of the Rules framed under the

Tamil Nadu Cinemas (Regulation) Act the second respondent is not entitled for the renewal. On-this ground, the impugned order of the

government is liable to be set aside and consequently the order of the learned single Judge has to be set aside. The view taken by the learned single

Judge that the second respondent's possession is lawful is not correct. In fact the learned single Judge found that the second respondent's

possession is lawful on the basis of the civil court decree, which view cannot be sustained, since the injunction granted by the civil court in favour of

the second respondent is to prevent the appellant from taking possession without due process of law and this will not make the possession of the second respondent as lawful one.

6. On the contrary, Mr.K. Chandrasekaran, the learned counsel appearing for the second respondent contended that the application filed by the second respondent theatre is only for the renewal of the C-Form licence since already the C-Form licence stands in the name of the second respondent theatre. After the demise of Subbaraja, the then Managing Director of the second respondent, the second respondent sought for the substitution of the name of the Director P.C.Balakrishna Raja. The authorities have found that the application is only for the substitution of the name of the Director and not for the transfer of the licence. Consequently the C-Form licence was renewed from time to time by virtue of the orders of the court. When once it is held that the application filed by the second respondent is only for substitution of the name of the Director, the second respondent is entitled for the renewal of the licence. The second respondent's possession is also lawful by virtue of the decree of the civil court in their favour. When the appellant had been restrained under the said civil court decree from evicting the second respondent, the possession of the second respondent under no stretch of imagination can be said to be illegal or unlawful. When possession of the second respondent is safeguarded by the civil court decree, they are deemed to be in lawful possession and as such the order of the learned single Judge; needs no interference. He further contended that one of the Directors of the second respondent, along with the wives of two other directors had purchased their share in the vacant site from the co-owner of the appellant herein. Hence the directors of the second respondent have become the co-owners of the vacant site along with the appellant herein and as such the directors of the second respondent as co-owner are entitled to enjoy the property. Consequently it is not open to the appellant to object either for the substitution of the name in the C-Form licence even assuming the same will amount to transfer of C-Form licence or the renewal of the C-Form licence, as the case may be. He further contended that it is well settled that one co-owner cannot interfere with the peaceful possession and enjoyment of the other co-owner and on this ground also the possession of the second respondent is

lawful.

7. We carefully considered the above contentions of both the counsel. In our considered view, it is unnecessary to go into the question as to

whether the application filed by RC. Balakrishna Raja, the Director of the second respondent is for substitution of the name in the place of the

deceased P.C.Subba Raja? or it is an application for the transfer of the C-Form licence. Whether the said application is for the renewal or transfer

of the C-Form licence, still the second respondent has to establish that they are in lawful possession for effecting such transfer or renewal. As the

learned single Judge, confirming the order of the government, found that the application is only for substitution of the name of the Director of the

second respondent and consequently is one for renewal of c-Form licence, we can proceed on the same basis. As stated above, even in the case

of renewal of C-Form licence, the question for consideration is whether the second respondent is in lawful possession, as contemplated under Rule

13 of the Rules framed under the Tamil Nadu Cinema (Regulation) Act. Hence in either way, the vital factor to be decided is with regard to the

lawful possession of the second respondent.

8. Firstly we will take up the contention of the learned counsel for the second respondent with regard to the co-ownership. Admittedly the

purchasers of the portion of the vacant site from the co-owner of the appellant are not the Directors of the second respondent theatre. Only the

wives of the Directors of the second respondent theatre individually had purchased the undivided share of the vacant site. When that be the case,

the Directors of the second respondent cannot be considered to be the co-owners of the appellant, herein. Hence this contention of the learned

counsel for the second respondent cannot be countenanced.

9, In order to get over this difficulty, after the judgment was reserved by us the second respondent theatre purchased the undivided share from the

wife of one of the directors of the second respondent under a registered sale deed dated 19.6.2001 and entered into an agreement with the wife of

the another Director for the purchase of her undivided share under the unregistered agreement dated 20.6.2001. The counsel for the second

respondent has also circulated the xerox copy of those documents to us after serving the copies on the learned counsel for the appellant.

10. We are not inclined to look into those documents, since the transactions are only to get over of the situation and over come certain views

expressed by us at the time of hearing of the appeal. If this sort of documents are to be permitted at this stage to establish the claim of the parties,

then there will be no end for any litigation. Even apart from this, with regard to the undivided share of wife of one of the directors, it is only an

agreement. It is well settled that an agreement do not create any interest right or title in the immovable property and as such the document cannot

be considered in relation to the title of the Directors of the second respondent theatre even as co-owners. For these reasons, the contention of the

learned counsel for the second respondent, putting forth their claim as co-owners are liable to be rejected and accordingly we reject the same.

11. The next question is the vital factor of lawful possession. There is no dispute that the second respondent's lease with the owners of the land

expired on 1.10.76. In fact the learned single Judge found that the second respondent obtained a decree from the civil court, restraining the

appellant herein from interfering with their possession. As the second respondent is armed with the decree of the civil court, their possession is

lawful.

12. We are unable to subscribe to the view taken by the learned single Judge in view of the decisions of the Apex Court. Before referring to the

decisions, it may be worthwhile to have a look at the Rule 13 of the Rules framed under the Madras Cinemas (Regulation) Act (Act 9 of 1955)

which is as follows:-

If the applicant for the licence is the owner of the site, building and equipment, he shall produce to the licensing authority the necessary records

relating to his ownership and possession (hereof. If he is not the owner, he shall, to the satisfaction of the licensing authority, produce documentary

evidence to show that he is in lawful possession of the site, building and equipment.

The above Rule contains two parts. The earlier one deals with the owner of the site, building etc. The later part deals with the case where the

licensee is not the owner of the site or building.

13. In order to, satisfy the compliance of the rule, apart from the lease deed, the second respondent had relied upon the civil court decree to claim

that their possession is lawful. The application either for the transfer of C-Form licence or the renewal was submitted on 2.7.79 subsequent to the expiry of the lease.

14. We are concerned in this case with the concept of "lawful possession" in the context of the Act with which we are concerned. As stated

earlier, Rule 13 has two parts and we are concerned in this case with second part. Apart from the plea of co-owner, the learned counsel for the

second respondent relied upon the decree of the civil court to establish his claim that the second respondent is in lawful possession. So far as the

co-ownership is concerned, already the same had been rejected by us as unsustainable.

15. When we consider the lawful possession with reference to Rule 13 of the said Rules, even in the first part if the applicant either for the grant of

licence or renewal, if he is the owner of the property, he has to produce before the licensing authority the necessary records not only relating to his

ownership but also regarding his possession. It is implicit that the owner having a title to the property if he can satisfy the licensing authority with

regard to his possession also will indeed be in the lawful possession although the word "lawful" is not used in the first part. It is in this context, the

word "possession" is even not necessary to be qualified by lawful in the first part of Rule 13. However, the applicant, for the licence or renewal, is

not the owner, there is no question of his showing title to the property and the only requirement of the law is to produce to the satisfaction of the

authority, documentary evidence with regard to its lawful possession of the property. The word "lawful possession" naturally assumes significance

in the second part, while it was not even necessary in the first part. The fact that after the expiry of the lease the tenant will be able to continue his

"possession" of the property by filing a suit for injunction restraining the owner of the land from interfering with his possession, does not satisfy" the

requirement of "lawful possession" of the property within the meaning of Rule 13 of the said Rules. After the expiry of the lease, there is no

relationship between the landlord and tenant and as such the possession of the lessee would amount to litigious possession which is without any

legal right.

16. In fact the Apex Court in the judgment reported in M.C. Chockalingam and

Others Vs. V. Manickavasagam and Others, has held as follows:

Lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant. This

relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant.

Lawful possession is not litigious-possession and must have some foundation in a legal right to possess the property which cannot be equated with

a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly disposed from it. This court in Lallu Yeshwant

Singh Vs. Rao Jagdish Singh and Others, had not to consider whether judicial possession in that case was also lawful possession. We are clearly

of opinion that juridical possession is possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession.

17. In fact the same view was reiterated by the apex court in a later judgment also in R.V. Bhupal Prasad Vs. State of Andhra Pradesh and others,

where the learned Judges held as follows:

In view of the settled position of law, the possession of the appellant is as tenant at sufferance and is liable to ejectment in due course of law. But

his possession is not legal nor lawful. In other words, his possession of the theatre is unlawful or litigious possession. The appellant may remain in

possession until he is ejected in due course in execution of the decree in the suit filed by the respondent. His possession cannot be considered to be

settled possession. He is akin to a trespasser, though initially he had lawful entry.

18. A Division Bench of this court in a recent judgment in The Madura Talkies Pvt. Ltd. Vs. The District Collector, Madurai and another, has

relied upon the above judgment of the Apex Court in R.V. Bhupal Prasad Vs. State of Andhra Pradesh and others, and held that where the site

was taken on lease by the lessee, continuance in possession by him even after the expiry of the lease period in contravention of the terms of the

lease and there was no acquiescence by the lessor, such possession was not lawful possession as there was no landlord and tenant relationship.

19. A Division Bench of the Karnataka High Court also fell in line with the above view. In the case of Vinoda Talkies, Tiptur Vs. The District

Magistrate, Tumkur District, Tumkur and Others, the learned Judges had the

occasion to interpret Rule 6 of the Karnataka Cinema Regulation

Rules, 1971 which is in pari materia with Rule 13 of the Tamil Nadu Cinema (Regulation) Rules, wherein the learned Judges held as follows:

In the present appeal, it is not in dispute that the lease granted to the appellant firm has already expired on 16.1.1996 and therefore they cannot

be said to be in lawful possession of the premises in question enabling them to even make an application for grant and/or renewal of licence in

terms of Rule 6 of the Rules.

20. From the above laid principle, we are of the view that the injunction obtained by the second respondent restraining the appellant from

interfering with their possession will amount to a restriction on the appellant from resorting to the eviction of the second respondent without due

process of law and the same will not make the ""possession"" of the second respondent as "lawful possession" as contemplated under Rule 13 of the

Tamil Nadu Cinema (Regulation) Rules. At the most, it can be only a litigious possession. Hence the finding of the learned single Judge that the

second respondent is in lawful possession cannot be sustained.

21. We accordingly allow the writ appeal and set aside the order of the learned single Judge. The impugned proceedings of the first respondent in

the writ petition is quashed. No costs.