

Baiambal Vs. Devasenathipathi

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SooperKanoon Citation : sooperkanoon.com/796919

Court : Chennai

Decided On : Dec-17-1987

Reported in : (1988)1MLJ177

Appellant : Baiambal

Respondent : Devasenathipathi

Advocate for Pet/Ap. : Mr. P.B. Ramanujam

Judgement :

ORDER

Sivasubramaniam, J.

1. The unsuccessful tenant in R.C.A. No. 1186 of 1985 on the file of the appellate authority (VIII Judge, Court of Small Causes), Madras, is the petitioner in this revision petition and the respondent is the landlord.

2. The respondent-landlord filed the petition in R.C.O.P. No. 2353 of 1984 on the file of the learned Rent Controller (XIII Judge, Court of Small Causes) Madras, for eviction of the petitioner - tenant under Section 10(2)(v) of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 on the ground that the tenant has committed acts of nuisance. According to him, the petition building was let out to the tenant for running wet grinding machines, that his wife is a heart patient and, therefore, even while letting out the premises to the tenant, it was agreed that the

tenant should not erect machineries which would create noise affecting the health of his wife. It was further contended that the tenant, in disregard of his undertaking had installed flour mills in the petition building and has been running the same from 7 a.m. to 8 p.m. every day thus creating great annoyance and mental agony to his wife and which has resulted in aggravating her disease leading to complications.

3. The tenant resisted the application contending that the building was let out to her only for the purpose of running a flour mill and not for running a wet grinding business. It is her case that she is doing a lawful business and she has not violated any of the conditions laid down by the authorities. She stated that she has not committed any acts of nuisance whatsoever and that the alleged ailment of the wife of the landlord is not true. According to her, since she has refused to pay enhanced rent as demanded by the landlord, the present application has been filed.

4. The learned Rent Controller accepted the contentions of the tenant and held that she has not committed any acts of nuisance in the building and therefore, the eviction petition was dismissed. As against the said order, the landlord preferred the appeal in RCA 1186 of 1985, and the appellate authority did not agree with the findings of the learned Rent Controller and it came to the conclusion that the tenant has committed acts of nuisance in the petition building and that the heart ailment of the landlord's wife is true. Consequently, the appellate authority ordered eviction of the tenant. Aggrieved against this decision, the tenant has filed the above revision petition.

5. Mr. P.B. Ramanujam, learned Counsel for the petitioner submits that the petition building was let out for running a flour mill and the same is evidenced by Ex. R1 issued by the landlord in favour of the tenant. He has also pointed out from the plan Ex. R2 that the petition building is intended for use as a flour mill. Even though the landlord contended that the building was let out originally for running a wet grinding business, the evidence shows that it was let out for running a flour mill and as a matter of fact the appellate authority came to the same conclusion. Therefore, we have to proceed only on that basis. Learned Counsel further

contended that the so called heart ailment of the landlord's wife is not true and that it has been invented for the purpose of evicting the tenant from the petition premises. According to him, the doctor who has been examined as a witness in this case to prove the so called ailment, is admittedly a relation of the landlord and moreover, he is only an Eye Specialist and he is not a Specialist in heart diseases. It was further contended that his evidence should not be accepted. The landlord and his wife have been examined as P. Ws. 1 and 2 in this case and they have categorically spoken about the heart ailment of P.W. 2. P.W. 3, who is a Doctor who had examined P.W. 2, has categorically stated that P.W. 2 is suffering from serious heart ailment and that it is absolutely necessary for her to live in healthy surroundings where fresh air and light are available. It is also in evidence that P.W. 2 was treated as an inpatient in the Government General Hospital as evidenced by Exs. P5 and P7. The prescription slips issued to her have been marked as Exs. P3 to P7. Even the learned Rent Controller has found that the said ailment is true. Therefore there is no difficulty in accepting the case of the landlord on this aspect.

6. The learned Counsel for the petitioner further contended that originally there was no upstairs building over the petition premises and it was only subsequently constructions were put therein and the landlord occupied the same. According to him, when the building was let out to the tenant for the purpose of running a flour mill, it is not open to the landlord to say now that it is creating nuisance in the premises. It is no doubt true that as long as the tenant is carrying on normal activities relating to running of the flour mill during the prescribed timings, it cannot be said to be an act of nuisance and the landlord will not be entitled to evict her on that ground. But in this case, P. Ws. 1 and 2 have categorically stated that apart from running the flour mill, the tenant is indulging in hammering the machineries very often causing unbearable noise in the surroundings. P.W. 2 has stated that whenever such hammering is going on, her heart is affected considerably and that she finds it difficult to bear the such noise emanating from the petition building. According to P.W. 2, such hammering is going on continuously and that it had aggravated her ailment in the heart. The Doctor also has opined that such noise would affect the health of P.W. 2. Learned Counsel for the respondent submits that even though the building is let out for running certain machineries or as a

workshop, the tenant is not entitled to create unnecessary nuisance which is not connected with the normal working of the machineries. According to him, the unusual hammering in a workshop would amount to an act of nuisance. In support of his contention, he relies upon the decision of this Court in Bhogilal M. Davey v. S.R. Subramania Iyer : AIR1964 Mad514 , and D.B. Ghodse v. Ramachandra Iyer A.I.R. 1955 Mys. 107.

7. Learned Counsel for the petitioner would submit that the theory of hammering in the flour mill run by the tenant is only an afterthought and the same was not mentioned in the petition filed by the landlord for eviction. It is no doubt true that there is no such specific allegation in the petition. But Courts have held that the pleadings in the rent control petitions need not be strictly construed as in civil suits. P. Ws. 1 and 2 have given positive evidence on this aspect which stands uncontradicted. It is significant to note that the tenant has not been examined as a witness in this case. Even though this Court initially felt that the landlord cannot object to the running of a flour mill as the building has been let out only for that purpose, after specific evidence was pointed out to the effect that apart from normal activities the tenant is indulging in constant hammering in the premises, it has to be held that such acts would amount to nuisance. If only the tenant had chosen to deny the positive evidence of P. Ws. 1 and 2 by examining herself as a witness, this Court would have taken a different view. As the matter stands, the allegations of the landlord stand unchallenged and the same have got to be accepted. Moreover, it is a pure question of fact which has been accepted by the appellate authority. Therefore, I do not find any valid grounds to interfere with such finding of fact in this revision petition. There is no material irregularity or illegality in the judgment of the appellate authority warranting interference from this Court exercising revisional jurisdiction.

8. In the result, this revision petition is dismissed. No costs. However considering the difficulties of the tenant in securing an alternative accommodation, she is given six months time from this date with the consent of the learned Counsel for the respondent, to vacate the petition premises and put the landlord in possession of the same.

