

Subbiah Devendran and anr. Vs. Kasamuthu Konar and ors.

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Court : Chennai

Decided On : Feb-21-1973

Reported in : AIR1973Mad437; (1973)2MLJ15

Judge : Gokulakrishnan, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 144

Appeal No. : Civil Misc. Petn. No. 1350 of 1973 in Appeal No. 61 of 1972

Appellant : Subbiah Devendran and anr.

Respondent : Kasamuthu Konar and ors.

Judgement :

ORDER

1. This is a petition for extension of time granted in C. M. P. 11138 of 1972 in A. S. 61 of 1972. A. S. 61 of 1972 is against an order passed by the lower court declaring that the appellants are trespassers on the suit lands. The contention of the appellants is that they are cultivating tenants and, as such, there must be a declaration to that effect that they are cultivating tenants, and not trespassers. During the pendency of the suit the petitioners herein were in possession and they continued to be in possession even after the filing of the appeal in this court by virtue of the stay order. Unfortunately, the petitioners did not comply with the conditions mentioned in the stay order granted by Krishnaswamy Reddy, J., as early as 7-7-1972. Subsequent to that it is alleged by Mr. T. R. Mani, the learned

counsel for the respondents, that delivery has been effected as early as 19-1-1973 owing to the fact that the conditions made in the stay petition have not been complied with. Nevertheless it is admitted by Mr. T. R. Mani that the crops now standing on the suit lands measuring about two acres and odd, are raised by the petitioners herein. By my order, dated 1-11-1972, I have also extended the time for complying with the original order passed by Krishnaswamy Reddy J. as early as 7-7-1972. It is clear that the whole matter is at large and the question as to whether the petitioners are trespassers or not has to be decided in the pending appeal. It is needless to say that there cannot be any finality with regard to the orders passed in the interlocutory application pending disposal of the above appeal. To substantiate this principle we have decisions such as Mahanth Ramdas v. Gangadas, : [1961]3SCR763 and the recent decision of this court rendered by Kailasam. J. in Civil Revn. Petn. No.1201 of 1971 = : AIR1973 Mad250 Periasami Asari v. President Iluppur Panchayat Board has been cited. Mr. Kumaraswami Pillai argues to the effect that the court has ample powers to grant extension of time even if a petition is filed subsequent to the expiry of the stipulated period. I am in complete agreement with his proposition. But, nevertheless, it is purely in the discretion of the court to decide whether to grant such an extension. If the court feels that there is no valid ground made out for such extension, it can easily dismiss the application for extension. But, taking into consideration the facts of this case and also the averments made in the affidavit for extension of time. I am satisfied that the petitioners must be given indulgence to extend the time granted to them. They have already deposited Rs. 1500 on 4-12-1972 even though the same ought to have been deposited by 15-11-1972. The subsequent deposit for pissam crops has to be made only on or before 15-4-1973. I direct the petitioners to deposit rents due for the pissam crops on or before 15-4-1973 and continue to comply with my order dated 1-11-1972, hereafter. The delay in paying the kar rent which has been paid subsequently on 4-12-1972 is excused. As regards the payment of Rs. 3,000 directed to be paid on or before 15-1-1973, the same has not yet been paid by the petitioners herein. It is represented that this money will be deposited by the petitioners within one week from this date into the trial Court. Hence the said delay in depositing the amount is also excused. Hence the time to deposit the aforesaid amount is extended by one week.

2. The next point that has to be considered is the delivery alleged to have been effected on 19-1-1973. It is clear from the facts of the case that the crop standing on the suit lands is that of the petitioners herein. Mr. T. R. Mani produces the delivery athatchi for having taken delivery of the suit land on 19-1-1973. It is stated by Mr. Kumaraswami Pillai that such delivery has not been recorded by court as yet. But, nevertheless as stated by Mr. T. R. Mani the delivery has been effected as per the records of the court. Whether it may be the learned counsel for the petitioners submits that his clients who allege that they are the cultivating tenants have effective possession of the suit lands and it cannot be denied that the crops now standing on the suit lands which have not yet been harvested belong to the petitioners herein. It is but necessary, pending disposal of the appeal, the status quo has to be maintained as far as possible provided the petitioners are prompt in paying the rents or damages which are due to the respondents herein. The quoting of Section 144, C.P.C. by Mr. T. R. Mani will have no application to the facts of this case and nothing can bar this court to give relief to the parties concerned in order to maintain the status quo and in the interests of justice. If tomorrow it is found that the petitioners are the cultivating tenants the damages that would have been caused by the mere fact that the delivery has been effected could not be rectified later and the poor tenants will be out of possession till the disposal of the above appeal. Taking all these aspects into consideration, and also in view of the fact that hereafterwards the petitioners will strictly abide by the directions of the court in respect of the payment of the rents due. I am inclined to direct the respondents not to interfere with the possession of the suit lands pending disposal of the above appeal. The delivery effected on 19-1-1973 will not be given effect to by the trial Court and the petitioners will be allowed to continue to be in possession till the disposal of the above appeal or till such time the stay is vacated for the default that may be committed by the petitioners in future. With these directions this petition for extension of time is ordered.

3. Petition allowed.