

Masilamani Vs. V. Baliah

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SooperKanoon Citation : sooperkanoon.com/802383

Court : Chennai

Decided On : Dec-01-1988

Reported in : (1988)2MLJ449

Appellant : Masilamani

Respondent : V. Baliah

Judgement :

ORDER

Srinivasan, J.

1. This revision is by the tenant, who has suffered an order of eviction before the authorities below.

2. The respondent sought eviction on the grounds of wilful default and requirement for own occupation for residential purpose. The Rent Controller negated the ground of wilful default and ordered eviction on the ground of requirement for own occupation. The Appellate Authority confirmed the said order. The tenant filed C. R. P. No. 1849 of 1984 in this Court. By that time, another tenant against whom a similar eviction petition was filed at the same time by the respondent had vacated and that portion was occupied by the respondent herein. It was argued in that Revision Petition that the portion occupied by the respondent was sufficient for his purposes and the bona fide of the requirement ceased to exist. Sathar Sayeed, J., accepted that contention and by his order on 3-1-1986 remanded the matter to the

Appellate Authority with the following observation:

I am of the view, considering the contention of the learned Counsel of the petitioner that the said tenant Selvaraj has vacated a portion of the premises, it is just and reasonable that a finding has to be given by the appellate authority as to whether the portion, which fall vacant, is sufficient and suitable for the landlord for his own use and occupation. It is on this ground alone, the matter is remitted to the appellate authority (VI Judge Court of Small Causes, Madras) to find out the requirement of the landlord, namely, whether the vacated portion by Selvaraj is sufficient for the landlord's own use and occupation. This is the only point that was argued by the learned Counsel for the petitioner.

3. After remand, the respondent gave further evidence and filed a partition deed, which was marked as Exhibit P.7 after considering its evidence adduced, the appellate authority found that the total area available to the respondent was only 268 square feet and that the respondent's family consists of six members including himself and his wife. The appellate authority found that the portion occupied by the other tenant namely Selvaraj, which was recovered from him by the landlord during the pendency of the revision petition was not sufficient for the purposes of occupation by the respondent. Hence, the appellate authority has come to the conclusion that the requirement of the respondent is bona fide and consequently dismissed the appeal.

4. Learned Counsel for the petitioner contends that the petition for eviction is not maintainable as the respondent is residing in a rented premises outside the city of Madras. Learned Counsel places reliance on the decision of Justice Srinivasan, in K.S. Subramania Naidu v. V.R. Mohammed Syauddin 81 L.W. (J.S.) 34. That case arose out of a petition under Section 10(3)(a)(iii) of the Madras buildings (Lease and Rent Control) Act. The learned Judge held that, 'the underlying implication of Section 10 (3) (a) (iii) of the Act cannot apply to a case where the business carried on is in a town different from the one in which the disputed premises is situated.' Though I have my own doubts about the correctness of that decision, it -cannot certainly apply to a case under Section 10(3)(a)(iii) of the Act. The relevant portion of the section reads as follows:

A landlord may, subject to the provisions of Clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building-

(i) in case it is a residential building, if the landlord requires it for his own occupation or for the occupation of any member of his family and if he or any member of his family is not occupying a residential building of his own in the city, town or village concerned.

Learned Counsel for the petitioner submits that if the landlord is occupying a building outside the city concerned, he cannot maintain a petition for eviction under the said section. I do not agree. The section does not say that the landlord should be occupying a residential building which does not belong to him within the city, town or village concerned, for the purpose of filing a petition under Section 10(3)(a)(i) of the Act. For example, a native of Madras owning a house here gets employed in Bombay or Delhi and after retirement decides to settle down in his own place, he cannot be expected to take a house on rent in Madras or live in a relative's or friend's house for being eligible to file a petition under Section 10(3)(a)(i) of the Act. He may continue to live in Bombay or Delhi till he gets actual possession of his own house. The section merely says that he should not be occupying a residential building of his own in the city, town or village concerned. In the present case, the landlord is not occupying building of his own within the city of Madras, where the petition-premises is situated. Hence the petition under Section 10(3)(a)(i) of the Act is maintainable.

5. It is next argued by learned Counsel for the petitioner that in the petition for eviction, the landlord had stated that he was experiencing ex-cruciating difficulties in the rented building on account of occupation of some portions of the said building by several bachelors. Learned Counsel contends that in the course of evidence the landlord took an instance which took place subsequent to the filing of the petition viz., a woman jumping into the well in that house and committing suicide. Learned Counsel submits that the reason given in the petition was not established by evidence. I am of the view that the said argument is not open to the petitioner at this stage. As seen from the order of remand made in C.R.P. No. 1849 of 1984 of this Court, the only point which was urged before this Court on the

earlier occasion was that the landlord's bona fide ceased to exist on account of his occupation of the portion vacated by Selvaraj, the other tenant. No other point was urged before this Court in that Revision. Hence, it is not open to the petitioner to raise that contention at this stage.

6. It is then argued that the evidence given by the landlord with regard to the space required by him and the plinth area of the building is discrepant and that his evidence should not be accepted. It is also contended that the rented premises occupied by the landlord at present situate in Ambathur is more convenient for him to go to his working place and his children are admitted in a school near that premises. It is argued that if he occupies the petition premises, he will experience more difficulty than what he is experiencing in the rented premises. I cannot accept any of the above arguments. It is found on the evidence that the space available to the landlord in the petition-premises is hardly sufficient for his family and he requires the entire house for the purpose of occupation. It is found that the space which was in the occupation of the other tenant Selvaraj is not sufficient for the use of the landlord. It is based on the evidence on record. The advantages which the landlord will gain by occupying his own house are much more than the disadvantages which he may have to suffer thereby. The landlord has proved that he bona fide needs the petitioner-premises for occupation for his residential purpose.

7. Yet another contention urged by learned Counsel for the petitioner is that the Appellate Authority has wrongly thrown the burden on the tenant to prove that the landlord owns another building of his own in the city. It is argued that it is only for the landlord to prove that he does not own any other building. In the present case, the landlord has entered the witness box and deposed that he does not own any other building except the petition-premises. No Court can expect the landlord to produce more evidence to prove the negative. On the other hand, if the landlord had owned another building, it would have been very easy for the tenant to produce documentary proof therefor. The burden is rightly cast on the tenant to prove the positive fact of landlord's owning another building.

8. There is no merit in the revision petition and it is hereby dismissed with costs.

