

A. Krishnaswami Vs. S. Rasheeda

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Court : Chennai

Decided On : Jan-30-1980

Reported in : (1980)2MLJ463

Appellant : A. Krishnaswami

Respondent : S. Rasheeda

Advocate for Def. : Mr. Krishnan

Advocate for Pet/Ap. : Mr. Peter Francis

Judgement :

ORDER

S. Natarajan, J.

1. The petitioner herein unsuccessfully contended before the District Munsif Tiruchirapalli, in E.A. No. 374 of 1979 on the file of his Court that the decree for ejectment passed against him in the above suit was inoperative, inexecutable and null and void. The said petition was filed under Sections 47 and 151, Civil Procedure Code, read with Section 18 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960(hereinafter referred to as the Act). Consequent on the dismissal of the petition the petitioner has approached this Court for reliefs.

2. The facts lie within a narrow compass. The respondent sought ejectment of the petitioner from the house leased out to him and succeeded in obtaining a decree for possession in the above said suit. The petitioner preferred an appeal in A.S. No. 438 of 1974 on the file of the District Court, Tiruchirapalli. During the pendency of the appeal, the town where the suit property is situate was constituted a municipality and automatically the provisions of the Act became applicable to that area. Notwithstanding this fact, the appeal was argued with reference to the provisions of the Transfer of Property Act. One of the main defences taken by the petitioner in the appeal was that the tenancy had not been properly terminated by issue of a valid notice under Section 106 of the Transfer of Property Act. The petitioner's contentions were rejected and the appeal was dismissed. He preferred a second appeal to this Court in *Krishnaswami v. Rasheeda S.A.* 640 of 1976, and the only question argued in the appeal was about the valid termination of the tenancy. N.S. Rama-swami, J., who heard the second appeal, rejected the contentions of the petitioner and dismissed the second appeal, but nevertheless, gave the petitioner time for one year to vacate the premises. When the said period of one year was nearing completion, the petitioner came forward with the petition, from out of which the revision arises, for declaration that the decree in ejectment passed against him was inoperative, inexecutable and null and void. The principal contention of the petitioner is that consequent on the introduction of the Act to the area where the building is situate, the decree-passed earlier has become inexecutable and therefore, notwithstanding the expiry of the time-limit granted to him in S.A. No. 640 of 1976 he is entitled to be in occupation of the building as a statutory tenant until a valid order of eviction is passed against him under Section 10 of the Act. The learned District Munsif has taken the view that since the Act was introduced subsequent to the filing of the* suit by the landlady, the jurisdiction of the (sic) Civil Court is not taken away and hence it is not open to the petitioner to question the validity and executability of the decree passed against him. For reaching this conclusion, the learned District Munsif has followed the ratio laid down in *Sengalaneer Pilliar Temple, Koranad by its trustee Ambalavana Chettiar v. Manickam Chettiar* (1977)90 LW 162.

3. Mr. Peter Francis, learned Counsel for the petitioner, submits that Section 10 of the Act is clear in its terms and it expressly forbids the eviction of the petitioner,

who is a tenant, in any other manner, except in accordance with the provisions of that section or Sections 14 to 16 of the Act and the section further provides that a tenant cannot be evicted even in execution of a decree obtained by the landlord. For appreciating the contention of the learned Counsel for the petitioner, it is necessary to refer to the definition of 'tenant' in the Act and the prescription contained in Section 10 for the eviction of the tenant. Section 2(8) of the Act defines a 'tenant' as follows--

'tenant' means any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son, or daughter, or the legal representative of a deceased tenant who--

(i) in the case of a residential building, had been living with the tenant in the building as a member of the tenant's family upto the death of the tenant, and

(ii) in the case of a non-residential building, had been in continuous association with the tenant for the purpose of carrying on the business of the tenant upto the death of the tenant and continues to carry on such business thereafter, and a person continuing in possession after the termination of the tenancy in his favour but does not include a person placed in occupation of a building by its tenant or a person to whom the collection of rents or fees in a public market, cart stand or slaughter-house, or of rents for shops has been farmed out or leased by a Municipal Council or a Panchayat Union Council or the Municipal Corporation of Madras or the Municipal Corporation of Madurai.

Section 10 of the Act deals with the eviction of tenants and Sub-section (1) of Section 10 reads as follows--

10(1). A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section and Sections 14 to 16:

Provided that nothing contained in the said section, shall apply to a tenant whose landlord is the Government:

Provided further that where the tenant denies the title of the landlord or claims a right of permanent tenancy, the Controller shall decide whether the denial or claim

is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

Sub-section (2) of Section 10 states that a landlord seeking eviction of his tenant, should apply to the Controller for a direction in that behalf and if the Controller, after giving the tenant a reasonable opportunity of showing cause against the application is satisfied, he may make an order directing the tenant to put the landlord in possession of the building. Clauses (i) to (vii) in Section 10(2) and Sub-section (3)(a) lay down the grounds on which a landlord can seek an order of eviction against his tenant. Besides the grounds mentioned in the above sub-sections, Sections 14 to 16 also indicate the grounds on which a landlord can seek the recovery of possession of a building from his tenant on a temporary or permanent basis, as the case may be.

5. From the terms of the definition of 'tenant' contained in the Act, it goes without saying that the petitioner herein has to be recognised as a tenant of the respondent-landlord. Though the tenancy in favour of the petitioner had been terminated, yet inasmuch as he continues in possession of the property even after the determination of the tenancy, he will be deemed to be a tenant. Once this position is recognised, then automatically the embargo contained in Section 10(1) of the Act will be attracted. In this connection it is apposite to point out that Section 10(1) does not inhibit the filing of suits during the time the Act was in force. All that Section 10(1) says is, that during the period the Act is in force, a tenant shall not be evicted from the premises occupied by him in execution of a decree for ejectment passed against him. This position is now well-settled and I need refer only to a few cases on this aspect. One of the earliest case on the subject is *Muhammadunni v. Unniri* : (1949)1MLJ417 , which arose under the Madras Non-Residential Buildings Rent Control Order, 1942. Clause 8 in the said order was more or less similar to Section 10(1) of the Act. A Bench of this Court held that the eviction of a tenant can only be in accordance with the provisions of clause 8, that there is nothing in the clause or in any of the other clauses of the Order, expressly

prohibiting the institution of a suit for possession or prohibiting a civil Court from passing a decree for possession though a decree for possession that may be passed by the civil Court, will not be capable of execution by the civil Court. The abovesaid view has been taken even with reference to Section 10(1) of the Act by a Division Bench of this Court, to which was a party in Haji Abdulla Salt v. Sanjivi Rao : (1979)2MLJ413 . The Supreme Court too has laid down the same ratio in B.V. Patankar v. C.G. Sastri : [1961]1SCR591 , though that case arose under the Mysore House Rent and Accommodation Control Order, 1948.

6. The resultant position therefore, is that the filing of a suit for recovery of possession of a property from a tenant or the passing of a decree therein by the Court in favour of the landlord, is not prohibited under the Act. But, the decree cannot be executed so long as the Act remains in force.

7. In the instant case, at the time the suit was filed, the area where the building is situate was not covered by the Act, because the Act had not been extended to that area. Subsequently, the town where the building is situate, was constituted a Municipality and the provisions of the Act became automatically extended to that area. What we have to see is, whether, by reason of this fact, the petitioner herein is precluded from relying upon Section 10(1) and invoking the interdiction contained therein for obtaining the declaration that the decree obtained against him is inexecutable.

8. Mr. Krishnan, learned Counsel for the respondent, concedes that the petitioner will no doubt fall within the definition of 'tenant' under the Act, but would however contend that he is estopped from relying upon Section 10(1) to seek a declaration of the non-executability of the decree passed against him. The argument of Mr. Krishnan is that as soon as the provisions of the Act were extended to the area where the building is situate, the petitioner ought to have sought stoppage of further proceedings in the suit and should have exercised his option to seek protection of his rights under the Act. The learned Counsel argues that the conduct of the petitioner in filing an appeal and a second appeal against the decree passed against him, amounted to waiver of his rights under the Act and especially after having obtained one year's time from this Court for vacating the premises, the

petitioner should not now be allowed to make a volte face and rely upon the provisions of the Act to seek protection from eviction. In support of his contention, Mr. Krishnan places reliance on the following cases. He first relies on the decision in *Lachoomal v. Radhashiam* : [1971]3SCR693 , wherein it has been held that it is open to the landlord to give up his rights under U.P. (Temporary) Control of Rent and Eviction Act (III of 1947) and enter into a binding contractual agreement with the tenant. This decision cannot apply to the facts of this case, because there is no agreement between the petitioner and his landlord whereunder the petitioner has agreed to waive his rights under the Act.

9. Mr. Krishnan then states that the petitioner is estopped by conduct from seeking the protection under Section 10(1) of the Act. For this argument, he relies upon *Madanappa and Ors. v. Chandramma* : [1965]3SCR283 . The argument cannot be countenanced, because the petitioner had nowhere stated that he was giving up his rights under the Act. Even in the suit, the petitioner had taken the stand that he was not liable to be evicted. Therefore, there is no inconsistency between the stand taken by him in the suit and the stand taken in the present proceedings. The learned Counsel then cites *Turner Monison and Co. Ltd. v. H.I. Trust Ltd.* : [1972]85ITR607(SC) , and *Motilal Padampat Sugar Mills Co., Ltd. v. State of U.P.* : [1979]118ITR326(SC) , to argue that the doctrine of promissory estoppel is attracted and on that basis, the petitioner should be denied the relief. I have already stated that the petitioner has not taken inconsistent stands and he has not misled the respondent at any time as regards the rights claimed by him as a tenant. Lastly, Mr. Krishnan cited *Nagubai v. Shamarao* : [1956]1SCR451 , to argue that the petitioner had elected to seek enforcement of his rights under the Transfer of Property Act in the suit and therefore, he has lost his rights under the Act to claim the status of a statutory tenant. This is also a fallacious contention, because the rights of the petitioner under the Act are not lost to him, merely because he contested the civil suit filed by the respondent for recovery of possession. Finally, the respondent's counsel cites *Hajee Abdullah Sail v. Mohandas and Ors.* : AIR1977 Mad218 . In that case, the legal representatives of a deceased tenant were denied protection from eviction under Section 10 of the Act, when they resisted the execution of a decree in ejectment passed against the deceased tenant on the ground that they did not constitute tenants, but were mere

trespassers in possession of the property. The denial of protection to the respondents in that case was not because the civil Court's decree was held executable in spite of the provisions of Section 10(1) of the Act, but because the respondents were held to be trespassers and not tenants of the property. As regards the submission that the conduct of the petitioner in dragging on the proceedings till the stage of second appeal and also in availing of one year's time granted by this Court and then putting forth his contentions under Section 10(1) of the Act is an unconscionable one, it must be pointed out that where the interpretation of a statute is concerned, equitable considerations cannot be taken note of. As pointed out by a Bench of this Court in *Calicut Bank Ltd. v. Radha-Lakshmi* : AIR1945 Mad65 , where the extension of a tenancy is by operation of a statute, the Court is not concerned with the lack of merit in the tenant or the hardship caused to the landlord. The ratio contained in *Sengalaneer Pilliar Temple, Keranad, by its trustee, Ambalavana Chettiar v. Manickam Chettiar* (1977)90LW 162, which has been applied by the learned District Munsif to this case, will not govern the situation, because we are not concerned with the validity of the decree that has been passed in the suit. We are only concerned with the executability of the decree. For that question, Section 10(1) of the Act provides an answer in unmistakable terms. The mandate of the Legislature has been expressed in unambiguous terms in Section 10(1) and the petitioner's application has to be dealt with in accordance with that provision. Such being the case, there cannot be a plea of estoppel by the respondent, because there cannot be estoppel, by conduct or promise, against statute. So too, the doctrine of election cannot be projected as a valid defence for the petitioner's application.

10. For the aforesaid reasons, the contentions of the petitioner have to be sustained. However, it is made clear that the decree passed against the petitioner is not a null and void one. Only its executability has been impugned by Section 10(1) of the Act. Therefore, there can only be a declaration that so long as the petitioner merits the status of tenant under the Act and so long as Section 10(1) remains on the statute book, the decree obtained by the respondent will be inexecutable. There will be a declaration to that effect in the petitioner's application. The revision will stand allowed accordingly, but there will be no order as to costs. It is also made clear that notwithstanding the decree for possession

already obtained by the respondent, it is open to him to seek eviction of the petitioner by instituting appropriate proceedings under Section 10(1) of the Act, if there are grounds for the same.

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