

**Vasudevan Vs. Ramachandran**

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**Court :** Chennai

**Decided On :** Feb-12-1980

**Reported in :** (1980)1MLJ534

**Appellant :** Vasudevan

**Respondent :** Ramachandran

**Judgement :**

**V. Balasubrahmanyam, J.**

1. A building bearing Door No. 24, Kaseem Ali Street, Triplicane, Madras, originally belonged to one Jayammal. In 1965, she settled this property jointly in favour of her daughter Prema and her son Vasudevan. Subsequently, in 1967, Prema died, leaving two children of hers as her heirs. In consequence, the building came to be jointly owned by Vasudevan and his sister's children. The building was under the occupation of one Ramachandran as a tenant. Vasudevan, however, required the building for purposes of personal occupation. He consequently applied to the Rent Controller for an order evicting the tenant from the premises under Section 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The tenant resisted the eviction proceedings on the score that one Radhakrishnan was the person to whom he was paying rent and Vasudevan was not entitled to demand or receive rent from him. The Rent Controller negatived this contention. Addressing himself to the ground put forward in the petition for eviction

of the tenant, the Rent Controller found that there was evidence to show that Vasudevan and his deceased sister's children were now living in rented premises, that they did not have any other house of their own in the city and that their requirement of the building under the tenant's occupation was for bona fide personal residence. The Rent Controller accordingly passed an order of eviction against the tenant.

2. On appeal by the tenant, the appellate authority agreed with the findings of fact recorded by the Rent Controller on the subject of bona fide requirement for personal residence on the part of the landlord. Nevertheless, the appellate authority allowed the tenant's appeal and dismissed the eviction petition, on a technical plea raised by the tenant as to the maintainability of the eviction petition. This objection which was mooted for the first time in the appeal, was to the effect that since the building was jointly owned by Vasudevan and his sister's children Vasudevan as one of the co-owners should have obtained the written consent of the children, who were the other co-owners, for filing the eviction petition, and the petition as filed, without obtaining such consent, was not entertainable.

3. The appellate authority upheld this contention relying on Section 10(8) of the Act and also on a decision rendered by Ramaprasada Rao, C.J., in *Abdul Rahman v. G. Chandrasekaran* (1978) 2 M.L.J. 234 : (1978) 1 R.C.J. 59.

4. In this revision petition, the landlord challenges the view of the appellate authority on the question of maintainability of the eviction petition. Learned counsel for the petitioner submits that Section 10(8) of the Act relied on by the appellate authority has no application to the present case.

5. I agree with this submission. The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, is a special piece of legislation. It is also a complete code in itself. This being so, the question of maintainability of the eviction petition has to be answered with reference to the relevant statutory provisions. Section 10, which deals with eviction of tenants, sets out certain grounds on which a tenant can be evicted from the building under his occupation. It further provides that the eviction proceedings shall be by way of application before the Controller. On the question as who can take eviction proceedings against the tenant, Section 10 refers simply

to 'landlord', which expression is the subject of elaborate definition under Section 2(6). The idea behind this drafting device obviously is that all those who answer to the definition under Section 2(6) would have locus standi as 'landlords' to file eviction petitions before the Rent Controller under Section 10. Section 2(6) reads as under:

'Landlord' includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant.

6. The method followed by the Legislature in drawing up this definition is the method of enumeration. On the terms of this clause, therefore, a landlord can be one or other of the persons referred to this clause. Broadly, speaking, the persons dealt with under this definition can be divided into three categories; (i) a person who owns the building as absolute owner; (ii) a person who owns it as co-owner along with another co-owner or other co-owners; and (iii) a person who acts on behalf of, or for the benefit of, the beneficial owner of the building such as an agent, trustee, guardian, etc. The first two classes of persons have full title to the property. The third category, on the other hand, comprises either those who have no title at all to the property and only possess a power to act for the owner, or those who, although possessing a legal title, cannot act for their own benefit, but can only act for the benefit of another who is the beneficial owner of the property. In the way the definition in Section 2(6) is designed, the distinction is clearly marked between a sole owner or co-owner of a building, on the one hand, and a mere agent of the owner, on the other although all of them have to be treated as landlords for the purposes of the Act, one of which is in connection with the filing of eviction petitions against tenants.

7. Section 10(8) which the appellate authority had invoked in this case is in the following terms:

Notwithstanding anything contained in this section, no person who is receiving or is entitled to receive the rent of a building merely as an agent of the landlord shall,

except with the previous written consent of the landlord, be entitled to apply for the eviction of the tenant.

As a matter of construction, it is plain enough to see that this sub-section, in express terms, applies only in the case of a person who files a petition as an agent of the landlord. The idea behind Section 10(8) seems to be that the agent of a landlord should not be allowed to apply for eviction of a tenant on the basis merely of his accredited power to collect rents from the tenant as agent of the landlord, but that he should possess an express written mandate from his principal for that specific purpose. The object of this provision is not quite apparent, and can only be guessed at. Presumably, it was intended that the tenants are not to be left to the particular idiosyncracies of a mere agent authorised by the landlord to collect rents from them. Whatever be the legislative objective, there is no doubt in my mind that Section 10(8) is severely circumscribed in its application to eviction proceedings filed by 'agents' acting on behalf of landlords of buildings; it cannot apply to any other persons such as co-owners of buildings.

8. The position in law of a co-owner of property vis-a-vis the other co-owners is too well-settled to be left in doubt. It is said that a co-owner cannot be mistaken for one who merely has title to a fractional interest or share in the property. On the contrary, every co-owner is, in a real sense, the absolute owner of the entirety of the interests in the joint property. In this sense, a co-owner is by no means the agent of the other co-owners in respect of any interest in the property. On the other hand, an agent strictly so-called, has no title over even an iota of the principal's property, he only has the power to deal with it in the name of and on behalf of his principal.

9. The legal position of a co-owner is made clear in a recent judgment of the Supreme Court reported in *Sri Ram Pasricha v. Jagannath* : [1977]1SCR395 . Although that case arose under the West Bengal Premises Tenancy Act, 1956, the enunciation of the law relating to the legal incidents of co-ownership is fairly general in its application. The relevant passage at page 2339 of the report reads as under:

We are of opinion that a co-owner is as much an owner of the entire property as any sole owner of a property is.

The same theme is elaborated in an earlier passage in the judgment in the following terms:

Jurisprudentially, it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property. The position will change only when partition takes place.

10. On the question of the applicability of the particular provision of the West Bengal Premises Tenancy Act, 1956, namely, Section 13(1)(f), which figured in that case, the Supreme Court held that as long as the person applying for eviction of the tenant was a co-owner of the property it was not necessary for him to establish that he was the only owner, and even as a co-owner he was at the same time the acknowledged landlord of the tenants.

11. On a consideration of the legal position enunciated by the Supreme Court, the reliance placed by the appellate authority on Section 10(8) of the Act to non-suit the petitioner is clearly based on a misconception of the law relating to co-owners.

12. Learned counsel for the respondent, however, relied on the decision of Ramaprasada Rao, C.J., in Abdul Rahman v. G. Chandrasekaran (1978) 2 M.L.J. 234 : (1979) 1 R.C.J. 59. That case arose out of proceedings against a tenant for eviction filed by one of two co-owners of a building. The question arose whether, in the absence of a written consent obtained from the other co-owner of the building, the petition was maintainable. The question of maintainability, no doubt, appears to have been argued in that case on the basis of Section 10(8) of the Act. No doubt, again, the learned Chief Justice ultimately concluded that an eviction petition by one of the co-owners alone was not maintainable, in the absence of the consent of the other co-owners. But I am satisfied that the learned Chief Justice did not intend to decide the case as one of construction and application of Section 10(8) of the Act. For the learned Chief Justice himself quite frankly stated: 'Whether this provision would apply to a co-owner is doubtful', even though he had

earlier observed that the provision had to be liberally construed. At the same time, he was disinclined to express any concluded opinion on the construction of the section.

13. With respect, I am unable to regard this case as a precedent for any position. All I can say is that if the learned Chief Justice had been minded to construe Section 10(8) on its terms and also in the context of the inclusive definition of the expression 'landlord' occurring in Section 2(6), he would not have come to the decision he did. I am quite clear in my own mind that on the incontrovertible position in law of co-owners, who must be distinguished from 'agents', properly so-called, Section 10(8) has absolutely no application to the petition filed in the present case for eviction of the tenant. The determination to the contrary made by the appellate authority must therefore be rejected as untenable.

14. I have already mentioned that both the Rent Controller and the Appellate Authority had rendered a finding on the merits that the petitioner did bona fide require the premises for personal occupation. On the basis of that finding, the only proper order which the Appellate Authority should have passed was to confirm the order of eviction made by the Rent Controller. Since that authority did not do so, it would be my duty in this revision to set aside that order and confirm the earlier order of eviction passed by the Rent Controller. This revision petition is accordingly allowed; but in the circumstances, there will be no order as to costs. Time for rendering vacant possession; two months.