

Ambrose Vs. Abdul Rahim

Ambrose Vs. Abdul Rahim

SooperKanoon Citation : sooperkanoon.com/806640

Court : Chennai

Decided On : Dec-05-1988

Reported in : (1989)1MLJ344

Appellant : Ambrose

Respondent : Abdul Rahim

Judgement :

ORDER

Srinivasan, J.

1. The tenant who has suffered an order of eviction before the authorities below has preferred this revision petition. Though two grounds were urged for eviction before the Rent Controller, only one ground survives now and it is the ground of requirement for own occupation. The respondent stated in the petition for eviction that he is residing at No. 102, Mettu St., Varaganeri, Tiruchi, which is a rented house. According to him, a partition has taken place in the family of the owner of that house and the person to whom it has been allotted in the partition is demanding the respondent to vacate the property. He has stated that he is in dire need of the house. In the counter filed by the petitioner herein, besides the denial of the averments in the petition for eviction, it was stated that it would be inconvenient for the respondent to go to his office from the place where the petition premises are situated. The Rent Controller accepted the evidence of the

respondent and disbelieved the evidence of the petitioner, and ordered eviction. On appeal, the respondent filed certain documents as additional evidence in order to prove that the house which he is occupying at present is a rented house, and that it belongs to somebody else. The appellate authority admitted the additional evidence and confirmed the order of eviction passed by the Rent Controller.

2. It is argued by learned Counsel for the revision petitioner that the authorities below have not considered the question of bona fides of the requirement of the respondent. Learned Counsel referred to the latest decision of the Supreme Court in *Hameedia Hardware Stores v. Mohanlal Sowcar* (1988) 2 L.W.1 and submitted that the authorities below have proceeded on the footing that it was not necessary to prove bona fides. Learned Counsel points out that in so far as Section 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act hereinafter referred to as the Act, is concerned, this Court has already taken the view that it was necessary to prove bona fides and it was only under Section 10(3)(a)(iii), this Court had taken a different view, which has now been overruled by the Supreme Court by the aforesaid decision. The contention of learned Counsel cannot be accepted on the facts of the case. The appellate authority has considered the question of bona fide requirement and come to the conclusion that the requirement of the respondent is bona fide. The following passage in the judgment of the appellate authority shows that he has considered the evidence relating to the bona fide requirement and given a finding thereon....

The evidence in this case clearly shows that the landlord does not own any other building except the petition mentioned premises which he had built with the Government loan, that he is now residing in a rented building which does not belong to him and that, he honestly requires the petition mentioned premises for his own occupation. Now the conclusion of the learned Rent Controller about the requirement of the landlord being bona fide, does not appear to be perverse or unreasonable. It is also the evidence of P.W.1 that sentimentally he wants to shift and to move to his own house particularly after his wife had undergone some surgery. It is also his evidence that as he had built this house with the Government loan he is not entitled to secure accommodation from the Accommodation Controller as per G.O. NO. MS. 980 Housing and Urban Development dated

10.11.1981. When it is shown that he is now living in a rented house, the mere fact of his not having tried to move to his house for the past 5 years cannot be a ground for concluding that his present requirement is also not bona fide. Apparently the house in which he is now living does not belong to him. There is nothing in the evidence to show that he owns any other house of his own within the Municipality of Golden Rock where the petition mentioned premises is situated or in Tiruchirapalli. It is his evidence that the house in which he is living is a rented building. There is no reason to disbelieve the same. When these things are clearly established, it can only be held that his requirement is bona fide and that there is really an element of need in his claim. When that is so clearly established the relief of eviction sought for by him has to be granted under Section 10(3)(a)(i) of the Act. Thus considered, there is no ground for setting aside the orders of the learned Rent Controller, I hold under point No. 1, that the landlord bona fide requires the premises for his own use and occupation.

3. The next contention urged by learned Counsel is that both authorities below ought not to have accepted the ipse dixit of P.W.1. According to him, the respondent has not produced any evidence apart from his own deposition in the witness box, to prove that his landlord is requesting him to vacate the premises which he is occupying. Learned Counsel contends that unless the landlord of the respondent has been examined or a notice issued by the landlord demanding possession of the premises is produced the court cannot proceed on the interested version of the respondent. I do not agree with this contention also. The question depends upon the facts of each case. This is a case in which it is oath against oath. The landlord has given evidence as P.W.1, to the effect that the owner of the premises which he is occupying is demanding possession as he requires the same. That evidence has been accepted by the Rent Controller, as he found that respondent was a truthful witness. The respondent has clearly stated as P.W.1 as follows:

Mr. Abdul Salem, the owner of the house in which I am residing is dead. His son-in-law is residing in a rented house at Thennur and he is collecting rent from him. His son-in-law is requesting him to vacate the premises as he wants to reside there. He has not sent any notice to him and has made only oral demands.

P.W.1 has denied the specific suggestions made by the petitioner herein that there was no demand by the landlord of the premises occupied by him. On the other hand, the evidence of the petitioner herein has been found by the Rent Controller to be wholly unacceptable. The petitioner did not state in his counter-statement that the landlord demanded an advance of Rs. 10,000, and an enhanced rent of Rs. 200 per month. However, he stated so in his evidence for the first time. Similarly, he stated in his evidence that the respondent owned the house situated opposite to the house which he is occupying to present. He also stated that the respondent is the owner of the house which he is occupying. Both these versions were not found in the counter-statement filed by him. This shows that the petitioner is not a person who would care for truth. A perusal of the evidence of the respondent shows that he has to travel by two buses from the place where he is residing at present to his working place, viz., District Munsif Court. He has also referred to the bus fare payable. He has stated specifically that from the petition premises, it will be possible for him to reach his working place by travelling in one bus instead of two buses. On that aspect of the matter when the petitioner was questioned, he stated that he did not know about the bus fare or the availability of buses from the petition premises.

In his evidence in chief examination, he stated that he made enquiries as to the ownership of the house in which the respondent is living at present and learned that it belonged to him. In the cross-examination, he admitted that he did not make any such enquiry. The various discrepancies and contradictions found in the evidence of the petitioner prove that the petitioner is not a man to be believed. The Rent Controller has rightly refused to accept the evidence of the petitioner and accepted the evidence of the respondent. Just because the respondent has not examined his landlord, it does not mean that his deposition cannot be accepted. The appellate authority has rightly confirmed the finding of the Rent Controller.

4. As regards the additional evidence produced before the appellate authority and admitted by him the genuineness of the documents is not challenged. Hence, there is nothing wrong in the appellate authority having admitted the additional evidence in the appeal.

5. Learned Counsel for the petitioner places reliance on the decision of a Division Bench of this Court in *Sampathu Chetti v. Bapulal* (1967) 80 L.W. 73 : (1967) 1 M.L.J. 289. He submitted that the definition of 'Bona fide' as laid down in the said decision has not been kept in mind by the authorities below. The decision of the Division Bench is not helpful to the petitioner. On the other hand, it will help the respondent. The Division Bench has clearly laid down that so long as the evidence does not justify a finding that the claim is a device and is intended to serve an oblique purpose, it will go a long way towards the claim being honest. The Division Bench observed that once it is clear that the claim is not a device, very little evidence might be required to find that the claim is an honest one.

In the present case, there is nothing on record to prove that the claim of the respondent is for an oblique purpose and a dishonest one.

6. Learned Counsel drew my attention to the decision in *Subburaman v. Shanmugam* (1984) 97 L.W. 209 (S.N.) : (1985)1 M.L.J. 77, Ratnam, J., in that case held that Section 10(3)(e) of the is common to both Section 10(3)(a)(i) and Section 10(3)(a)(iii) and therefore, it is necessary for a landlord to prove bona fide requirement. In that case, the appellate authority had decided the case on the footing that the bona fide of the landlord was irrelevant in considering an application under Section 10(3)(a)(i) of the Act. That was held to be wrong by the learned Judge. In the present case, as pointed out already, the appellate authority had not considered the bona fide to be irrelevant. On the other hand, the appellate authority had gone into the question and found on the evidence that the bona fide had been proved.

7. A Division Bench of this Court in *Sitaramayya v. Rajasekhara Reddi* (1951) 1 M.L.J. (S.N.) 40, held that a landlord residing in rented building need not prove that he is in danger of being evicted there from before he could obtain possession of his own building under the Act.

8. The above principle was recognised by the Supreme Court in *Mohini Suraj Bhan v. Vinod kumar* : AIR 1986 SC706 . In that case, eviction was sought on the ground of requirement for own occupation. It was deposed by the landlady that she was required by the owner of the premises occupied by her to vacate the

same. The Rent Controller accepted the same and passed an order of eviction. On appeal, the appellate authority reversed the order of eviction on several grounds. The order of the appellate authority was affirmed by the High Court in revision. The Supreme Court reversed the conclusion of the High Court and the appellate authority and restored the decision of the Rent Controller. When the matter was pending in the High Court an application was filed by the landlady to produce additional evidence to show that her landlord had filed a petition for eviction and served summons on her. That application for filing additional evidence was rejected by the High Court as irrelevant. The Supreme Court held that the High Court was in error in dismissing the application for additional evidence. The Supreme Court pointed out that the additional evidence sought to be produced would corroborate the version given by the landlady and it was therefore relevant evidence. Even without the additional evidence on record the Supreme Court had decided in favour of the landlady and upheld the order of the Rent Controller. That shows that it is not necessary in every case to prove that the landlord is in danger of being evicted by his landlord. The principle laid down by the Division Bench in *Sitaraman v. Rajasekhar Reddi* (1951)1 M.L.J. 40, has thus been upheld by the Supreme Court, though there is no reference to the decision of the Division Bench.

9. In *Rathool Bai v. Vaidyanatha* : (1966)2MLJ412 Venkatadri, J., held that apart from cases of gross unreasonableness on the part of a landlord, if it is established that there is a genuine present need of the house of the landlord's own occupation the Court cannot presume mala fides, because of factors such as the landlord's having other houses or his or her being a single soul or that he or she is not permanently living in the city or town concerned. It was also held that the fact that the landlord is living in a rented house would be enough to satisfy the Court about the bona fides of the requirement. Of course, it has not been held in that case, that merely because a landlord is living in a rented premises, his requirement should be accepted to be bona fide. All the relevant factors have to be taken into account as set out in that case.

10. In the present case, the authorities below have considered the entire evidence on record and come to the conclusion that the bona fide of the requirement of the respondent has been made out. I do not find any reason to interfere with the

concurrent finding. Hence, the revision fails and is dismissed with costs.

11. Learned Counsel for the petitioner prays for time to vacate the premises. Learned Counsel for the respondent is agreeable for grant of three months time on condition of the petitioner filing an affidavit of undertaking and paying the arrears. The petitioner is granted time till 5-3-1989 to vacate the premises on condition that he files an affidavit in this Court on or before 19-12-1988 undertaking to vacate the premises on or before 5-3-1989 and pays the entire arrears of rent on or before 31-12-1988. If any of the conditions is not complied with, the petitioner will not have the benefit of grant of time and it will be open to the respondent to execute the order of eviction immediately.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com