

Abdul Gaffar Vs. N.K. Sidique

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Court : Chennai

Decided On : Jan-05-1982

Reported in : AIR1983Mad98

Judge : T.N. Singaravelu, J.

Acts : Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 - Sections 10(2)

Appeal No. : C.R.P. No. 335 of 1981

Appellant : Abdul Gaffar

Respondent : N.K. Sidique

Advocate for Def. : R. Balasubramaniam, Adv.

Advocate for Pet/Ap. : A. Veerappan, Adv.

Judgement :

ORDER

1. The tenant is the revision petitioner. The respondent-landlord filed the petition for eviction on the ground of wilful default in payment of rent and requirement for own occupation. The tenant denied both the grounds contending that the landlord is not the owner of the premises and that the building belongs to the Tamil Nadu State Housing Board. The Rent controller found that the landlord was not the owner and that, in view of the agreement of sale between the parties, the landlord

cannot maintain the eviction petition. On appeal by the landlord, the Appellate Authority reversed the findings of the Rent Controller and ordered eviction and hence the revision by the tenant.

2. It is common ground that the building in question belongs to the Tamil Nadu State Housing Board and it was allotted to the respondent-landlord in the year 1960. Thereafter, the landlord appears to have entered into an agreement of sale with the tenant's wife, who undertook to pay the instalments due to the Housing Board and also the property tax. The landlord also appears to have received some amount from the woman in consideration of the agreement of sale Ex. P-6 is the agreement of sale dated 1-6-1973 entered into between P. W. 1 and Shamshed Begum wife of R. W. 1 the tenant. Now disputes have arisen between the landlord and the intending purchaser, and the former had filed the petition for eviction on the ground of wilful default in payment of rent and requirement for own occupation. These facts are not in dispute.

3. Learned counsel for the petitioner-tenant argued that by virtue of the agreement of sale the landlord has ceased to be the owner of the premises and therefore, he cannot file the petition for eviction. The Appellate Authority rightly rejected this plea and held that the petitioner tenant was inducted into possession only by virtue of a tenancy agreement and that the subsequent agreement of sale is immaterial for the purpose of this case. It cannot be disputed that the Tamil Nadu Housing Board continues to be the owner of the building and the landlord has to clear the instalments due to the Housing Board before he becomes the full owner.

In other words, full title to the property does not pass to the landlord unless he pays the entire amount due to the Housing Board as per the contract. Therefore, the landlord who was put in possession of the building cannot sell the same to a third party without the consent or the concurrence of the Tamil Nadu Housing Board, which is the paramount owner. Therefore, the agreement of sale in favour of the wife of the tenant is yet to be enforced in accordance with law and a mere agreement will not entitle the intending purchaser to become the owner of the property, especially when the property itself is mortgaged to the Tamil Nadu Housing Board for due payment of instalments. The fact that the petitioner tenant

has paid some instalments on behalf of the landlord will not clothe him with the rights of ownership of the building as against the allottee-landlord. In any event, that is a matter between the parties to the agreement of sale who have to work out their rights in a civil suit. The allottee landlord is certainly entitled to collect rent from the tenant who entered possession of the property by virtue of a tenancy agreement and not under the agreement of sale.

4. Ex. P-1 is the letter written by R. W. 1 to P. W. 1 wherein the tenant who was let into possession for a fixed period of six months had agreed to vacate the premises within six months. In Ex. P-2 also the tenant has categorically admitted the tenancy under P. W. 1. In the face of this documentary evidence it is futile for the tenant to contend that there is no relationship of landlord and tenant between P. W. 1 and himself. The tenant is certainly not concerned with the disputes between his landlord and the paramount title holder, namely, the Tamil Nadu Housing Board. Admittedly, no rents have been paid by the tenant after the agreement of sale since the tenant's wife appears to have paid some lump sum to the respondent landlord herein by virtue of the agreement of sale.

But, as rightly pointed out by the Appellate Authority, this is a matter to be decided in the civil court and it is open to the third party, namely, wife of R. W. 1 to sue the landlord for breach of agreement or for recovery of the amount or even for specific performance, R. W. 1's wife is not a party to the petition and her cause of action is entirely separate and distinct and it has nothing to do with the present rent control petition. In fact, she is a third party and the tenant is estopped from setting up title in a third party. Of course, it may be a hard case where the landlord has received lump sum payment from R. W. 1's wife, but that does not put an end to the tenancy between P. W. 1 and R. W. 1. The tenant cannot at all rely on the agreement of sale in favour of his wife and deny the title of the landlord under whom he entered possession as a tenant. No title has passed on to the purchaser by virtue of the agreement of sale. Therefore, the finding of the Appellate Authority that the petition by the landlord is maintainable cannot be assailed. Admittedly, the tenant has not paid the rent regularly and he has even denied the title of the landlord. Therefore, this conduct was rightly construed by the Appellate Authority as wilful.

5. P. W. 1 has proved that he is residing in a rented building and that he does not own any building in the city of Madras other than the petition mentioned premises. Therefore, he is entitled to evict the tenant despite the agreement of sale between him and the tenant's wife.

6. The result is, the order of eviction passed by the Appellate Authority is upheld had and this civil revision petition is dismissed. No costs. Time to vacate three (3) months from today.

7. Petition dismissed.

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