

Koppaiyan Vs. K. Ramaraj

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Court : Chennai

Decided On : Apr-17-2004

Reported in : (2004)3MLJ267

Judge : M. Thanikachalam, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act - Sections 25

Appeal No. : C.R.P. No. 3601 of 2001

Appellant : Koppaiyan

Respondent : K. Ramaraj

Advocate for Def. : M. Kalyanasundaram, Senior Counsel for ;N. Thirupurasundari, Adv.

Advocate for Pet/Ap. : D. Rajagopal, Adv.

Disposition : Revision allowed

Judgement :

ORDER

M. Thanikachalam, J.

1. The tenant, who suffered an eviction order in the hands of the courts below concurrently, is the revision petitioner.

2. The respondent herein as landlord had filed a petition before the Rent Controller in R.C.O.P. No. 12/1997, for the eviction of the tenant/revision petitioner, on the grounds that the tenant had committed willful default in payment of rents, from June 1981 to May 1996, totaling a sum of Rs. 11,700/-, that he had willfully denied the title of the petitioner, that the premises is required for demolition and reconstruction, to have personal occupation.

3. The respondent in R.C.O.P.12/1997 viz., the tenant/revision petitioner opposed the application contending, that he is not the tenant, in respect of T.S. No. 2317, that he is the tenant only in respect of the ground alone in T.S. No. 2316/2 and not the superstructure and in this view, the Rent Controller has no jurisdiction to entertain the application for eviction, that he had not denied the title of the landlord willfully at any point of time and that in view of the previous litigation between the parties, the rent control application is not maintainable.

4. The learned Rent Controller, examining the power agent of the landlord as P.W.1 and examining the tenant as R.W.1, had exhibited 10 documents, on behalf of the landlord and 71 documents on behalf of the tenant/revision petitioner.

4-A. Upon considering the above materials, the Rent Controller came to the conclusion, that the petitioner (landlord) is the owner of T.S. No. 2316/2, that the tenant had failed to establish that he had constructed the superstructure over the said survey number, that the tenant had not paid the rent from the year 1985, taking advantage of the prolonged litigation between the parties, which should amount to willful default, that he had denied the title of the landlord without any bona fide. Thus concluding, eviction was ordered on 2.7.1999 by the Rent Controller, which was put to test before the appellate authority in R.C.A. No. 1/2000.

4-B. The appellate authority commenting unnecessarily and without any justification, the conduct of the tenant/revision petitioner, forgetting his duty to decide the case on merits, on the basis of the pleadings, came to the conclusion that the tenant had committed willful default and that he denied the title of the landlord also without any bona fide. On the basis of this finding alone, as if the judicial process intended for genuine cause, has been misused by the tenant,

confirmed the order of eviction, thereby giving cause of action for the tenant, to come this Court, as revision petitioner.

5. Heard the learned counsel for the petitioner, Mr. D. Rajagopal and the learned Senior Counsel Mr. M. Kalyanasundaram, for the respondent.

6. The learned counsel for the revision petitioner submits, that the revision petitioner is the tenant only in respect of the vacant site viz., T.S. No. 2316/2 and the building does not belong to the respondent, who claims as the landlord and therefore, the Rent Controller has no jurisdiction to decide the case. It is the further submission of the learned counsel for the revision petitioner, that T.S. No. 2317 is a road poramboke, in which the respondent is not entitled to claim any interest and the claim of the revision petitioner in that poramboke, on the basis of the long possession, will not amount to denial of title, since there is no landlord and tenancy relationship between them, so far as this survey number is concerned. It is further pointed out by the learned counsel for the revision petitioner, that both the courts below without going into the real dispute viz., whether the building belongs to the landlord, whether the Rent Controller has got jurisdiction to try the case and whether the tenancy is in respect of the vacant site or the building thereon, have rendered a perverse finding, that too against the materials available on record and therefore, though it is a concurrent finding, it is incumbent upon this Court, to set aside the same, because of the perverse findings, prima facie available in the judgments of the courts below.

7. The learned counsel for the respondent, opposing the above contention, submits that T.S. No. 2317 should be treated as an appurtenant to T.S. No. 2316/2, which was the subject matter of the tenancy between the parties and in this view, the denial of the title to Survey No. 2317 should be deemed as willful denial or denial without bonafide, thereby warranting eviction. The learned counsel for the respondent further submits that the landlord took the premises with the building, in the execution proceedings and the same was leased out to the tenant, on his agreeing to pay a monthly rent of Rs. 65/- and therefore, the question of jurisdiction does not arise for consideration, since the tenancy is also admitted by the tenant himself.

8. To appreciate the rival contentions of the parties, we have to see the description of the property, how the petitioner derived the title to the same and the effect of admitted previous proceedings between the parties, for a decade or so.

9. The subject matter of the eviction is in T.S. No. 2316/2 and its appurtenance in T.S. No. 2317, contiguous to the building, Sunnambukkalavai Street, Gandhiji Road, Tanjore Town. In paragraph-2 of the petition, it is said that the tenancy is in respect of the building in T.S. No. 2316/2 and its appurtenance, where we do not find T.S. No. 2317. From the description of the property also, it is not clear, whether the building(s) claimed by the petitioner/landlord is (are) in T.S. No. 2316/2 or in 2317 or in both. If in both, what is the portion available in T.S. No. 2316/2, and what is the portion available in T.S. No. 2317. In the notice issued before the filing of the petition also, T.S. No. 2317 does not find place.

10. In the delivery receipt also, TS.2317 is absent. The petitioner has not made clear how he claims title in TS.2317, in order to say that he had leased out TS.2317 also to the tenant, fixing the rent. Under these circumstances, when the petitioner himself had failed to establish a case in respect of T.S.2317, the admitted position being, it is a road poramboke, the denial of title in respect of this survey number, could not be construed as malafide or the tenant had denied the title wantonly. In this context, we have to see, how the petitioner traced his title.

11. It seems, in the execution proceedings, in O.S. No. 173/68, the property was purchased and taken delivery by the petitioner. Ex.A7 delivery receipt says, as observed by the courts below also, that Survey Number regarding the delivered property, is T.S. No. 2316, including a thatched shed. In this document, there is no reference regarding Survey No. 2317, either as an appurtenance or otherwise. Except Ex.A7, no other document of title is projected to claim title over the demised premises, which includes, as per the description in petition, T.S. No. 2317 also. The tenant, admitting, that the petitioner is the owner of T.S. No. 2316/2, denied the title only in respect of T.S. No. 2317, which is a road poramboke, and the same cannot be termed as a denial of title coming within the meaning of Section 10(2)(vii) of the Act, warranting eviction, holding that the claim was not bona fide. Unfortunately, both the courts below, have not adverted this aspect and

proceeded, as if the tenancy is only in respect of T.S. No. 2316/2, forgetting the description of the property, as well as the defence. The next question which survives to decide is, whether the tenancy in respect of Survey No. 2316/2 includes the building also, in order to attract the jurisdiction of the Rent Controller.

12. The learned counsel for the landlord submits, that the petitioner took delivery, including a thatched shed and that property alone, was leased out to the tenant and in this view, it should be construed, that the lease is not only in respect of the site, but also in respect of the building, thereby attracting the jurisdiction of the Rent Controller. Both the courts below, have accepted this case, taking into consideration the mention of 'Koorai', 'Kottagai', without going into the question, who had built up the said building. If the building belonged to the judgment debtor in O.S. No. 173/68, then taking possession of that building also would entitle this petitioner, to claim title over that building.

13. Admittedly, as proved by the documents, the revision petitioner and his mother in law, have been in occupation of the premises in T.S.Nos.2316/2 and 2317, which are in contiguous, having thatched shed(s) or building(s) in both the survey numbers. As proved by the property register, the demised premises stands in the name of the revision petitioner, thereby proving he alone must be the owner of the superstructure. It is not the case of the petitioner/landlord, that though the respondent had constructed the superstructure, in pursuance of the delivery, he attorned this petitioner as his landlord, including the building. The evidence would show, in its proper reading, that he had accepted this petitioner as his landlord, only in respect of Survey No. 2316/2 and nowhere he admitted, the petitioner as his landlord in respect of the building. The fact that the revision petitioner admitted, that he is the tenant of the petition mentioned property, does not automatically would show, that the petitioner is the owner of the building.

14. Unfortunately, the courts below, without considering the previous suit between the parties and the property tax standing in the name of the alleged tenant, had took a contrary view against the evidence available on record, only taking into consideration the delivery receipt, which alone will not clinchingly prove, that the tenancy is in respect of the building also. As seen from the oral evidence of P.W.1,

it is the case of the petitioner, once, that there was a written lease. But the same is suppressed, probably to avoid the nature of tenancy, as rightly submitted on behalf of the revision petitioner. If the document is produced that will throw much light upon the issue, indicating what is the nature of the tenancy, such as whether the tenancy is in respect of the site alone or it includes the building. The suppression of the material evidence, as well as the ignorance exhibited by P.W.1 regarding the origin of the tenancy, payment of rent, etc. amply prove the fact, that the respondent herein, who is the petitioner in R.C.O.P. failed to prove that the lease is in respect of the building also. In this view of the matter, it should be held, that the Rent Controller has no jurisdiction to order eviction, when the tenancy is in respect of the ground in T.S.2316/2.

15. This revision petitioner, and his mother in law had filed a suit in O.S. No. 135/85 against this respondent for permanent injunction, in respect of the property which is the subject matter of R.C.O.P. In that suit, it is specifically alleged, that T.S. No. 2316 and 2317 are adjacent properties and in both the survey numbers, constructions are put up, and enjoyed in common. He had further stated that the defendant has no right in T.S. No. 2317. It is the further contention of the plaintiffs, in the suit that they are the tenants in respect of the ground in Survey No. 2316 and the rent payable is 65/- and the same was paid periodically. Thus, it is seen, in the previous suit, the revision petitioner had not denied the title of Ramaraj, as far as T.S. No. 2316 is concerned, whether it is in sub division 2 or 5 as the case may be. After contest, the suit was dismissed. In the appeal, setting aside the decree and judgment of the court in O.S. No. 135/95, a decree was granted in favour of the plaintiffs in that suit, restraining this alleged landlord not to interfere with their possession, in respect of Survey No. 2316/5, till they are legally evicted from the premises. As far as Survey No. 2317 is concerned, a permanent injunction was granted. That decree and judgment were challenged by Ramaraj in S.A. No. 838/96 before this Court. This Court at the stage of admission itself, dismissed the second appeal with certain observation, thereby confirming the decree and judgment of the first appellate court. In view of the decree passed by the first appellate Court in A.S. No. 152/93, generally, the eviction petition filed by the landlord, in respect of Survey No. 2317 is not at all maintainable, and if at all, they could maintain a petition in respect of 2316/2, which is stated to be 2316/5 in the

previous suit. This Court while dismissing the second appeal, had observed:

'I am of the view that interest of justice will be better served by clarifying the above situation that any observations in the judgment of the first appellate Court shall not stand in any way of the defendant vindicating his rights for recovery of possession or other remedy in a properly framed suit.'

Therefore, the respondent in this revision ought to have filed a well framed suit, as observed by this Court, for the recovery of possession. Instead of doing so, he had filed R.C.O.P. as if the building was also leased out to the revision petitioner, which cannot be so, in view of the established position, that the building stands in the name of the revision petitioner, even before the delivery. Even ignoring the previous decision, if a case is made out by the landlord, that he is the owner of the building also and the tenant agreed to pay the rent or paid the rent, then RCOP could be maintained and there is no problem. Dispute had arisen between the parties from 1985 and admittedly from the said date onwards, no rent has been paid for the building. For the past so many years, the alleged landlord, who claimed that he is the owner of the building also, failed to take any eviction proceedings, on the ground of willful default and he had also failed to establish that the rent was fixed for the building also. Therefore, in my considered opinion, the landlord, has misconceived his remedy, by way of filing an RCOP., instead of filing a regular suit, for the recovery of possession, if permissible under law.

16. Unfortunately, both the courts below have not properly considered the terms of the tenancy, whether it includes the building or not; whether the respondent herein is the owner of T.S. No. 2317 or not. Without considering these facts, concluding as if T.S. No. 2317 also belongs to the petitioner and under the presumption that the tenancy is in respect of the building, thereby assuming jurisdiction, passed the eviction order, which are not legally sound, based on materials, whereas it appears, they are against the materials available on record. In this view of the matter, though there is a concurrent finding, the same is liable to be set aside. If at all, the petitioner has to file a suit, as observed by this Court in S.A. No. 838/96 for the recovery of possession and it is not possible to order eviction in the Rent Control proceedings. For the foregoing reasons, the revision petition deserves,

acceptance and the same is to be allowed.

In the result, the revision is allowed setting aside the order of the courts below and dismissing the R.C.O.P. The parties are directed to bear their respective costs throughout.

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