

A.G. Devadoss Vs. S. Jayabal

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Court : Chennai

Decided On : Apr-29-2004

Reported in : (2004)3MLJ171

Judge : S. Sardar Zackria Hussain, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act 1960; Tamil Nadu Buildings (Lease and Rent Control) (Amendment) Act, 1973 - Sections 25; Transfer of Property Act - Sections 53A; Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 10(2)

Appeal No. : Civil Revision Petition (N.P.D.) No. 163 of 2000

Appellant : A.G. Devadoss

Respondent : S. Jayabal

Advocate for Def. : V.K. Vijayaraghavan, Adv.

Advocate for Pet/Ap. : V. Sitharanjandas, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S. Sardar Zackria Hussain, J.

1. The landlord, who lost his case before the Rent Control Appellate Authority, is the revision petitioner in this Civil Revision Petition. The Civil Revision Petition is directed against the judgment of the Rent Control Appellate Authority reversing the order of eviction of the tenant from the petition non-residential premises made by the Rent Controller on the ground of wilful default in payment of rent and for denial of title without bona fide.

2. The revision petitioner/landlord as petitioner filed the Rent Control Original Petition stating that he is the owner of the petition shop in which the respondent is a tenant on a monthly rent of Rs.175/-. It is further stated that from February 1989 to May 1993, the respondent committed wilful default in payment of rent. To the notice caused by the petitioner, the respondent replied that he is in possession of the petition shop as owner in part performance of the alleged agreement of sale and to which, the petitioner replied that the respondent is only a tenant under him. It is stated that no possession was handed over to the respondent pursuant to the alleged agreement of sale. To the notice sent again on 19.12.1990, no reply was sent by the respondent though the notice was received by him. It is further stated that the respondent has denied title of the petitioner as without bona fide. Hence, the petitioner sought for eviction of the respondent / tenant on the grounds of wilful default in payment of rent and for denial of title without bona fide.

3. The Rent Control Original Petition was resisted by the tenant as respondent by filing counter wherein it is stated that he is in possession of the petition shop only in his capacity as an agreement holder pursuant to agreement of sale dated 12.9.1988 entered into between him and the petitioner / landlord and that the petitioner agreed to sell the property to the respondent for 1-1/2 lakhs and advance of Rs. 50,000/- was paid to the petitioner at Madurai on 12.9.1988. In fact, the respondent also purchased general stamps for Rs.9,000/- on 20.9.1988 and drafted the Sale Deed to be executed by the landlord. It is further stated that the petitioner never informed that his sister Chellammal and her son filed O.S. No. 958 of 1988 and obtained ex parte order of interim injunction in I.A. 1478 of 1988 against the him from alienating the petition shop and as such, the petitioner cannot perform his part of the contract in executing the Sale Deed. According to the respondent, the petitioner informed that he could execute the Sale Deed only after

disposal of the said suit. It is stated that he also returned the general stamps in which the Sale Deed was drafted and got back Rs. 8100/-. It is further stated that the respondent is no longer a tenant and he ceased to be tenant pursuant to the agreement of sale entered into between him and the petitioner. The respondent caused lawyer's notice dated 07.8.1989 calling upon the petitioner to execute the Sale Deed as per the agreement for which the petitioner replied on 19.8.1989 and also sent a rejoinder. According to the respondent, the tenancy came to an end with the execution of the agreement of sale entered into between him and the petitioner and from the date of agreement, the respondent is in possession as a purchaser in part performance of sale agreement and not as a tenant. On these grounds, the respondent / tenant sought for dismissal of the petition.

4. Before the Rent Controller, the petitioner examined himself as P.W.1 while the respondent / tenant examined himself as R.W.1. Exs. A.1 and A.4 were marked as documents on the side of the petitioner / landlord while Exs. B.1 to B.24 were marked on the side of the respondent / tenant. The Rent Controller, after considering the evidence adduced on either side and the Exhibits marked, found that the respondent is in possession of the petition premises only as a tenant and not as purchaser in part performance of the agreement of sale entered into between the petitioner and the respondent and in that view, found that the respondent committed default in payment of rent wilfully, i.e., from February 1989 to June 1993 and that denial of title to the petitioner is without bona fide and accordingly, ordered eviction on both the said grounds. The order was challenged in the appeal by the tenant and the Rent Control Appellate Authority accepting the case put forth by the tenant that he is in possession of the petition shop only pursuant to the agreement of sale between him and the petitioner and as such, the denial of title for the petitioner to the petition shop is bona fide and so allowed the appeal setting aside the order of eviction made by the Rent Controller. The petitioner / landlord as revision petitioner has preferred this revision challenging the said judgment passed by the Rent Control Appellate Authority.

5. Heard the learned counsel appearing for the revision petitioner / landlord as well as respondent / tenant.

6. It is admitted that the revision petitioner is the owner of the petition shop and that the respondent became tenant under him in respect of the petition premises. But according to the respondent, he is not in possession of the petition premises as tenant after the agreement of sale Ex. B.1 dated 12.9.1988 entered into between him and the petitioner and that he is in possession as a purchaser as part performance of the agreement of sale. The execution of the agreement of sale Ex.B.1 is admitted.

7. The learned counsel for the revision petitioner contended that inasmuch as the respondent is in occupation of the petition shop only as a tenant and continued as such even after the agreement of sale Ex. B.1 entered into between them in view of the fact that the possession was never handed over to him pursuant to the agreement of sale. The learned counsel relied on the decision of the Supreme Court in RAKAPALLI RAJA RAMA GOPALA RAO vs . NARAGANI GOVINDA SEHARARAO AND ANOTHER : AIR 1989 SC2185 and the same is not applicable to the facts of the present case. In the case cited above, there was an oral agreement between the landlord and the tenant to purchase the property. In that case, Their Lordships have held that the tenant did not pay or tender the rent not because he had no desire to pay the rent to the respondents but because he bonafide believed that he was entitled to purchase the property under an oral agreement with the vendor for which he had also paid earnest amount. The matter was remanded back to the Rent Controller to give the benefit of Clause 1 of Sub-section 2 of Section 10 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960.

8. Learned counsel for the revision petitioner also relied on the decision of this Court in B. KUPPULAL vs. D. SAGUNTHALA AND ANOTHER wherein it has been held as follows:'Mere agreement of sale will not terminate the landlord - tenant relationship and the liability of the tenant to continue to pay the rent. The tenant will have to continue to pay the rent, unless there are specific recitals to the contrary in the agreement of sale'.

9. Reliance was placed on by the learned counsel on the decision of this Court in VELLAIYAN vs. MOOKKAMMAL 1996 I L.W. 46, in which it was held as follows:

'An agreement for sale does not create any interest in land is clear from the provisions of S. 54 of the Transfer of Property Act. The plaintiff has no case that pursuant to the agreement, possession passed to the defendant or there was a change in the nature of his possession. Plaintiff must have a case that pursuant to the agreement for sale, defendant was put in possession or the nature of his possession changed in part performance of the contract. Unless that is pleaded and proved, there cannot be any question of determination of earlier possession or character of earlier possession.'

10. Learned counsel relied on the decision in S.DORAISAMI NADAR vs. NAGAMMAL 1993 L.W. 855 wherein this Court has held as follows:

'By merely entering into an agreement of sale the tenant does not acquire any right in the property. If possession is traceable to the agreement of sale, then such possession can be sustained on the basis of the principle of part performance under S. 53-A.'

11. A decision of this Court in R.RANGANAYAKI AMMAL vs. NAMAGIRI VENKATARAMAN 1994 2 L.W. 148 was also relied on by the learned counsel wherein it has been held as follows:

'From the observations of the Supreme Court in A.I.R. 1982 S.C. 1989, it is clear that the mere retention of earlier possession as tenant would not be sufficient, but that there has to be some independent material or evidence to establish that the retention of possession was as a result a part performance of the agreement to sell. In this case, there is absolutely no material whatever to show that the nature of the possession changed its character after 28.8.1969 or even after 05.11.1969.'

12. Learned counsel for the revision petitioner relied on the decision of this Court in JESSIE THAVAMANI vs. LIAKATH BASHA 1996 T.L.N.J. 55 wherein this Court has held that agreement itself should be in clear terms and specify that landlord and tenant relationship terminated and no future liability on part of tenant to pay rent.

13. Learned counsel also relied on the decision of this Court in ZAIBUNNISSA BI AND ANOTHER vs. RAM KISHORE AND ANOTHER 2001 1 L.W. 506, it has been held that as per Section 53-A of the Transfer of Property Act, possession of property in the capacity of tenant is not a case of possession pursuant to the agreement of sale and Section 53-A of the Transfer of Property Act cannot be invoked.

14. Learned counsel for the respondent / tenant argued that in view of the agreement of sale entered into between the petitioner and the respondent under Ex. B.1 dated 12.9.1988, from the date of the agreement, possession of the petition shop by the respondent is not as a tenant and it is only as a purchaser in part performance of the agreement of sale. The agreement of sale entered into between the petitioner and the respondent is Ex.B.1 and it is dated 12.9.1988. As per the agreement, the petitioner agreed to convey the property to the respondent for a sum of Rs. 1,50,000/- and also received the advance of Rs.50,000/- on that date and no time limit was fixed to complete the contract. According to the learned counsel for the respondent that nowhere it is mentioned in the said agreement that the respondent is in possession of the petition shop as a tenant and from the date of the said agreement, he will be in possession by way of part performance of the said agreement. The nature of possession as a tenant by the respondent has not been challenged. Therefore, it cannot be said that the possession of the respondent in the petition shop is as a result of part performance to the agreement of sale and it is also not specified in clear terms in the agreement Ex.B.1 that from then the relationship between the petitioner and the respondent has been terminated and that the respondent is under no obligation to pay rent.

15. In the notice Ex.B.11 dated 07.8.1989, the respondent claimed that he continues to be in possession of the petition shop as owner in part performance of the agreement of sale under Ex.B.1. In the reply Ex.B.12 dated 19.8.1989, such case of the respondent was repudiated stating that the respondent continued to be in possession only as a tenant and that he also paid rent up to January 1989 and obtained receipts. In the reply notice Ex. A.2, the petitioner has stated that the respondent has not paid the rent from February 1989. In fact, it appears that the respondent as per notice Ex. B.23 has denied title to the petitioner stating that

superstructure was put up by him with thatched roof. In Ex.A.2, the petitioner has stated that the possession of the respondent in the petition shop is only as a tenant. In the notice Ex. A.2 and in the Rent Control Original Petition, it is clearly stated that the tenant has committed default wilfully from February 1989 to June 1993 to the tune of Rs.9,275/- at the rate of Rs. 175/- per month and as such, there have been callousness on the part of the respondent in not paying the rent for the above said months. Such default has to be construed as wilful.

16. The respondent also denied title in respect of the petition premises to the petitioner and it is without bonafide. It is clear that by virtue of agreement of sale, Ex. B.1, the respondent has not become owner and the contract entered into between him and the revision petitioner as such has not been concluded and that the said agreement has not been enforced. Despite such fact, the Rent Control Appellate Authority has found that the respondent is in possession of the petition premises as owner pursuant to agreement of sale Ex.B.1 as part performance of the contract, which is erroneous. Since the Rent Control Appellate Authority has not recorded proper finding, the same has to be interfered with.

17. In the result, the Civil Revision Petition is allowed with cost setting aside the judgment passed by the Rent Control Appellate Authority and the order of eviction passed by the Rent Controller is restored.