

S. Balakrishnan Vs. Viswanathan and ors.

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Court : Chennai

Decided On : Feb-16-1996

Reported in : (1996)2MLJ541

Appellant : S. Balakrishnan

Respondent : Viswanathan and ors.

Judgement :

ORDER

Srinivasan, J.

1. The tenant who is aggrieved by concurrent orders of the Rent Controller and the Appellate Authority directing eviction has filed this revision petition. The only contention urged before me by learned senior counsel for the petitioner-tenant is that the application for eviction is not maintainable inasmuch as it relates to two different tenancies filed by two landlords. According to the learned Counsel, the landlords must have filed two separate petitions as they are owners of two different portions of the same building in view of the fact that they had notionally divided the same and let out the portion belonging to each of them separately to the tenant.

2. It is not in dispute that the building belonged originally to the mother of the first petitioner in the R.C.O.P. by name Seethalakshmi Ammal. After her death, the property devolved on the first petitioner in the R.C.O.P. and his brother the father

of the second petitioner. After the death of the second petitioner's father, he became a joint owner of the property. Admittedly, after the death of Seethalakshmi Ammal, the two brothers were receiving rents separately with respect to separate portions of the same building notionally. It was said that the northern portion belonged to one brother and the southern portion belonged to the other. But the property was not actually divided. Even at the time of the petition for eviction and even now, the property continues to be only one building having one door number. It is not in dispute that the tenant is running a hotel business in the entire premises.

3. Learned senior counsel placed reliance on the fact that in 1983, the two owners let out the two portions to the tenant. P.W.1., the second petitioner in the R.C.O.P. has stated in the chief examination as follows:

In the month of February 1983, the two petitioners let out the premises for a rent of Rs. 175 for each of them. Two documents were written. A sum of Rs. 500 to be paid by each of them by way of advance. The property was not divided. As the tenant requested separate deeds, two different documents were written. The lease was for a period of five years till 1988. Again, in 1988, the property was leased out as a single unit for a total rent of Rs. 1,500. The tenant was paying rent till 1989. In 1989, the rent was increased. From January, 1990. rent was increased to Rs. 2,000. It was let out jointly at that time. He paid rent till February, 1990. From March, 1990, the tenant did not pay rent

In the cross-examination, P.W.1 has stated as follows:

On 12.1.1983, the father of P.W.1, and the tenant entered into an agreement. That related to the northern portion. As regards southern portion, the tenant entered into an agreement with Venkataramana Aiyar on 12.1.1983. That was for a period of five years. Between 1983 and 1988, P.W. 1's father died. There was no agreement between 1983 and 1993. There was not even an oral agreement. There was no payment of Rs. 10,000 by the tenant to each of the landlords as alleged by him. It is not correct to say that the rent was Rs. 1,000 in so far as P.W.1' is concerned. The total rent was only Rs. 1,500 out of which Rs. 750 was paid to P.W.1. Later, the rent was increased to Rs. 2,000 from Rs. 1,500. In that, a

sum of Rs. 1,000 belonged to P.W.1. There was no written agreement in 1988. It was only oral agreement.... In January, 1990, the rent was increased jointly to Rs. 2,000. A receipt has been issued thereafter. It is not correct to say that no receipt was issued.

4. R.W.1 the tenant has stated in his cross-examination as follows:

The petition property belongs to both the petitioners in the R.C.O.P. It bears only one door number. There is no dividing wall in the property. Only if the property of both the petitioners is taken up together, the business can be carried on. It was previously owned by Seethalakshmi Ammal. As per the document executed by her, it belongs to both the petitioners. On the same conditions, lease was obtained from the two petitioners separately. Each petitioner is entitled to one half of the total rent. From June, 1988, the rent was Rs. 1,000. No receipt was issued from June, 1988. An agreement was entered from January, 1988 till December, 1988 by payment of Rs. 10,000 by way of advance to each of them. Nobody else excepting the petitioners and the tenant knew about the agreement.

5. There is no other evidence on record of worthy of consideration with regard to this question. The Rent Controller discussed this aspect of the matter in paragraph 6 of his order and held that the petition is maintainable. The Rent Controller placed reliance on the fact that there is no dividing wall in the property and that admittedly, there was no division among the landlords and allotment of separate portions. The Rent Controller held that just because one half of the portion of the rent is being paid separately to each of the petitioners, it cannot be held that there were two tenancies and two different petitions should be filed.

6. That finding was accepted by the Appellate Authority who discussed the matter in paragraph 12 of his judgment. His reasoning is almost the same as that of the Rent Controller.

7. I am unable to accept the contention urged by the learned senior counsel for the petitioner that there was a division of the property after the death of Seethalakshmi Ammal, and once a division was effected, there cannot be a merger of the two portions among the two co-owners. The evidence only makes out that after the

death of Seethalakshmi Ammal, the two brothers were receiving the rent in two halves for the purpose of convenience. In fact, in the original petition, it is stated by the petitioners that though the property was not subdivided, separate lease was obtained for convenience as insisted by the respondent (tenant). Admittedly, the entire building bears only one door number and the business of running the hotel can be carried on only if the entire building is under tenancy. There is no evidence whatever to show that a division as such was effected and allotment of two different portions was made to the two brothers or their successors. It is because the two co-owners found it convenient to receive the rent in two halves from the tenant, it would not mean that there was a division. Hence, the finding of the courts below that the property is one, and the subject matter of the lease is one and the tenancy is also one cannot be disturbed. At any rate, sitting in revision, I do not find any justification whatever to interface with the said finding.

8. Learned Counsel placed reliance on a judgment of a single judge of this Court in *T.N. Annamalai Achi v. Saminatha Pathar* 93 L. W. 404. In that case, there were three different premises and they were let out for different premises and they were let out for different purposes, one being residential and another being non-residential. In such circumstances, the Court held that a single petition for evicting the tenant from the three premises cannot be countenanced. The principle laid down in that judgment will not apply to this case.

9. My attention is drawn to the judgment of the Supreme Court in *Goplakrishna Chetty v. Ganeshan* (1976)1 S.C.J. 358. A contention was urged before the Supreme Court that a single petition with regard to two different tenancies, although in the same premises, one for residential purpose and the other for non-residential purpose, was not maintainable. The Supreme Court rejected that contention as one without any substance. Learned senior counsel for the petitioner tries to distinguish the said judgment by contending that it was a case of one landlord and one tenant. In my opinion, the principle will not apply in this case as there is no legally affected partition among the two co-owners of the building in Door No. 8, Cutchery Street, Pollachi. There is no question of merger here from 1990 as there was no division at all on any previous occasion.

10. Hence, the contention urged on behalf of the petitioner/tenant cannot be accepted. It is pointed out by learned Counsel that mere increase in rent does not create a new tenancy and reliance is placed on *Rahim v. Kanniah Prasad* 77 L. W. 522. No doubt, mere increase in rent does not create new tenancy. But, the Courts have found that there was no division at all of the property at any time and it has been only one property throughout. In such a situation, a petition has been filed by the two co-owners of the same property. Though for the purpose of business, rent was only paid in two halves to the two petitioners, that would not make two different tenancies. Hence, I accept the concurrent findings of the Courts below and hold that the single petition for eviction is maintainable.

11. Though no argument was advanced as regards the finding that there was wilful default on the part of the tenant, I find from the orders of the courts below that the said finding is supported by ample evidence on record. The courts below have considered the entire evidence and properly appreciated the same before coming to the conclusion and there was wilful default on the part of the petitioner-tenant. Learned Counsel for the respondent has referred to the judgment in *N. Damodaran Naicker and another v. Janaki Ammal* (1995) 1 M.L.J. 330. I do not find any necessity to invoke the principle set out therein as concurrently held by the courts below that the petitioner is guilty of wilful default in payment of rent.

12. There is no merit in the revision petition and the same is dismissed. No costs.

Learned senior counsel for the petitioner prays for grant of time to vacate the premises. Learned Counsel for the respondent has agreed for grant of three months time. The petitioner is granted time to vacate the premises till 31st May, 1996, on condition that the petitioner files an affidavit in this Court on or before 1.3.1996 undertaking to vacate the premises on or before 31.5.1996 without driving the landlords to execution proceedings. If such affidavit is not filed, the petitioner will not be entitled to the benefit of grant of time.