

Packirisamy Chettiar Vs. R. Ramadoss

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Court : Chennai

Decided On : Nov-19-1996

Reported in : (1997)1MLJ189

Appellant : Packirisamy Chettiar

Respondent : R. Ramadoss

Judgement :

ORDER

AR. Lakshmanan, J.

1. Civil Revision Petition No. 1693 of 1991 is directed against the order of the Appellate Authority (Sub Court, Nagapattinam) made in R.C.A. No. 37 of 1989, dated 2.4.1991, confirming the orders of the Rent Controller, District Munsif, Thiruvarur in R.C.O.P. No. 32 of 1986, dated 30.10.1989.

2. The civil revision petition was filed by Packiriswamy, who was the respondent before the Rent Controller, Thiruvarur in R.C.O.P. No. 32 of 1986. The said petition was filed by Ramadoss, the respondent herein, praying for an order, of eviction under Section 10(2)(i) and (vii) of the Tamil Nadu Buildings (Lease and Control) Act, 1960 from the premises bearing Door No. 25-B-1, T.S. No. 592, in Thanjavur Road, Tiruvarur, of an extent of 752 sq.ft. Before the Rent Controller, Tiruvarur, Ramadoss claimed to have purchased the property from one Ramanathan Chettiar of Devakottai along with some other items of property under

a sale deed, dated.7.3.1980, a registration copy whereof was filed before the Rent Controller marked as Ex. A-1. He had also traced the title of his vendor Ramanathan to the properties conveyed to him under Ex. A-1. The prayer for eviction was founded on an allegation that the petitioner herein, Packiriswamy, was a tenant of the superstructure on the property from the vendor Ramanathan ever since the year 1970, on a monthly rent of Rs. 10 and that the rent was being paid to the said Ramanathan until 1975, whereafter Packiriswamy is stated to have stopped paying the same. It was also alleged that a notice, demanding possession was issued to Packiriswamy on 22.1.1986.

3. The petitioner herein by way of his defence, has set out in his counter-affidavit as follows:

Ramados is not owner of either the superstructure or the site. Equally so, the alleged vendor of Ramados was not the owner of the superstructure or the site of the building. The alleged tenancy of Packiriswamy stated to have commenced in 1970 under Ramanathan Chettiar on an alleged monthly rent of Rs. 10 is also not true. The building in fact belongs only to the respondent in the said R.C.O.P., Packiriswamy. The sale deed taken by Ramados also is not enforceable.

4. Before the Rent Controller, Exs. A-1 to A-27 were marked on the side of Ramados and Exs. R-1 to R-26 were marked on the side of the petitioner herein. Ramados examined himself as P.W. 1, and Ramanathan Chettiar examined himself as P.W. 2. The revision petitioner herein examined himself as P.W. 1.

5. The Rent Controller granted the prayer of Ramados on 30.10.1989 and an appeal therefrom in R.C.A. No. 37 of 1989 filed Packiriswamy was dismissed on 30.10.1989 by the Rent Control Appellate Authority, Nagapattinam. The instant revision petition has been filed against the order, confirming the order of the Rent Controller.

6. Arguments were advanced by Mr. S. Gopalarathinam, learned Senior Counsel appearing on behalf of the revision petitioner and countered by Mr. R. Alagar learned Senior Counsel appearing on behalf of the respondent. I have been taken through the entire pleadings and also of all the documents filed in the form of

typed sets.

7. When one looks into the sale deed, dated 7th March, 1980 under which Ramadoss claims ownership of the building under consideration, it is found that door No.25B-1 is not among the properties conveyed thereunder. On the other hand, it is to be found that only door Nos. 23,24,24-A, 25,25-A, 25-A1 and 25-A2 are listed in the schedule to the document as properties conveyed thereunder. (13th sheet). Another noteworthy feature of Ex. A-1 is that is the 6th sheet thereof, only the names of 1 Kuppaswamy Naicker, 2. Kuppaswamy Chettiar, 3 C. Sengamumal and 4. Mohideen are found set out as tenants to whom the building standing on the property conveyed had been let out on rent. When Ramadoss gave his evidence before the Rent Controller as P.W. 1, he did not furnish any explanation about door No. 25-B 1, not being found among the properties conveyed to him under the original of Ex. A-1. But in his cross examination he admitted that the premises bearing door No.25-B 1 was not shown in Ex. A-1. He also admitted that the name of Packiriswamy was not shown in Ex. A-1. However, he did make the claim that Packiriswamy was a tenant under Ramanathan Chettiar on a monthly rent of Rs. 10. No explanation was given or attempted by P.W. 1 to this strange feature of the sale deed, viz., non-inclusion of door No.25j B1 and of the name of the revision petitioner herein. The vendor of Ramadoss under Ex. A-1 gave evidence in the case as P.W. 2. In the course of his chief-examination, he stated as follows:

The petition property's door number is 25-A3....' At the time of my sale, door number of petition property was changed to 25-B1. Now it is 25- B1. Earlier it was 25-A-3.... Sub Registrar objected for my selling the property as assessment to tax was in the name of Packiriswamy. Due to that it was not written in the sale deed. I had taken possession through Court and was enjoying all the superstructure in 26,974 sq.ft. I sold to the petitioner all that was there: In 1970,1 build the petition property and let it to Packirisamy on a monthly rent of Rs. 10....

In his cross-examination, he admitted that he did not take a lease deed from Papkirisamy and that he had taken lease deeds from the tenants in the other properties.

8. I have looked at Ex. A-2, the sale certificate issued by the District Munsif, Thiruvavarur in E.P. No. 482 of 1934 in S.C. No. 75 of 1931 in favour of Ramanathan Chettiar, the father of the vendor to Ramadoss. The Municipal door numbers 19 to 25 could be noticed in the same for the properties sold thereunder.

9. Mr. S. Gopalaratnam, learned Senior Counsel appearing for the revision petitioner, Packirisamy contended in the first place that the respondent in this civil revision petition, Ramadoss cannot claim to have become the owner of the property involved in these proceedings, which bears door No.25-B-1 that a petition by him seeking eviction of Packiriswamy therefrom cannot be maintained. He also contended that the alleged leasing of the property to Packiriswamy by the vendor of Ramadoss had not been made out. Learned Senior Counsel also drew my attention to the evidence of the vendor Ramanathan that while he had taken lease deeds from his other tenants, he had not taken one from Packiriswamy and contended that Ramanathan's claim to have granted a lease to Packiriswamy was obviously an untrue one. Learned Senior Counsel also pointed out that there was no evidence placed before the Rent Controller to corroborate the evidence of the vendor, which continued to remain only his mere ipso dixit.

10. Mr. R. Alagar, learned Senior Counsel appearing for the respondent Ramadoss contended that notwithstanding the non-inclusion of door No. 25-B-1 in Ex. A-1 the respondent's title to the said property has been established in the case; Learned Senior Counsel relied upon Section 8 of the Transfer of Property Act for this purpose. Section 8 of the Transfer of Property Act reads as follows:

Section 8: Unless a different intention is expressed or necessarily implied, a transfer of property passes forth-with to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth and, where the property is machinery attached to the earth, the moveable parts thereof; and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks keys,

bars, doors windows and all other things provided for permanent use therewith; and where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer and where the property is money or to her property yielding income, the interest or income thereof accruing after the transfer takes effect....

Mr. R. Alagar, learned Senior Counsel cited to me the decision of the Judicial Committee of the Privy Council reported in *Asghar Reza Khan v. Mamomed Mehdi Hossein Khan* I.L.R. 30 Cal. 556, as also the decisions reported in *George v. South Indian Bank* : AIR1959 Ker294 . and *B.N. Murthy and Sons v. V.V. Sugana* : AIR 1978 AP257 , *Asghar Reza Khan's case* I.L.R. 30 Cal. 56, was cited before me to show that the sale deed, Ex. A-1 contains no words of exception or reservation and is ample in point of language-to pass all interests of the vendor and that the description of the property is quite sufficient to pass even the interest of the respondent herein in the absence of any words showing an intention to exclude it. According to Mr. R. Alagar, learned Senior Counsel appearing for the contesting respondent that the above principle will apply even to a mortgage as well. *George's case* : AIR1959 Ker294 , arose from the decree in a suit for recovery of money, in which a Division Bench of Kerala High Court has observed as follows:..A house being embedded in the earth is immovable property and when land is transferred, buildings erected upon it pass by necessary implication to the transferee. We are therefore unable to accept the argument that the plaintiff is not entitled to a charge on the building in items 2 and 3 of the schedule....

B.N. Murthy & Sons case : AIR 1978 AP257 was again rendered by a Division Bench of Andhra Pradesh High Court, in which it was held as follows:

Even though the title deed deposited relates to land only, if at the time the deposit was made there were any structures on it, equitable mortgage would be created both with regard to the land as well as the structures thereon....

The Division Bench of Andhra Pradesh High Court has also referred to the Division Bench Judgment of Kerala High Court in *George v. South India Bank* : AIR1959 Ker294 and the decision of a single Judge of this Court in *Berumull*

Sowcar v. Velu Gramany : AIR1942 Mad369 to the similar effect. There also the title deed deposited mentions only the land and not the building thereon. The Madras High Court held that the title deeds though relating only to the land would clearly cover the house and their deposit could create an equitable mortgage of the entire property consisting of the ground and the superstructure. In the concluding portion of the said judgment, the Division Bench of Andhra Pradesh High Court also observed thus:

We are in entire agreement with the view expressed by the Bench of the Kerala High Court and the single Judge of the Madras High Court and hold that even though the title deed deposited relates to land only, if at the time the deposit was made there were any structures on it, equitable mortgage would be created both with regard to the land as well as the structures thereon....

11. The contention of Mr. R. Alagar, learned Senior Counsel was that by the sale deed, the original of Ex. A-1 the vendor had conveyed to his client the entire property owned by him and that therefore, there was no need or necessity for the specific inclusion of the premises bearing door No. 25-B-1.1 may state even here that before the Rent Controller, the stand appears to have been different. Reliance was also placed on the decision in Balaprasad and Ors. v. Asmabi A.I.R. 1954 Nag. 328 and the explanation appears to have been that there was only an error, by way of omission and a Court should construe the document *Ut res Magis Valeat Quam Pereat*'. I shall also deal with the argument based on Section 8 of the Transfer of Property Act presently. The next submission of Mr. R. Alagar was that both the Authorities below have accepted the plea of tenancy and I should not interfere with that conclusion.

12. Per contra, Mr. S. Gopalarathinam in the course of his reply to Mr. R. Alagar's submission invited my attention to the recent decision of Subramani, J. in Raj, Section v. Rajakaniammal : 1996(2)CTC270 and contended that Section 8 of the Transfer of Property Act could not be pressed into service in the facts and circumstances of the present case. In this context, the following passage appearing in page No. 564 in Asghar Reza Khan's case I.L.R. 30 Cal. 556 appears to be the crucial one. It reads thus:..The deed of 1883 contains no words of

exception or reservation, and is ample in point of language to pass all Syad Haidar Reza's interest in the Zemindari, including the land on which the bazar was situate. His interest in the houses on that land and in the profits rents derived from them would pass by the deed. In the Absence of words showing an intention to retain them....

I think the words in Italics by me are very important. Even though courts have to interpret and construe the documents placed before them and may not look for guidance in this regard from outside, it cannot be denied only the author knows what he wanted to do. Whether he failed to achieve his purpose may have to be decided by the court, while construing his language but that he is the best interpreter of his own acts cannot be ignored or left out of consideration. In the present case, I have already referred to the evidence of the vendor that in view of the objections raised by the Sub Registrar, the property in Door No. 25-B-1 was not included in the sale deed. Here, we have a positive admission of the actor i.e., the vendor. He, with due deliberation, decided to omit the property from the sale deed. The prompting therefor might have come to him from the registering Officer. But it is his, the vendor's act, which the Court is now considering. In my considered view, there can be no escape from the conclusion that by the vendor's deliberate decision, the property bearing door No. 25-B-1 was not included but excluded from the conveyance under the Original of Ex. A-1, that Ramadoss the petitioner in R.C.O.P. No. 32 of 1986 cannot assert his non-existent title to the property and maintain the petition for eviction.

13. As I said, the crucial and decisive words of Section 8 of the Transfer of Property Act are the opening words thereof, which I quote, once again for emphasis. 'Unless a Different intention is expressed or necessarily implied. ' I say that the different intention of the vendor under the original of Ex. A-1 is to be held to be expressed in the same viz., not to convey the title to Ramadoss then and under that conveyance the original of Ex. A-1. At any rate, it has to be necessarily implied in the circumstances set out, viz., the uncontradicted testimony of the vendor, the author of the document, himself. In this view I do not find any need or necessity to refer to the other decisions referred to and relied on by Mr. R. Alagar, learned Senior Counsel appearing for the respondent. I, however, find that the

decision of my learned brother, Subramani, J. in Raj's case : 1996(2)CTC270 is instructive. He had quoted in his judgment, the following passage in the decision of the Privy Council in Hariprasad and Ors. v. Fazal Ahmad and Ors. 64 M.L.J. 514 : A.I.R. 1933 E.C. 83 : 148 I.C. 217 : 18 I.A. 116:

But in any event they are of opinion that in order to ascertain the intention of the lady in executing the wakfnama, the whole transaction must be looked at, and upon this they think that her intention to settle only what she though had been entrusted to her by her son is clear....

Coming to the second aspect of the matter, viz., is the tenancy of Packiriswamy Chettiar been established, I have to consider the arguments of respective Senior Counsel. Mr. Gopalratnam, learned Senior Counsel for the revision petitioner points out that apart from the interested oral evidence of P.W. 2, there is not even a single scrap of paper to evidence the same. Even here, learned Senior Counsel points out to the admission of the witness that while he had taken lease deeds from his other tenants, he had not taken one from Packiriswamy. Learned Senior Counsel adds that in another case, Judgment in which is being pronounced by me to-day C.R.P. No. 1644 of 1991, the petitioner Ramadoss has exhibited the Account Books of his vendor as Exs. A-54 to Ex. A-6 to prove the alleged tenancy in that case. Learned Senior Counsel further points out that even such an attempt has not been made in the instant case. In addition, learned senior counsel refers to the fact that in the notice issued to his client on 22.1.1986, the tenancy was claimed to be according to the English Calendar month and the monthly rent was claimed to be Rs. 15. But in the R.C.O.P. presented before the Rent Controller, the rent was stated to be only Rs. 10 per month and the vendor Ramanathan Chettiar stated in his deposition that the tenancy was only according to Tamil Calendar month and the monthly rent was only Rs. 10. He had asserted that it would be incorrect to say that the rent in 1970 was Rs. 15 and that the tenancy was according to English Calendar month. Learned Counsel also refers to the omission of his client's name in the list of names of the tenants found in Ex. A-1. On the other hand, Mr. Alagar, learned Senior Counsel for the respondent submitted that both the Lower Authorities have accepted the case of tenancy and I should accept that finding. I am afraid that I cannot accept the above submission.

To direct the eviction of a person in possession, the claimant has to clearly establish his claim of existence of landlord tenant relationship. More so, when it is admitted that the tenancy commenced in 1970 and the petition for eviction was filed in 1986, it has to be accepted there is no lease document, there is no proof of receipt of rent at any time, relevant account books, which must be available with the vendor, examined as P.W. 2 are not produced. The vital document Ex. A-1 has not included the petitioner, Packirisamy's name, while listing the names of other tenants and even as late as in January, 1986 the petitioner Ramadoss to say the least is unsure about the vital terms of the tenancy viz., rent and the commencement of the month of tenancy. There is the further fact that the vendor categorically admits that in regard to his other tenants, he has taken lease deeds. I am, therefore, has not been made out. This undoubtedly is a jurisdictional fact and an error in regard to this, will oust the jurisdiction of the Rent Controller and consequently, the Rent Control Appellate Authority.

14. In view of my conclusions set out above, I allow Civil Revision Petition No. 1693 of 1991 and direct the dismissal of R.C.O.P. No. 32 of 1986, dated 30.10.1989 on the file of the Rent Controller, Tiruvarur. However, there will be no order as to costs.

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