

A. Shamsuddin Vs. K. Chellappan

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Court : Chennai

Decided On : Feb-02-1998

Reported in : (1998)2MLJ99

Appellant : A. Shamsuddin

Respondent : K. Chellappan

Judgement :

ORDER

S.S. Subramani, J.

1. Tenant in R.C.O.P. No. 15 of 1982, on the file of Rent Controller (District Munsif's Court), Palani, is the revision petitioner.
2. These revisions have been filed under Article 227 of the Constitution of India.
3. In the above R.C.O.P. the order of eviction has become final. When the matter was taken in execution, the Amin reported that he could not identify the building in view of the vague description. Landlord filed an application before the executing court, to give better particulars regarding the building. He filed I.A. No. 30 of 1996 for correction of description of property.
4. When I.A. No. 30 of 1996 was filed, tenant took a contention that mere narration of boundaries will not be sufficient. Little more detailed description with side

measurements is required without which the property cannot be identified. When such a contention was taken, on the basis of the Commissioner's Report prepared during trial of the R.C.O.P., I.A. No. 6 of 1997 in I.A. No. 30 of 1996 was filed by the landlord, for giving a better description of the property. The same was also objected by the tenant for the very same reason.

5. The same was seriously opposed by the tenant on the ground that the Rent Controller has no jurisdiction to correct or amend the Schedule and the power is within the four corners of the Statute, which does not permit any amendment. It was further contended that since the original petition itself has been disposed of, the same cannot be corrected. It is further said that even during trial of the R.C.O.P., tenant contended that the description of property is vague, and the correction should have been done during trial itself. An opportunity which was available to him during trial is now taken away. According to him, the very description of the property will change if the amendment is allowed.

6. By the impugned order, the Rent Controller allowed both the Interlocutory Applications and permitted the landlord to correct the schedule of property. While holding so, the Rent Controller came to the conclusion that there is no change in the property. It is only a better description that is being given and the tenant is aware as to the property in which he is in possession. An accidental mistake or omission should not be a reason for dismissing a genuine application, if interest of justice warrants such a correction. It also came to the conclusion that the Rent Controller has got jurisdiction to allow the amendment.

7. When the matter came for admission, since respondent had already entered caveat, learned Counsel on both sides were heard. Learned counsel for petitioner reiterated the same contentions that were urged before the Rent Controller, and he also relied on the decisions reported in *V. Munisami Naidu v. A. Kasim Khan* (1971)2 M.L.J. 379: 84 L.W. 521 and *Rukmini Devi v. Paswan Kumar Gupta* : AIR1979 Pat88 .

8. How far those decisions are relevant and applicable to the facts of this case will be considered later.

9. Since the power that is sought to be invoked in these revision petitions is under Article 227 of the Constitution of India, unless there is manifest injustice, or there is an error apparent on the face of the record, I do not think that I will be justified in interfering with the impugned orders.

10. If an order has been passed in the interest of justice, and at the same time no injustice is done to the petitioner herein, my hands are tied from probing further into the matter. This Court is not exercising the power of appeal, after re-appreciation of evidence.

11. It is not disputed that the revision petitioner is a tenant of the building bearing Door No. 18-A. Regarding the same, there is no amendment sought for. It is only regarding the location of that door number, further particulars are required. It may also be noted that in the description of property, originally it is said that it is situated in Palani Town, Ward No. 3, Block No. 12, T.S. No. 771, bearing Door No. 18-A. Tenant has no case that he is not in occupation of this door number. When he took the building on rent, he knew where it is located, and he also knew that it is only in respect of that door number, eviction proceedings were initiated, for the reasons stated in the R.C.O.P. I do not find any scope for a contention in the Rent Control proceeding about the identity of the building. When this question was raised during trial of the original petition, a Commissioner was also deputed and the Commissioner also filed a report and plan. He has identified the property along with the side measurements. It is also not disputed by the tenant that eviction was ordered in respect of that building which is identified by the Commissioner. In the plan, the Commissioner has given side measurements which were sought to be incorporated by way of amendment application. When an adjudication has already been made in respect of the property identified, merely because that description at the time of identification is now sought to be included in the schedule, I do not think the petitioner will be prejudiced in any way.

12. In this connection, it must also be noted that the Bailiff or Amin who returned the warrant expressing vagueness in the schedule, was not doing the duty enjoined upon him. He was acting only as a tool in the hands of the petitioner (tenant). When the warrant was returned, even though there was an executable

decree, naturally, the decree holder became helpless, except to file the Amendment Application, for further description of the property, and not for correction. The contention that there is a change in the schedule of property and even the subject matter becomes different is without any basis. If the facts show that no prejudice is caused to the petitioner and the impugned order is only to add better particulars to the case ,already found, I do not find any ground to interfere with the impugned orders, unless the petitioner satisfies the Court that the court below has no jurisdiction to pass the impugned orders.

13. It is here that the decision reported in *V. Munisami Naidu v. A. Kasim Khan* (1971) 2 M.L.J. 379: 84 L W. 521, requires consideration. In that case, G. Ramanujam, J. has held thus:

The preponderance of judicial opinion is that the Code of Civil Procedure as such will not apply to the proceedings before the authorities constituted under the Madras Buildings (Lease and Rent Control) Act and that Order 6, Rule 17 (C.P.C.) cannot be invoked by them.

The learned Judge further went on and said thus:

Even assuming that the Rent Controller or the appellate authority had an inherent power to set right mistakes committed by inadvertence in a petition for eviction, the respondent in this case is not entitled to have the amendment sought for by him, so as to permit him to seek a review of the judgment rendered by the Rent Controller.

How far the said decision will apply, and whether the same was followed in subsequent decisions by this Court may also be considered.

14. In *Usman Koya v. Muthukrishnan* : AIR1978 Mad158 , a learned Judge of this Court has held that the Rent Controller, being a quasi judicial authority, has power to rectify a mistake and pass orders, in the interest of justice.

15. In *Chinnnaraju Naidu v. Bavani Bai* (1981)2 M.L.J. 354 : 94 L.W. 745, S. Ratnavel Pandian, J., as he then was, in paragraph 9 said thus:..The tribunal, in exercise of its inherent power, so long as the proceeding pending before it is alive,

has to consider such a request and order the amendment to be carried out if it is warranted in the interests of justice....

In that case, the learned Judge was considering a revision against an order passed in an interlocutory application under the Rent Control Act. In that decision, the learned Judge followed an earlier decision, of this Court by two eminent Judges of this Court in *Komaraswami Goundan, In re.* : AIR1951 Mad766 , Rajamannar, C.J. and Panchapakesa Ayyar, J., Constituting a Division Bench, considered the question whether amendment could be allowed after the order has become final. In that case also, vagueness of description of property was found out in execution, and in fact, the door number was different. An application for correction was made before the appellate authority which confirmed the order of eviction. The appellate authority allowed the application and directed the Rent Controller to incorporate the amendment. Consequently, the Rent Controller also incorporated the amendment. When orders of the appellate authority as well as Rent Controller were challenged in revision before this Court, while considering the same, in para 2 of the judgment, their Lordship held thus:

It was contended by the learned Counsel on behalf of the petitioner that the application was made under Section 151, Civil Procedure Code which did not apply and also that the landlord should have approached the Rent Controller and not the appellate tribunal for an amendment, even assuming that he was entitled to that relief. We see no substance in either of these contentions. It may be that Section 151, Civil Procedure Code by itself does not apply to proceedings under the Madras Rent Control Act 15 of 1946. But we are of opinion that a quasi-judicial tribunal like the Rent Controller or the appellate tribunal has an inherent power to set right mistakes made by inadvertence so long as the amendment does not amount to a review of the adjudication already made. In this case it is not denied that both the landlord and the tenant knew to which property the proceedings related. In fact, when the Rent Controller passed an order of eviction against the petitioner, he filed an appeal to the appellate tribunal, presumably on the assumption that the proceedings related to the house which he was occupying. It does not lie in his mouth to oppose the present application for amendment....

[Italics supplied]

16. In Kannan v. Southern Roadways : (1980)2MLJ145 , which was a case under the Motor Vehicles Act, a similar question was raised before the tribunal, which is not a court to which the provisions of the Code of Civil Procedure are not made applicable, and in para 13, it was held thus:

The power to grant amendment of the pleadings must, in my judgment, be regarded as inherent in all tribunals or authorities which are charged by the law with the duty of enquiring into rights and liabilities of parties and/or adjudicating on their claims or disputes. Where pleadings play an important part in legal proceedings before tribunals and other authorities and where they afford the basis for evidence to be called at the enquiry, power to amend must be necessarily attributed as an indispensable adjunct to their jurisdiction. Pleadings, after all are makers of composition by literate people. Error cannot be completely avoided from any human endeavour much less in matters of writing or drafting. Tribunals or their professional advisers are by no means to be regarded as perfectionists, not their pleadings as always error-proof...

17. In B.C.S. Enterprises v. Ashok Kumar Lunis : 1995(2)CTC281 , it was held thus:..When it is conceded that the Rent Controller has the inherent powers to order for amendment with regard to the mistake found in the petition, I feel that the court is more powerful with its inherent powers to rectify the mistake namely the omission to mention certain vital aspects which are incidental to the relief sought for in the petition.

In an earlier portion of that judgment, in para 2, Rengasamy, J. has said thus:

When the adjudication before the Rent Controller relates to the rights of the parties, which are in civil nature, and the order of Rent Controller also is an executable order, certainly the view of this Court that the Rent Controller is a court has to be accepted for all purposes...

In para 4, the learned Judge further said thus:..the court must have the way for doing substantial justice to the parties before it. The court cannot be so rigid

closing its eyes to the facts when placed before it for the purpose of the proper adjudication...

In the same volume, at page 577 *Kannaiyan v. Subramania Pathar*, in paragraph 3, Raju, J. after taking note of the judgment of Rengasamy, J. (*supra*), (wherein it was held that Rent Controller is a court), held thus:..Even de hors the said line of approach, I am of the view that a Forum or Authority, which has been conferred with jurisdiction to entertain a lis for adjudication of a dispute involving a decision of the rights of parties before it must be considered to have all the essential and necessary powers to effectively discharge its duties.

I also had occasion to consider the same question in the decision reported in *G. Jayapandian v. P.C. Manickam and Anr.* : (1996)1MLJ350 . In that case I have considered the distinction between a court and a tribunal, and how far the tribunal has got power to allow amendment applications. In paragraph 12, I have held thus:..An amendment of a pleading is necessitated to avoid multiplicity of litigation and also to explain the vagueness, if any, in the pleadings. To decide the real matter in controversy, parties are permitted to amend the pleadings. In certain circumstances, the existing pleadings become insufficient or inappropriate due to subsequent events. If amendment is refused and if the party is directed to file another suit or proceeding, the very purpose of coming to court will be defeated. We must understand that both courts and tribunals are intended to administer justice.

In paragraph 14, I have further held thus:

When the Act or Rule confers certain powers on the authorities concerned, it does not follow that those are the only powers that could be exercised by them. It cannot be expected that the powers exercised by the tribunals should always be enumerated. All further contingencies cannot be exhausted while drafting a statute or rule, it is in that view, we have to consider whether a tribunal can exercise a power which is not specifically excluded. When a tribunal is more or less a court and is discharging judicial functions, even though it is creature of a Statute, unless it is specifically prohibited, we have to presume that the tribunal also will have the same powers as a court, and it can discharge those functions as well.

18. A similar view was taken by Abdul Hadi, J. also, in the same volume, at page 364 *Mohamed Gani v. Rajamani*, wherein it was held that even though Order 6, Rule 17, C.P.C. may not apply, the principles enunciated therein could be applied even in Rent Control proceedings.

19. In all these decisions, the amendment was sought when proceedings were pending. In fact, in this case, I do not think the present application could be treated as an amendment. It is only an explanation regarding the description of the property. In fact, regarding the door number, there is no dispute, and there is also no dispute that the revision petitioner is the tenant in respect of that building. By virtue of the present applications, the landlord is only giving better particulars to identify the rented building. If that be so, it cannot be said that to settle a controversy, an amendment is made. Regarding the tenanted building, there is no controversy. Naturally, it is only a correction of the boundaries. If that be so, the application need not be filed during the pendency of the proceedings. It can be filed even after the proceedings have come to an end, and before the satisfaction of the decree is entered. The principle of Order 6, Rule 17, C.P.C, will apply only to pending proceedings and when there is controversy. In this case, so long as there is no controversy, the petitioner cannot impeach the right of the decree-holder to give better particulars to identify the rented building.

20. In this connection, two decisions of this Court may require consideration for the proposition whether the application could be filed before the Rent Controller. It is an admitted case that against the order of eviction, there was an appeal, and there was also a revision before this Court, and there was also a Special leave petition before the Supreme Court. Even though the Special Leave Petition was not admitted, their Lordships gave six months time to vacate the premises on the tenant's undertaking. But he did not file the undertaking. He did not surrender possession of the building also. That necessitated the filing of the execution petition before court. The question is, whether the amendment applications could be filed before the Rent Controller when the eviction order has become merged with the order of this Court.

21. A similar question came for consideration in the decision reported in Goli Ammiraju alias Ammanna v. Goli Kondalrayudu and Ors. : AIR1951 Mad877 . Panchapakesa Ayyar, J. considered this question, and held thus:

When a matter is finally settled in first appeal and second appeal, the appellate courts become functus officio and the trial court is the residuary legatee for all future I. As. and other matters of litigation connected with the suit, provided such matters do not seek to modify the decrees in appeal. A bona fide error of the parties, Commissioner and court, in failing to divide two undoubted items of family properties can be rectified by a Court and the decree amended, even after appeal and second appeal, without any danger of limitation, provided the vested interest of other persons whether parties to the suit or not, are not affected. The mere fact that there has been a first appeal and a second appeal will not stratify the error and make it unrectifiable, without limitation operating in law. Nor will it take away the jurisdiction of the trial court to rectify the error where it is rectifiable within the period of limitation. The trial Court has undoubtedly the power to rectify any bona fide error not affecting the vested interests of others like limitation, adverse possession, etc.

[Italics]

The aforesaid decision was taken into consideration by Srinivasan, J., as he then was in the decision reported in Kannappan v. Rajeswari Ammal : AIR1993 Mad134 . In that case, after Rent Controller's order had become final, a separate suit was filed by the tenant, challenging the order, and one of the grounds taken in that suit was that the Rent Controller has no jurisdiction to amend the schedule property after the same is merged in appeal and after the lis is over. The learned Judge, after extracting the relevant portion of the judgment in Ammiraju 's case : AIR1951 Mad877 and also following the decision in Janakirama Iyer, v. Nilakanta Iyer : AIR 1962 SC633 , in para 27 held thus:

Learned Counsel for the tenant contends that the principle of merger was not considered by the Supreme Court in that case. Even it is so, the ruling of the Supreme Court that clerical errors in the decree could be amended even after the same was confirmed by the appellate court, which in that case, was the High Court

is binding on me. I cannot distinguish the ruling and refuse to apply the same to the present case on the footing that a particular argument which was available to the appellant therein was not raised or considered by the Supreme Court. The fact remains that the power under Sections 151 and 152, C.P.C. of a court to rectify errors arising from accidental slip was considered and it was held that it could be exercised at any stage, even after the decree had been confirmed by the higher court. In spite of the trial court decree having merged with the decree of the High Court, the Supreme Court held that the trial court had jurisdiction under Sections 151 and 152 of the Code of Civil Procedure to rectify the errors and amend the same...

I respectfully follow the said decisions of this Court wherein the decisions of the Supreme Court have been followed.

22. Now I come to the decisions relied on by learned Counsel for petitioner.

23. The decision in *V. Munisami Naidu v. A. Kasim Khan* (1971) 2 M.L.J. 379 : 84 L.W. 521, was taken into consideration by Rengasamy, J. in *B.C.S. Enterprises, v. Ashok Kumar Lunia* : 1995(2)CTC281 . The learned Judge has not followed it. Learned Judge has rightly taken the views of the Honourable Supreme Court as well as other decisions of this, Court to come to the conclusion that the Rent Control Court has got the power to allow amendment applications. That decision was followed by Raju, J. in the decision reported in the same Volume at page 577 (referred to supra). I have also held in *Jayapandian v. P.C. Manickam* : (1996)1MLJ350 , that tribunals which are given certain powers to adjudicate upon the rights of parties also will have incidental power to allow amendment applications. The decision of the Supreme Court regarding the power of the tribunals was not considered by the learned Judge, and I do not think that decision holds good as on this date. That apart, even if Order 6, Rule 17, C.P.C. itself may not apply, it does not prohibit the Rent Controller from following the principle enunciated therein as held by Abdul Hadi, J. in : (1996)1MLJ364 . Merely because the authority is created by the Statute, it does not follow that the authority is prohibited from taking guidance from the procedure adopted by courts.

24. I have already held that in the present case, the correction ordered does not really mean amendment to which Order 6, Rule 17, C.P.C. could be strictly applied. It is really a clarification, to identify the building in which the revision petitioner is admittedly a tenant. When the tenant has preferred appeal, revision and even special leave petition before the Supreme Court, he is debarred from taking a contention that the building could not be identified. It has been so held in the decision reported in Komaraswami Gounder In re. : AIR1951 Mad766 . The principles of Sections 151 and 152, C.P.C. apply to the facts of this case, and the lower court has taken into consideration the interests of justice in allowing the applications. There is no prejudice caused to the petitioner, and there is also no manifest injustice done by the court below in allowing the Applications. Consequently, both the revision petitions are dismissed with costs. Advocate's fee Rs. 3,000 consolidated.

25. The respondent may produce a copy of this order before the Executing Court and the Executing Court shall see that the building in question is handed over to the decree-holder without any further delay. I direct the Executing court to effect delivery of the building within three days from the date of production of a copy of this order. It is also directed to report compliance of the above direction to this Court without fail. C.M.P. Nos. 18413 and 18414 of 1997 are also dismissed consequently.