

Muthiah Vs. Subramaniam

Muthiah Vs. Subramaniam

SooperKanoon Citation : sooperkanoon.com/828564

Court : Chennai

Decided On : Aug-13-2001

Reported in : (2001)3MLJ304

Appellant : Muthiah

Respondent : Subramaniam

Judgement :

ORDER

A. Subbulakshmy, J.

1. Landlord is the petitioner.

2. The landlord filed petition under Section 10(3) of the Rent Control Act for eviction on the ground of own use of the petition mentioned premises. The case of the petitioner is that O.S.No. 268 of 1998 was filed in the Sub Court, Dharapuram for partition and that suit ended in compromise and final decree was passed on 7.8.1991 and as per that decree, the petition mentioned property was allotted to the share of the petitioner and the respondent who was the tenant already in the petition mentioned premises became the tenant under the petitioner. After the partition decree the respondent/ tenant was informed about the ownership of the suit property. The petitioner, contends that he is doing business in cattle feeds and other goods at new door No. 218 and old door No. 43/A at Dharapuram and that premises is now allotted to the share of the brother of the petitioner, and the

petitioner is doing his business in door No. 218 by paying monthly rent of Rs. 200 to his brother. Whiles, the brother of the petitioner sent notice to the petitioner demanding that premises for his own use and the petitioner also gave assurance to him that he would deliver possession of the same. The petitioner had also informed about this to the respondent and the respondent also informed him that he would vacate and deliver possession of the petitioner mentioned premises in the month of Thai 1992. The petition mentioned property is required for the own use of the petitioner. So, the petitioner issued notice to the respondent. Since the petitioner is running his business in a rented premises, he requires the petition mentioned property for his own use.

3. The respondent/ tenant filed counter contending that the compromise decree has been obtained by collusion between the family members and the petitioner is not doing any cattle feed business in the Srinivasa Stores and the petition mentioned premises is not required for own use. The respondent further contends that the petitioner has got other shop portions in the Municipal Area and if the petition is allowed, the business of the respondent would be collapsed and consequently the respondent would sustain heavy loss, and the balance of convenience is in favour of the respondent.

4. The petition was allowed by the Rent Controller.

5. Aggrieved against that order, the respondent/ tenant preferred appeal before the appellate authority in R.C.A. No. 1 of 1994 and the appeal was allowed setting aside the order of the rent controller.

6. Aggrieved against that, the landlord has filed the present civil revision petition.

7. Learned Counsel for the revision petitioner submitted that the petitioner is now running his business in a rented premises which belongs to his brother and his brother wants that premises for his own use and the petitioner requires the premises for his own occupation for running his business and there is bona fide on the part of the petitioner in asking the petition mentioned premises for own occupation.

8. Counsel for the respondent submitted that the petitioner owns other buildings and the partition decree obtained is only to defeat the right of the respondent and it is a collusive decree and as the petitioner also owns other premises, he could occupy any of those premises and the requirement of the petition mentioned property is not bona fide. He further submitted that the petitioner also did not allege in his petition that the petitioner does not hold any other premises for his own use.

9. The suit property and other properties are joint family properties, so, partition suit was filed in O.S.No. 268 of 1990 and compromise final decree was passed in that suit under Ex.P-1.

10. Under Ex.P-1, the petition mentioned property was allotted to the share of the petitioner and door No. 218 was allotted to the share of the brother of the petitioner. The petitioner is now running the cattle feed business in a rented premises by paying rent of Rs. 200 per month. So, the petitioner contends that since he is running his business in the rented premises, he requires the petition mentioned premises which is required for his own use.

11. The documents filed by the petitioner i.e., books of accounts for Srinivasa Stores viz., daily account books Exs.P-13 and P-14, credit and debt accounts Exs.P-16 and P-17 and Ex.B-5 certificate of registration issued by Dharapuram, B.C.T.O. in the name Srinivasa Stores would go to establish that the petitioner is running his business in the name of Srinivasa Stores. Further Exs.P-7 and P-8 also reveal that the petitioner has remitted compounding fee to the Commercial Department in respect of Srinivasa Stores. These documents reveal that the petitioner is doing cattle feed business in door No. 218, Vasantha Road, Dharapuram.

12. It is evident from the oral as well as documentary evidence that the petitioner is running his business in door No. 218 which is the property of the brother of the petitioner and the petitioner is paying rent. So, it is crystal clear that the petitioner is running his business in a rented premises and only for bona fide reasons, he requires the petition mentioned property and he has come forward with this petition for eviction.

13. The respondent vehemently contends that Ex.P-1 document is not a true document and it is a collusive document. He relies upon the decision in *Hameedia Hardware Stores v. Mohan Lal Sowcar* (1988)2 L.W. 1, wherein it has been held that,

by merely proving that the premises in question is a non-residential building and that the landlord or any member of his family is not occupying for the purpose of a business which he or any member of his family is carrying on in any residential building in the city, town or village concerned which is his own, the landlord cannot in the context in which Section 10(3)(a)(iii) appears, get a tenant evicted. He must show in view of Clause (e) of Section 10(3) that his claim is bona fide.

The counsel also relies upon the decision in *S. Devaji v. K. Sudarshana Rao* (1994)1 L.W. 24, wherein it has been held that

On a reading of Section 10(3)(a)(iii) of the Act, the landlord is required to prove his bona fide requirement of the non-residential building to carry on or commence a business. At the relevant time the landlord is not in occupation of another non-residential building in the city, town or village concerned, which is his own or to the possession of which he is entitled, whether under the Act or otherwise. The object of the Act is to enable the landlord to recover possession of his non-residential building in occupation of a tenant, if his requirement is bona fide for the purpose of the business which he is carrying on or he bona fide proposes to commence. The landlord should not be in possession of another non residential building or of which he is entitled to be in possession in the city, town or village concerned. The intendment of the Legislature thereby is clear that a landlord who is in occupation of a non-residential building which is his own or to the possession of which he is entitled under the Act or any other law should not be permitted to recover possession of another non-residential building belonging to them by evicting the tenants therefrom. The finding of the appellate Court that the respondent does not bona fide require the demised building for business is well founded. The High Court has not considered this question in its proper perspective.

He also relies upon the decision in *Glamour Saree Museum v. Tamil Nadu Handloom Weavers Co-operative Society* wherein it has been held that:

By the language employed in Section 10(3)(a)(iii), it is clear that if a landlord is carrying on a business in a non-residential premises of his own that will be a bar to his obtaining an order of eviction in respect of another premises. It does not appear to be the intention of the provision that the test is every business considered separately. It is not as if that if a landlord is having several business and is occupying a non-residential premises of his own in which he is carrying on one of the businesses, he is permitted by the provision to get possession of their non-residential premises of his own for carrying on every one of the other businesses.

He has also relied upon the decision in *Sarla Ahuja v. United India Insurance Company Ltd.* wherein it has been held that,

While exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose of ascertaining whether the conclusion arrived at by the fact-finding Court is wholly unreasonable. A reading of the impugned order shows that the High Court has overstepped the limit of its power as a revisional Court. The order impugned on that score is hence vitiated by jurisdictional deficiency.

He has further relied on the decision in *Laswaran Chettiar v. Subbarayan* 1983 L.W. 696, wherein it has been held that,

The law as it stands says that the landlord is interdicted from seeking a non-residential building of his in the occupation of his tenant if and when he is already in such a non-residential building of his own in which he is carrying on a business.

14. In the case on hand, a partition suit had already been filed in Court and compromise decree for partition was passed allotting shares to the petitioner and ether family members. So, it cannot be said that Ex.P-1 is a collusive document. As per Ex.P-1, the petitioner is entitled to the property which is in possession of the respondent and he is now running his business in door No. 218 by paying rent which property belongs to his brother. So, it has been clearly established that the petitioner is running his business in a rented premises and he bona fide requires the petition mentioned property for his own use.

15. The counsel for the respondent tenant contends that the petitioner has got other buildings within the municipal area and his requirement is not bona fide.
16. The counsel for the petitioner landlord pointed out that the petitioner does not own any establishment or building and the other building is only a rice mill and in that rice mill, he could not run his business.
17. The counsel for the respondent tenant submitted that even the premises where the rice mill is being run will be convenient for running the business of the petitioner and there is no bona fide at all on the part of the petitioner in seeking the petition mentioned premises for own use.
18. P.W.1 has spoken in his evidence that he has no other building other than the petition mentioned property. R.W.1, even though in his evidence has stated that the petitioner has got other buildings, he says that he is not aware of the door number or its location. So, it is evident that there is no other premises available except the petition mentioned premises for running the business of the petitioner. It is significant to note that the brother of the petitioner has issued notice Ex.P-12 seeking delivery of possession. So, the petitioner, owes his liability to vacate and deliver possession to his brother. So, it cannot be said that there is no bona fide at all on the part of the petitioner.
19. The counsel for the respondent further submitted that previously an R.C.O.P. was filed by the petitioner's father for own occupation and that petition was dismissed and so, this petition also has to be dismissed.
20. The fact that the previous petition was dismissed is not a ground for dismissing the present petition. The previous petition was filed by the father of the petitioner. Now, this petition is filed by the petitioner after he became the owner of the petition mentioned premises as per the compromise final decree. The petitioner is now occupying a rented premises which belongs to his brother and his brother now requires that premises for his own use. It has been clearly borne out by oral as well as documentary evidence that the petitioner is running his business in a rented premises and the petition mentioned premises alone is suitable for running his business. It may be that the petitioner owns other building rice mill.

21. The counsel for the petitioner submitted that it is a rice mill and it will not be suitable for running the business of the petitioner.

22. The counsel for the respondent submitted that the rice mill is also an adjacent property to the petition mentioned premises and the business can be run in that premises.

23. Since the other building is a rice mill, as rightly submitted by the counsel for the petitioner, that may not be conducive for running his business in that premises. Further, it is not for the tenant to dictate the terms to the landlord with regard the choice of the premises for running his business.

24. A Division Bench of this Court has held in *N. Sampathu Chetty v. S.V. Bapulal* (1967)1 M.L.J. 289.

Section 10(3)(a)(iii) of the Madras Buildings Lease and Rent Control Act 1960, allows a landlord to apply to the controller for an order directing a tenant to put him in possession of the building if the landlord is not occupying for purposes of business which he is carrying on a non-residential building which is his own. If the conditions of the provisions are satisfied, the Controller may make an order as prayed for by the landlord provided he is further satisfied that the claim of the landlord is bona fide. This requirement that the claim of the landlord should be bona fide is common not only to this provision but also to several other provisions in the Act which provide for eviction of tenants. The expression bona fide, therefore, will have to be understood in the context, but subject to that, it means in cases under Section 10(3)(a), that the landlord honestly desires to occupy the premises from which eviction is sought and his claim is not a device to serve an oblique purpose.

That the landlord has made certain allegations or claims in some earlier proceedings may neither be relevant nor could they affect his bona fides in a latter claim so long as it is proved that the landlord honestly desires to occupy the premises for carrying on his business. The fact that he owned several other buildings, which were not mentioned in the petition, is of no consequence as it is entirely open to a landlord to choose which building he would require for his

business. So long as the evidence does not justify a finding that the claim is a device and is intended to serve an oblique purpose, it will go a long way towards the claim being honest. In other words, when once it is clear that the claim is not a device very little evidence might be required to find that the claim is an honest one.

In the case of *Sundara Gopal v. Subramanian* (1976)2 M.L.J. 13, it has been held that,

The Madras Buildings (Lease and Rent Control) Act states that if the landlord is in occupation of a building of his own, then the bar to apply for eviction of a tenant in another building of his own would come for adjudication. A building may be kept vacant for various reasons. It may be for the reason that it is unfit for occupation. It may be for sentimental reasons and for other causes. It is now well established in our Court at any rate that it is not for the tenant to dictate as to which of the houses of the landlord should be asked for his own use and occupation. Unless it is established that the landlord is physically in possession of a building of his own, it would be idle to contend that he is in occupation of a vacant building. It may be that the landlord might attempt to circumvent the law as in the case reported in *Dr. Mohammed Ibrahim v. Ahmed Khan* by putting his relative in a building and seeking for eviction of the tenant in another building. It was there held that it is not open to a landlord at any time if he so desires to go to reside in it. This poses a very different state of things. But to the case of a vacant building this principle cannot be extended as it would be illogical to do so.

25. The petitioner seeks the petition mentioned property for his own use since he feels that it will be convenient for running his business and as he is also occupying a rented building for running his business. Viewed at any angle, it can be safely concluded that the requirement of the petitioner is bona fide. The trial Court considered all these aspects and allowed the petition. The first appellate Court on some flimsy grounds has found that the order of the trial Court is not sustainable.

26. The counsel for the respondent submitted that the first appellate Court, on facts has found that the requirement of the petitioner is not bona fide.

27. On a perusal of the first appellate Court's order. It is seen that the first appellate Court found that the petitioner did not mention in the petition that there are no other buildings, but has only mentioned in the reply statement and not in the evidence, and from the evidence of the appellant, it is seen that the petitioner had been allotted other buildings in the partition and so, he found that there is no bona fide at all on the part of the petitioner in seeking the petition mentioned property for own use.

28. As I have already stated it is not for the tenant to dictate terms. The partition is a matter between the family members. The tenant has no business to interfere in that matter. The petitioner is running his business in a rented premises. So he bona fide requires the premises. Following the decisions cited supra, I hold that the requirement of the petition mentioned property by the petitioner for his own use is bona fide and the order passed by the first appellate Court is not sustainable and it is liable to be set aside. In the result, the civil revision petition is allowed. The order passed by the first appellate Court is set aside. The order of the trial Court is restored. Time for vacating the petition mentioned premises is three months. No costs.