

Reserved On: 12-09-2016

Delivered On: 16-09-2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-09-2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.4161 of 2014
and M.P.Nos.1 of 2014 and 1 of 2015

M/s Bombay Andhra Transport Co.,
Old No.227, New No.38,
Govindappa Naicken Street,
Chennai-600 001

... Petitioner

vs

S.M. Hameed Abdul Quadir (deceased)

1. Mrs.Ahamed Mariam

2. Mrs.Sharmila

.... Respondents

Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act 1960 against the order and decreetal order in R.C.A No.312 of 2011 on the file of VIII Judge, Court of Small Causes cum Rent Control Appellate Authority, Madras dated 15.09.2014, confirming the judgment and decree in

R.C.O.P.No.1403 of 2006 on the file of Rent Controller cum XI Judge,
Court of Small Causes, Madras dated 16.03.2011.

For petitioner : Mr.V. Raghavachari
For respondents : Mr.AR.L. Sundaresan
Senior Counsel for
Mr.Abdul Rahim

ORDER

Challenging the Judgment and Decree passed in R.C.A.No.312 of 2011 on the file of VIII Judge, Court of Small Causes/Rent Control Appellate Authority, Chennai, confirming the order passed in R.C.O.P No.1403 of 2006 on the file of Rent Controller/XI Judge, Court of Small Causes, Chennai, the tenant has filed the above Civil Revision Petition.

2. The respondent/landlord filed a Rent Control Original Petition in R.C.O.P No.1403 of 2006 for eviction on the ground of demolition and reconstruction. According to the respondent/landlord, he is the absolute owner of the petition premises, which consists of ground and first floor. The same was let out to the petitioner on a monthly rent of Rs.5,260/- besides electricity charges.

3. Further, the landlord has stated that the petition mentioned premises is bonafidely required for the purpose of demolition and reconstruction and that, he has sufficient means to put up a new construction. Further, he has undertaken to commence the demolition work in a month's time from the date of the order and also complete the construction before the expiry of three months.

4. The petitioner/tenant in their counter, while disputing the averments stated in the petition, has also stated that the petition has been filed with a malafide intention without there being an iota of truth in it. Further, the petitioner has stated that the respondent has not even made the necessary averments required for the purpose of seeking eviction on the ground of demolition and reconstruction. The tenant has also stated that the petition premises is very strong, stable, structurally sound and is in good condition. In these circumstances, the tenant prayed for dismissal of the petition.

5. Before the Rent Controller, on the side of the landlord, his authorised agent was examined as P.W.1 and P.W.2 was examined to speak about the condition of the building. On the side of the landlord,

four documents Exs.P.1 to P.4 were marked. On the side of the tenant, two witnesses were examined and eight documents Exs.R.1 to R.8 were marked.

6. The Rent Controller, taking into consideration the case of both the parties, ordered eviction. Aggrieved over the same, the tenant preferred an appeal in R.C.A.No.312 of 2011 and the Rent Control Appellate Authority also confirmed the order of eviction. As against the judgment and decree passed by the Courts below, the tenant has filed the above Civil Revision Petition.

7. Heard Mr.V. Raghavachari, the learned counsel for the petitioner and Mr.AR.L. Sundaresan, learned Senior Counsel for the respondents.

8. Mr.V. Raghavachari, learned counsel, appearing for the petitioner, submitted that the Courts below should not have ordered eviction on the ground of demolition and reconstruction, when the petitioner has not stated anything in the petition with regard to demolition and reconstruction and that, in the absence of any pleadings in the petition, eviction should not have been ordered by the

Courts below. Further, the learned counsel submitted that the landlord was not examined to prove the averments stated in the petition and only his agent was examined as P.W.1. In support of his contention, the learned counsel relied upon the judgment reported in **1995(1) CTC 340 (Ameeruddin and four others vs Premakumari)**, wherein this Court held as follows:

5. In my opinion, the order of the appellate Authority in ordering eviction on the basis of the evidence available, both oral and documentary, is wholly irregular and illegal. I am of opinion that the Appellate Authority has erred in not properly considering the averments made in the petitions and the oral and documentary evidence in its proper perspective and also the law on the subject. The landlady in support of her claim under Section 14(1)(b) of the Act has in paragraph 4 of Rcop No. 285 of 1979 stated as follows:

"The petitioner submits that the petition building is an old building and is not in a good condition. The petitioner desires to demolish and reconstruct a new building. In the circumstances, the petitioner requires the building for the immediate purpose of demolition and reconstruction".

In my opinion, there is no averment in the petition that the building is old and dilapidated and that it requires immediate demolition. Necessary averments which are required under the provisions of the Act have not been made in the petition.

9. Countering the submissions made by the learned counsel for the petitioner, Mr.A.R.L.Sundaresan, learned Senior Counsel, appearing for the respondents submitted that since P.W.2 was examined to speak about the condition of the building and that, the landlord required the building for better investment purpose, the Courts below have rightly ordered eviction. Further, the learned Senior Counsel submitted that since the oral evidences, let in by P.Ws, clearly establish the ground for demolition and reconstruction, the order of eviction, granted by the Courts below, does not warrant interference. Further, the learned Senior Counsel submitted since the evidence let in by P.W.1 is within his knowledge, the examination of the agent of the landlord is sufficient to prove the case. In support of his contention, the learned Senior Counsel relied upon the following judgments:

(i) **2001 (8) SCC 561 (Siddalingamma and another vs Mamtha Shenoy)**, wherein the Hon'ble Supreme Court has held as follows:

The learned counsel for the appellant submitted that the need of the appellant no. 1 who is now a widowed landlady was also in issue from the very beginning though in the then circumstances it was the need of her husband which was the centre of emphasis. Unfortunately, the husband expired during the pendency of the petition. This changed circumstance shifted the emphasis contained in the reason for shifting from village habitat to the landlady's premises in the city of Bangalore; earlier it was on the consideration for health of the landlady's husband which now is on the consideration for health of the landlady herself. Medical prescription given by the doctor at Bettalasoor was produced in evidence referring the landlady for treatment at Bangalore as the facilities for orthopaedic treatment which the landlady needed to undergo were available in the city of Bangalore and not in the village of present residence of the landlady. It is common knowledge that orthopaedic ailments render frequent travelling of the patient

uncomfortable and difficult and therefore the desire of the landlady to shift to Bangalore for her own treatment is a felt-need in praesenti and there is nothing unnatural, unreal or insincere about it. In addition, the school going children residing with the landlady as members of her family need to be shifted to the city of Bangalore and stay thereat in the interest of schooling in educational institutions with better ambience, facilities and standards. It is true that in the petition for eviction, as originally filed, the health condition of the landlady herself and the factum of children residing with her not being her own grand- children were not pleaded, nevertheless evidence was allowed to be let in without objection and was recorded by the Trial Court. An application for amendment under Order 6, Rule 17 of the CPC was moved and the deficiency in the pleadings stood removed by the amendment permitted by the Trial Court in exercise of its discretionary jurisdiction to do so. The order permitting the amendment was not put in issue promptly. Even the High Court in its impugned order has not found fault with the order of the Trial Court permitting the amendment nor has it expressed an opinion that leave granted by the Trial Court for amendment in the eviction petition suffered

from any error of jurisdiction or discretion. On the doctrine of relation back, which generally governs amendment of pleadings unless for reasons the Court excluded the applicability of the doctrine in a given case, the petition for eviction as amended would be deemed to have been filed originally as such and the evidence shall have to be appreciated in the light of the averments made in the amended petition. The High Court though set aside the order of the Trial Court but it is writ large from the framing of the order of the High Court, especially the portions which we have extracted from the order of the High Court and reproduced in earlier part of this judgment, that the learned single Judge of the High Court also was not seriously doubting the genuineness of the landlady's requirement on the material available on record but was not feeling happy with the contents of the eviction petition as originally filed and an over-zealous attempt on the part of the landlady in projecting her sister's sons and grand-children as her own. The High Court did not doubt that the landlady was not in a sound state of health and that a large-size family was with her nor was it disputed by the tenant that the number of members in the family of the landlady residing with her was eleven. In

such facts and circumstances, " in our opinion, the High Court ought to have adopted a realistic and objective approach rather than feeling sceptical about the landlady's mannerism. Had the High Court not been convinced of the landlady 's requirement it would not have given her the liberty of filing a fresh petition solely by "stating correct facts". In our opinion, driving the widowed landlady to the need of filing a fresh eviction petition and to the rigmarole of litigation would be subversive of the ends of justice. The need of the landlady is, as borne out from the amended pleadings and material brought on record, bona fide and not arbitrary, whim-sical or fanciful. In a civil case, once an amendment has been unreservedly permitted to be incorporated in the pleadings, the correctness of the facts introduced by amendment cannot be doubted solely on the ground that they were not stated in the original petition. So also genuineness of the landlady's statement, supported by medical prescription, that she needed to have treatment at Bangalore cannot be doubted by the Court forming an opinion that the ill-health of landlady was not so serious as to warrant her shifting to a city from a village and then substituting its opinion for the seriousness felt by the

landlady. The requirement pleaded and proved was neither a pretext nor a ruse adopted by the landlady for evicting the tenant. In such circumstances, in our opinion, the order of the Trial Court deserves to be restored. On the question of comparative hardship as also on the issue of partial eviction, having our-selves evaluated the well- reasoned findings recorded by the Trial Court we are inclined to uphold the same more so when they have not been reversed by the High Court.

(ii) **1995 Supp (3) SCC 107 (Murugesan and another vs Ramalingam Pillai (dead) and others)**, wherein, the Hon'ble Supreme Court has held as follows:

3. We have heard learned counsel for the parties. We are of the view that in the facts and circumstances of this case the absence of pleadings on the point has not caused any prejudice to the respondents. The son of the appellant-landlord appeared before the Rent Controller as P.W.1. In his examination-in-chief, he stated as under:

"I do not have any other place excepting the shop mentioned in the petition. Now I

am working under a third party for salary. We demanded the respondent to vacate the petition mentioned property at the time of the expiry of the agreement. The shop mentioned in the petition is required for my own use.”

It is thus obvious that there was clear evidence before the Rent Controller to the effect that the landlords did not have any other shop except the shop in dispute. The tenant therefore, fully knew the case set up by the appellants and which he was to meet by producing evidence in support of his defence. Even otherwise the question raised and decided in favour of the respondents was not raised either before the Rent Controller or before the Lower Appellate Court. We are of the view that the High Court was not justified in raking up the question by looking into the pleadings and reappreciating the evidence. In the facts of this case the High Court fell into patent error in reversing the findings reached by the two courts below.

(iii) **2010(2) L.W 357 (Standard Literature Company (P)Ltd rep vs Padma and others)**, wherein, this Court held as follows:

" 11. The learned counsel for the petitioner cites a decision of mine reported in 2009 (4) L.W 673 (Usha Ranganathan v N.K.V.Krishnan and another), wherein I have observed that the power agent may be permitted to conduct the case on behalf of his principal, while the stage of the case reaches recording of evidence, he is precluded from deposing on behalf of his principal as to matters which would be within the personal knowledge of his principal.

12. In view of the settled legal position, it is observed that the power of attorney can depose on behalf of his principal but he cannot reveal the matters which are in the personal knowledge of the principal. In this case oral evidence of P.W.1, with regard to the physical features of the demised premises and the means possessed by the landlords as borne out by record can be considered. To this extent, the authorisation of first respondent to P.W.1 is valid.

10. On a careful consideration of the materials available on record, the submissions made by the learned counsel on either side and the judgments relied upon by the learned counsel on either side, it could be seen that the respondent leased out the petition premises to

the petitioner/tenant on a monthly rental of Rs.5,260/-. The respondent/landlord filed a Rent Control Original Petition in R.C.O.P No.1403 of 2006 for eviction on the ground of demolition and reconstruction. In order to seek for eviction on the said ground, the respondent/landlord has averred in the petition as follows:

" 4. The petitioner states that the schedule mentioned building is bonafides required for the purpose of demolishing and erecting a new building on the site of the building sought to be demolished. The petitioner has sufficient means to put up a new construction. The petitioner also proposes to obtain planning permission from the Corporation of Chennai and CMDA for the proposed construction."

11. Except stating that he bonafidely required the building for demolition and reconstruction, he has not stated that for what purpose, demolition and reconstruction is necessary. Either he should have stated that the building is in dilapidated condition or he should have stated that the building is required for better investment. None of these was stated in the Original Petition. The petitioner/tenant, in their counter, has specifically stated that the landlord has not even made the necessary averments required for the purpose of eviction on the

ground of demolition and reconstruction. In spite of the same, the landlord has not even taken steps to amend the petition by including the necessary averments.

12. It is settled position that no amount of oral evidence can be looked into, in the absence of pleadings. In other words, the witnesses can let in evidence only based on the available pleadings. In the case on hand, in order to speak about the condition of the building, P.W.2 was examined. When there is no averment in the petition with regard to the age of the building or condition of the building, an order of eviction cannot be granted solely on the basis of oral evidence, let in by the parties. The evidence of P.Ws are beyond the available pleadings. The ratio laid down in the judgment reported in **1995(1) CTC 340 (Ameeruddin and four others vs Premakumari)**, relied upon by the learned counsel for the petitioner, squarely applies to the facts and circumstances of the present case.

13. Ignoring the insufficient pleadings and solely based on the oral evidence, let in by P.Ws, the Courts below has erroneously ordered eviction on the ground of demolition and reconstruction, which cannot be allowed to stand. When the landlord himself has not stated

anything in the petition with regard to the age and condition of the building, the Courts below gave a finding that the building is in a dilapidated condition, which is not the case of the landlord himself in the petition. Since the landlord has not made necessary averments in the petition with regard to the demolition and reconstruction, the Courts below should not have ordered eviction. In these circumstances, the judgments and decrees, passed by the Courts below are liable to be set aside. Accordingly, the same are set aside. The Civil Revision Petition stands allowed. No costs. Consequently, connected MPs are closed.

16-09-2016

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Index:no
website:yes

To

1. The VIII Judge, Court of Small Causes/
Rent Control Appellate Authority, Madras
2. The Rent Controller/XI Judge, Court of Small Causes,
Madras

M. DURAISWAMY,J.,

sr

Pre-Delivery Order in
C.R.P(NPD)No.4161/2014

16-09-2016