

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 31.10.2019	Delivered on 25.11.2019
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.Nos. 100 & 101 of 2014

Mandhirikodi

...Appellant in
both the appeals

Vs.

1.E.Balaraman
2.E.Ravi

...Respondents in both
the appeals

Prayer in S.A.No. 100 of 2014: Memorandum of Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree made in A.S.No. 43 of 2012 dated 23.09.2013 on the file of the Sub-Court, Poonamallee confirming the decree and judgment in O.S.No.319 of 2011 dated 24.02.2012 on the file of the Principal District Munsif Court, Poonamallee.

Prayer in S.A.No. 101 of 2014: Memorandum of Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 23.09.2013 in A.S.No. 47 of 2012 of the file of the Sub-Ordinate Court, Poonamallee, confirming the decree and judgment in O.S.No. 1061 of 2004 dated 24.02.2012 on the file of the Principal District Munsif Court, Poonamallee.

For Appellants in both appeals : Mr.M.V.Seshachari

For Respondents in both appeals : Mr.M.R.Murali for R1 & R2

Mr.P.B.Balaji, Amicus Curiae

J U D G M E N T

These two appeals arose out of two cross suits namely, O.S.No.1061 of 2004 and 319 of 2011. While O.S.No.1061 of 2004 was filed by Elumalai, father of the respondents 1 and 2 herein seeking ejectment of the appellant from the suit property, for damages, for use and occupation at the rate of Rs.2000/- per month. The suit in O.S.No. 319 of 2011 was filed by the appellant against the respondents herein seeking an injunction

restraining the defendant from evicting him except under due process of law.

2. Since the original plaintiff in O.S.No.1061 of 2004 died, the respondents herein were brought on record as plaintiffs 2 and 3 in the said suit as his legal representatives. The claim of the plaintiffs in O.S.No. 1061 of 2004 is as follows:-

The appellant herein became a tenant in respect of a shop bearing Door No.32/2/164, Kundrathur main Road, Porur, Chennai - 116 under a lease agreement dated 05.09.2001. The lease was for a period of 11 months ending by 04.07.2002. The monthly rent was fixed at Rs.1,000/-. On a request by the defendant, the rent fixed was reduced to Rs.900/-. An advance of Rs.20,000/- was paid by the defendant. On the expiry of the period of lease, the plaintiff required the defendant to vacate and handover possession. The defendant requested two months time to vacate. It is also stated that the property is required by the plaintiff for his sons business. Hence, the plaintiff issued a notice on 16.12.2002 thereby terminating the tenancy and requiring the defendant to quit and deliver the vacant possession of the property by the end of January 2003. The defendant sent a reply dated 05.01.2003 making various false and frivolous allegations. Since the defendant failed to comply with the demand made in the notice dated 16.12.2002, the plaintiff filed the suit seeking ejectment.

3. The suit was resisted by the defendant. While admitting the tenancy, the defendant claim that he has been paying rent regularly. It is also claimed that the notice to quit has not been validly issued. It is also stated that since the plaintiff attempted forcible eviction, he was forced to file a suit in O.S.No.474 of 2002 seeking permanent injunction and the same was pending. On the above allegations, the defendant sought for dismissal of the suit. Since the area in which the suit property is situate became a part of Greater Chennai Municipal Corporation during the pendency of the suit, an additional written statement was filed by the defendant claiming that the Civil Court has no jurisdiction to pass a decree for ejectment and the suit is not maintainable, since the provisions of Tamilnadu Buildings (Lease and Rent Control) Act, 1960, as they were in existence would apply to the tenancy on hand.

4. The original plaintiff in O.S.No.1061 of 2004 died in the year 2011 and his sons were brought on record as plaintiffs 2 and 3. The defendant in the said suit filed another suit in O.S.No.319 of 2011 against the newly added plaintiffs 2 and 3 in O.S.No.1061 of 2004 seeking a decree for permanent injunction restraining them from evicting him except under due process of law. In the said suit, the plaintiff claimed that after the

death of Elumalai, the defendants namely, plaintiffs 2 and 3 in O.S.No.1061 of 2004 are attempting to evict him by using force and there was an attempted eviction on 13.09.2011. The said suit was resisted by the defendants therein contending that the suit for eviction has already been filed by the father and that has been continued by them and as such they never attempted to evict the plaintiff by force. Both the suits were tried together.

5. The Trial Court, upon a consideration of the evidence on record concluded that the plaintiffs would be entitled to a decree for ejectment. On the plea taken in the additional written statement as to the maintainability of the suit for eviction of a tenant after the area in which the suit property is situate was annexed with the Greater Chennai Municipal Corporation, the Trial Court held that there was no notification extending the provisions of the Tamilnadu Buildings (Lease and Rent Control) Act to Porur area after it was annexed to the Greater Chennai Municipal Corporation hence, the jurisdiction of the Civil Court would not be barred. On the above findings, the learned Trial Judge decreed the suit in O.S.No.1061 of 2004 as prayed for and dismissed the suit in O.S.No.319 of 2011, in view of the decree in O.S.No.1061 of 2004. Aggrieved, the defendant preferred an appeal in A.S.No.47 of 2012.

6. The lower Appellate Court also concurred with the findings of the Trial Court. The lower Appellate however, found that the area in which the suit property is situate namely, the Porur Town Panchayath was made part of the Chennai Corporation as per G.O.256 dated 26.12.2009. Therefore, the annexation of the area namely, Porur Town Panchayat, as a part of the Chennai City Municipal Corporation is not in dispute. The lower Appellate Court however, held that the said annexation alone is not sufficient to conclude that the provisions of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 would stand automatically extended to the area in question so as to prevent a Civil Court from exercising jurisdiction. The learned Sub-Ordinate Judge, relied upon some of the judgments rendered by this Court with reference to the provisions of the Chennai City Civil Courts Act, 1892 and the Madras High Court (Jurisdictional Limits) Act 1927 and the Madras High Court (Jurisdictional Limits) Extension Act, 1985 to come to the conclusion that unless the provisions of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 are specifically extended to the extended areas of the Corporation also, a Civil suit cannot said to be barred. Since it agreed with the Trial Court on the factual aspects, the learned Appellate Judge affirmed the judgment and decree of the Trial Court. Aggrieved, the defendant has come up with these two appeals.

7. I have heard Mr.M.V.Seshachari, learned counsel appearing for the appellant. Though a counsel had entered appearance, none appeared for the respondents. Considering the importance of the question involved in this appeal, I had requested Mr.P.B.Balaji, learned counsel to assist the Court and appointed him as Amicus Curaie by order dated 19.09.2019. The following questions of law were framed at the time of admission:-

"a) Whether the Courts below after having found the Appellant is in possession and enjoyment of the suit property are justified in dismissing the suit for permanent injunction not to evict the appellant except by due process of law ?

b) Whether the applicability of Tamilnadu Buildings (Lease and Rent Control) Act, 1960 to the suit property during the pendency of the suit ousts the jurisdiction of the Civil Court to pass a decree for ejectment?"

8. Mr.M.V.Seshachari, learned counsel appearing for the appellant would invite my attention to the provisions of the Tamilnadu Buildings (Lease and Rent Control) Act to contend that once an area is notified as Municipality or a Corporation or once an area is annexed with an existing Corporation or a Municipality, the provisions of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 would automatically stand extended to that area. He would fault the lower Appellate Court for having adverted to the provisions of the Chennai City Civil Court and Madras High Court (Jurisdictional Limits) Act, 1927 which have no bearing on the issue. He would also draw my attention to the Sub-section 2 of Section 1 of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960. Sub-section 2 Section 1 of the Tamilnadu Buildings Lease and Rent Control Act, 1960 which reads as follows:-

"(1) (2) (a) (i) This Act [except sub-section (2) of section 3], shall apply to the City of Madras [and to the City of Madurai] and to all municipalities constituted or deemed to have been constituted under the [Tamil Nadu] District Municipalities Act, 1920 (Tamil Nadu Act V of 1920) in the State:

Provided that the Government may, by notification, direct that this Act shall cease to apply to any municipality specified therein or to the City of Madras [or to the City of Madurai] from such date as may be mentioned in the notification.

(ii) Where this Act had, under the proviso to sub-clause(i), ceased to apply to any such municipality or City as is mentioned in that proviso,

the Government may, by notification, apply this Act, except sub-section(2) of section 3, to any such municipality of City with effect from such date as may be specified in the notification.

(b) Sub-section (2) of section shall apply to the City of Madras [or to the City of Madurai] or any municipality constituted or deemed to have been constituted under the [Tamil Nadu] District Municipalities Act, 1920 ([Tamil Nadu] Act V of 1920) in the State only from such date as the Government may, by notification, appoint [and the Government may cancel or modify any such notification].

(c) The Government may, by notification apply all of any of the provisions of this Act except sub-section(2) of section 3, to any other area in the State with effect from such date as may be specified in the notification, and may cancel or modify any such notification.

(d) Upon the issue of a notification under the proviso to sub-clause (i) of clause (a) or of a notification of cancellation under clause(b) or clause (c), this Act, or as the case may be, the provision thereof, shall cease to apply, except as respects things done or omitted to be done before such cesser; and section 8 of the Tamil Nadu General Clauses Act, 1891 (Tamil Nadu Act I of 1891), shall apply upon such cessers if this Act or such provision had then been repealed by a Tamil Nadu Act; but such cesser shall not be deemed to affect the power of the Government under sub-clause (ii) of clause (a) or under clause (b) or clause (c) again to apply this Act or any such provision to any area mentioned in that sub-clause or clause."

Relying upon the said provision, Mr.M.V.Seshachari would contend that once an area is notified as Municipality or a Corporation or once an area is annexed with an existing Corporation or a Municipality, the provisions of Act would automatically apply. He would also specifically point out that the proviso to Clause (a)(i) of Subsection 2 of Section 1 empowers the government to withdraw the applicability of the provisions of the act to any such area. This, according to Mr.M.V.Seshachari would demonstrate that the extension of the act is automatic and it does not require a separate notification.

9. Mr.P.B.Balaji, learned counsel appearing as Amicus Curaie would concede the above position of law. A reading of the provisions particularly, Sub-section 2 Section 1 of the Act itself clearly discloses that once an area is annexed to the

Corporation or a Municipality or once an area is declared to be a municipality or a Corporation, the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 would automatically apply to such areas and the tenants of buildings situate within those areas would be entitled to protection of the enactment. No separate notification is necessary extending the provisions of the Act to a newly formed Municipality or Corporation. This is clear from the very language of the section which in fact enables the government to withdraw the applicability of the enactment from certain areas which form part of a Corporation or a Municipality. The language of Clause C of Sub-section 2 would also show that the applicability of the act is almost instantaneous on the area being declared as a Municipality or a Corporation. The very fact that Clause 'C' of Subsection 2 enables the state government to issue notifications to apply all or any of the provisions of the Act to any other area would mean that no notification extending under provisions of the Act is required, in so far as the areas declared as part of Municipality or Corporation. I therefore, conclude that the Courts below were not right in holding that the applicability of the provisions of the Tamilnadu Buildings (Lease and Rent Control) Act would depend on a separate notification to be issued by the government extending the provisions of the Act to any area in question. The above conclusion does not however fully answer the question of law raised.

10. In so far as the question of law 'B' is concerned, there is no express bar of a suit for ejectment under the Tamilnadu Buildings (Lease and Rent Control) Act, 1960. Section 10 of the said Act, deals with eviction of tenants. Subsection 1 of Section 10 which offers protection to the tenants from eviction reads as follows:

"The tenant shall not be evicted whether in execution of the decree or otherwise."

Therefore, a cursory reading of this provision would show that while a suit for ejectment is not barred, the jurisdiction of a Civil Court to pass a decree for eviction is also not taken away but the interdict is on execution of the decree. The expression "tenant shall not be evicted whether in execution of the decree or otherwise" would necessarily imply that the interdict is on execution of the decree and not institution of the suit or passing of the decree. This very question has been subject matter of several decisions of this Court as well as the Hon'ble Supreme Court. In A.Krishnaswami Vs. S.Rasheeda reported in 1980(2) MLJ Page 463, a similar situation was considered and this Court had upon a consideration of the Section 2(1) of the Act as well as a definition of the tenant under section 2(8) of the Act concluded that even though the suit was filed at a time when the area where the building is situate was not covered by

the Act, subsequently, upon the town where the building was situate having been declared a Municipality the provisions of the Act stood automatically extended to the area. On the question as to whether the suit could be continued, this Court held that from the clear language of the Section 10(1) of the Act, what is barred is the execution of the decree and not a suit for ejectment. In doing so, this Court had observed as follows:

"10. For the aforesaid reasons, the contentions of the petitioner have to be sustained. However, it is made clear that the decree passed against the petitioner is not a null and void one. Only its executability has been impugned by Section 10(1) of the Act. Therefore, there can only be a declaration that so long as the petitioner merits the status of tenant under the Act and so long as Section 10(1) remains on the statute book, the decree obtained by the respondent will be inexecutable. There will be a declaration to that effect in the petitioner's application. The revision will stand allowed accordingly, but there will be no order as to costs. It is also made clear that notwithstanding the decree for possession already obtained by the respondent, it is open to him to seek eviction of the petitioner by instituting appropriate proceedings under Section 10 (1) of the Act, if there are grounds for the same."

11. In Life Insurance Corporation of India Vs. India Automobiles Company Limited reported in 1991 1 MLJ Page 1. The Hon'ble Supreme Court had pointed out that the jurisdiction of the Civil Court is not taken away by any of the provisions of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960. The existence of such provisions in the Delhi Rent Control Act, namely Section 50, was also pointed out by the Hon'ble Supreme Court. Mr.P.B.Balaji would however submit that the Hon'ble Supreme Court in Krishan @ Krishan Kumar and others Vs. Manoj Kumar and others reported in 1998 (II) CTC Page 37, while considering the provisions of the Haryana (Control of Rent and Eviction) Act, 1973 had held that the maintainability of the suit has to be decided on the basis of the law that was in force on the date of the institution of the suit. Therefore, the Hon'ble Supreme Court had concluded that despite the fact that the building has become more than 10 years old during the pendency of the proceedings before the Hon'ble Supreme Court, the decree passed by the Civil Court based on an exemption contained in the rent control legislation will not become a nullity. He would also refer to a judgment of this Court in Bharath Kumar Jain Vs. Kanta Ben reported in 1998 (II) CTC 111 which also took a similar view. I can straight away say that the above two decisions arose under a totally different

circumstances. Section 1 (3) of the Haryana Act exempted buildings, which are less than 10 years old from the applicability of the said Act.

i) Section 1(3) of the said Act reads as follows:-

1(3) "Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion."

ii) In section 13(1) of the said Act reads as follows:-

13(1). "A tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of the Sections."

Considering the effect of the two provisions, the Hon'ble Supreme Court held that the Civil Suit instituted when building was less than 10 years old was exempt from the provisions of the Act can continue despite the fact that the building in question became more than above 10 years old during the pendency. Referring to the language of Section 13(1) of the Act which has already been extracted, the Hon'ble Supreme Court concluded that a decree passed in such a case even after the expiry of the 10 years is executable.

12. At this juncture, it will be relevant to point out the difference in language between Section 10(1) of the Tamilnadu Act and Section 13(1) of the Haryana Act.

i) Section 10(1) of the Tamilnadu Act reads as follows:-

"A tenant shall not be effected whether in "execution of a decree" or otherwise except in accordance with the provisions of this section or Sections 14 to 16." [emphasis supplied].

ii) Section 13(1) of the Haryana Act, which was the subject matter of the decision of the Hon'ble Supreme Court in Krishan's case reads as follows:-

13(1) " A tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this Court Act."

A comparison of the above two provisions would show the words "whether in execution of the decree otherwise" are not found in the Haryana Act. The Hon'ble Supreme Court had an occasion to consider the scope of the bar on jurisdiction of the Civil Court under the Tamilnadu Act, which is in M/s.East India Company Limited Vs. Meenakshi Mills Ltd., reported in AIR 1991 SC Page 1094. Section 30(ii) of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 as it stood originally exempted certain buildings from applicability of the Act on the basis of the quantum of rent. The said provision was struck down as being unconstitutional by issuance of a writ of declaration by the Hon'ble Supreme Court in Rattan Arya Etc. Vs. State of Tamilnadu and another reported in AIR 1986 SC 1444. The resultant position was that the Act applied to all buildings irrespective of the quantum of rent. The Civil Appeal, which was subject matter of

the decision in AIR 1991 SC 1094 namely, East India Company Limited's case was pending when the constitutional validity of Section 30(ii) was decided by the Hon'ble Supreme Court. The suit for ejectment in the said case was filed as early as in the year 1980 and the decree for ejectment also came to be passed. On the confirmation of the decree for ejectment by the High Court, the tenant had filed Civil Appeal No.4032 of 1984 before the Hon'ble Supreme Court, it was during the pendency of the Civil Appeal, the judgment in Ratan Arya's case came to be delivered declaring that Section 30(ii) of the Tamilnadu Buildings Lease and Rent Control Act as unconstitutional. When the appeal filed by the tenant in Civil Appeal No.4032 of 1984 was taken up before the Hon'ble Supreme Court, it was contended that in view of the judgment in Ratan Arya's case, the Civil Court will lose jurisdiction and the decree passed by the Civil Court would become a nullity. While answering the said contention, the Hon'ble Supreme Court in Meenakshi Mill's case had concluded as follows:-

"6. Clause 9 of the Mysore House Rent and Accommodation Control Order, 1948 reads:

"9. (1) A tenant in possession of a house shall not be evicted therefrom whether in execution of a decree or otherwise except in accordance with the provisions of the clause.

Clause 16 of that Order reads:

"16. Nothing in this Order shall prevent a landlord from filing a suit for eviction of a tenant, although a decree passed by such a Court for eviction cannot be executed without a certificate to that effect from the Controller. Jurisdiction of the civil court is thus not only not barred but specifically preserved, except for the restriction imposed on the execution of decrees in matters of eviction. On the other hand, such a provision is significantly absent in the enactment in question. The provisions of the Mysore Order considered by this Court in B.V.Patankar Vs. C.G.Sastry and those of the Act in question here are not in pari materia. The observations of this Court relied on by Dr. Chitale are not, therefore, helpful in understanding the provisions in question in the instant case.

9. What is stated in the second proviso to Section 10(1) is the sole circumstance in which the Civil Court is invested with jurisdiction in matters of eviction. But this jurisdiction cannot be invoked otherwise than as stipulated in the second proviso. This means that the condition precedent to the exercise of jurisdiction by a civil Court is that the tenant should have denied the title of the landlord or

claimed right of permanent tenancy and the Controller should, on such denial or claim by the tenant, reach a decision whether such denial or claim is bona fide. Upon such decision, the Controller must record a finding to that effect. In that event, the landlord is entitled to sue for eviction of the tenant in a civil court. Where these conditions are satisfied, the civil court will have jurisdiction to pass a decree for eviction on any of the grounds mentioned in section 10 or sections 14 to 16, notwithstanding that the court has found that the tenant's denial of the landlord's title does not involve forfeiture of the lease, or, his claim of right of permanent tenancy is unfounded. Except to this limited extent, the jurisdiction of the civil court in matters of eviction of a tenant is completely barred and the jurisdiction in such matters is vested in the tribunals set up under the statute.

10. Significantly, the jurisdiction of the civil court can be invoked only where the Controller comes to a decision, and records a finding, that the denial or claim by the tenant, as aforesaid, is bona fide. If the controller were to come to the opposite conclusion, no question of invoking the jurisdiction of the civil court would arise. But the decision of the Controller is concerned solely with the bona fides, and not the correctness or validity, of the denial or claim, for these difficult questions of title are by the statute reserved for decision by the appropriate civil court which is the more competent forum in such matters. (See the principle discussed in *Magiti Sasamal Vs. Pandab Bissoi* 1962 3 SCR 673.) In such an event, the civil court will become competent to pass a decree for **eviction** on any of the grounds mentioned in section 10 or sections 14 to 16. On the other hand, if the decision of the Controller is that the tenant's denial or claim is bona fide, the jurisdiction of the civil court cannot be invoked by the landlord and the controller will then be the competent authority to order eviction, after affording the parties a reasonable opportunity of being heard, on any one of the grounds specified under the statute, including the ground that the tenant has, without bona fide, denied the landlord's title or claimed right of permanent tenancy. What is significant is that the decision of the Controller, duly recorded by him, as regards the bona fide denial or claim by the tenant is the condition precedent to the invocation of power of the civil court. Any suit instituted by the landlord for eviction of a tenant from a building falling

within the ambit of the Act, otherwise than as stipulated by the section, is, therefore, incompetent for lack of jurisdiction of the court and any decree of the court in such a suit is null and void and of no effect."

Relying upon the above decisions of the Hon'ble Supreme Court Mr.M.V.Seshachari, learned counsel appearing for the appellant would contend that once the provisions of the act are extended to a particular area, thereafter, the Civil Courts will become quorum in non-judice and will lose jurisdiction to pass orders of eviction against tenants.

13. Mr.P.B.Balaji would, however, points out that there is difference between the circumstances under which the Hon'ble Supreme Court decided East India Company Ltd., Vs. Meenakshi Mills. According to him, the fact that a provision in the enactment was declared unconstitutional by the Hon'ble Supreme Court there by an exemption given under the Act was withdrawn, would mean that the provision of law was never in existence and therefore, the Hon'ble Supreme Court concluded that the Civil Court would lose its jurisdiction to pass a decree for eviction in respect those buildings for which the rent was above Rs.400/-. He would however point out that the three judge bench in Krishan @ Krishan Kumar's case had held that the law that would be applicable on the date of the institution of the suit will continue to apply till the logical conclusion of the proceeding unless there is an express bar created by any subsequent enactment or any subsequent enactment providing for transfer of the suits to a particular Court or a Tribunal constituted under such different enactment. I have considered the rival submissions.

14. As far as language of Section 10(1) Tamilnadu concerned, it is clear that it does not bar institution of the suit or passing of a decree. What is barred is only the execution of the decree. There is no other provision under the enactment even suggesting an implied bar on the institution of a suit or execution of the decree. The difficulty arose only in a cases where the act is extended to a particular area after the said area being included in a Municipality or a Corporation which results in automatic extension of the enactment to the said area. In so far as the exemption provided under Section 30 of the Tamilnadu Buildings Lease and Rent Control Act namely, on the basis of the age of the building and rent payable, the exemption provided on the basis of rent payable was struck down by the Hon'ble Supreme Court in Ratan Arya's case (Supra). However, any new building, which is less than 5 years of age is exempted from the provisions of the act. In that case, the judgment of the three judge bench of the Hon'ble Supreme Court in Krishan's case reported in 1998 (2) CTC Page 37 would

squarely apply and the law that was in existence on the date of the filing of the suit or the eviction proceedings would continue to govern such proceedings. But in the case on hand, the facts are slightly different. The building, admittedly, is not an exempted building. The suit as filed in 2004 for ejectment was perfectly maintainable, since the area in question was neither a Municipality nor a Corporation. Therefore, the provisions of the Tamilnadu Buildings (Lease and Rent Control) Act did not apply. However, in 2009, the area was annexed to the Chennai Corporation. Therefore, on and from 26.12.2009, the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 stood automatically extended to the area in question. It is here, the moot question as to whether the suit could be continued or not arises. As already pointed out, this Court in A.Krishnaswamy Vs. Radha under similar circumstances had held that the Civil Court's power to pass a decree is not taken away and it is the only the execution that is barred. I am of the considered opinion, neither the three judge bench of the Supreme Court in Krishan's case or the two judge bench which decided East India Company Limited Vs. Meenakshi Mills had contemplated a situation like the one on hand.

15. As far as East India Company Vs. Meenakshi Mills is concerned, it was the constitutional validity of the particular provision granting exemption to a particular class of buildings that was in question and the Hon'ble Supreme Court in Ratan Arya's case had held the provision of law to be unconstitutional. If a provision is held to be unconstitutional, then it is as if that it did not exist in the statute book at all. Therefore, any action taken or decree passed pursuant to such provision would automatically become invalid. Therefore, the reasoning of the Hon'ble Supreme Court in East India Company's case cannot be logically extended to the case on hand to conclude that the Civil Court will lose his jurisdiction. In Krishan @ Krishan Kumar and Others, the Hon'ble Supreme Court had dealt with the provisions of the Haryana Act where there is a slight difference in the language of section 13(1) of the said act when compared to the Section 10 (1) of the Tamilnadu Act. The Tamilnadu Act includes the words "in execution of a decree" or otherwise which are not available in the Haryana Act. If the principal of law that is laid down in Krishan @ Krishankumar to the effect that the law that existed on the date of the suit would determine the rights of the parties can be logically extended to the present situation also, there is no transitory provision under the Tamilnadu Act which provides for transfer of proceedings for eviction pending before the competent Civil Court on the date of extension of the Act to new areas also. Therefore, to conclude that a Civil Court's jurisdiction to pass a decree of eviction will be taken away in a pending proceeding, in view of the extension of the

Tamilnadu Buildings (Lease and Rent Control) Act, 1960 to the area in question will result in cessation of proceedings half way through and the parties would be left high and dry without any remedy. This litigation itself is 15 years old today and the Tamilnadu Buildings (Lease and Rent Control) Act has also been repealed and a new act namely, the Tamilnadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 has been put in place. The definition of a tenant under new Act is substantially different from that of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960. Under the new Act, as per Section 2(n), a tenant is defined as follows:

"tenant" means a person by whom or on whose account or behalf the rent of any premises is, or, but for a contract express or implied, would be payable for any premises and includes any person occupying the premises as a sub-tenant and also, any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made;"

16. While the definition of tenant under the 1960 Act includes the person who had suffered an order of eviction. The new Act does not include a tenant who had suffered an order of eviction. Section 40 of the new Act bars the jurisdiction of a Civil Court so far as it relates to any provision of the Act and Section 21(1) of the new Act, which offers protection to the tenants reads as follows:-

"The tenants shall not be evicted during the continuance of the tenancy agreement except in accordance with the provisions of Subsection 2."

17. Therefore, the provisions of the new Act are vastly different from that of the 1960 Act. From an analysis of the provisions of the enactment as well as judgments rendered by this Court and the Hon'ble Supreme Court, the following principles emerge:-

1) The provisions of the Tamilnadu Buildings Lease and Rent Control Act, 1960 does not bar jurisdiction of a Civil Court to pass decrees for eviction.

2. What is barred is execution of such decrees for eviction.

3. There is no machinery provided under the Act for transfer of pending proceedings to Rent Controllers where there is an automatic extension of the Act by certain areas being included in an existing Municipality or a Corporation. Therefore, necessarily the power of the Civil Courts to continue

with the eviction proceedings that have been initiated prior to the date on which the act is made applicable of area in question should be preserved.

18. No doubt, Mr.V.Sesachari would contend that there is a interdict on execution of the decree under the Tamilnadu Buildings (Lease and Rent Control) Act. But the said interdict no longer survives in view of the fact that the very enactment namely, the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 has been repealed and the new Act has been put in place. The new Act namely, the Tamilnadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 does not bar execution of a decree obtained against a tenant, in view of the definition of tenant under the new Act. I therefore conclude that the decree passed by the Civil Court is executable in the changed scenario. In the absence of any provision in the 2017 Act, I do not think the suit could be said to be barred and the decree could be said to be invalid. I therefore, conclude that the decree passed in O.S.No.1061 of 2004 is valid and is executable.

19. On the question of law relating to grant of injunction, I find that there is no need for injunction decree since the landlords have already approached the Courts below seeking a decree for eviction. Therefore, the Courts below were perfectly justified in dismissing the suit for injunction while decreeing the suit for eviction. In view of the above, the second appeals fail and accordingly dismissed. However, in the circumstances, there will be no order as to costs. I place on record my appreciation and gratitude to Mr.P.B.Balaji, who assisted the Court to complete the task. But for his assistance this Court would not have been able to answer this tricky question of law one way or the other.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To:-

1. The Sub-Court, Poonamallee.
2. The Principal District Munsif,
Poonamallee.

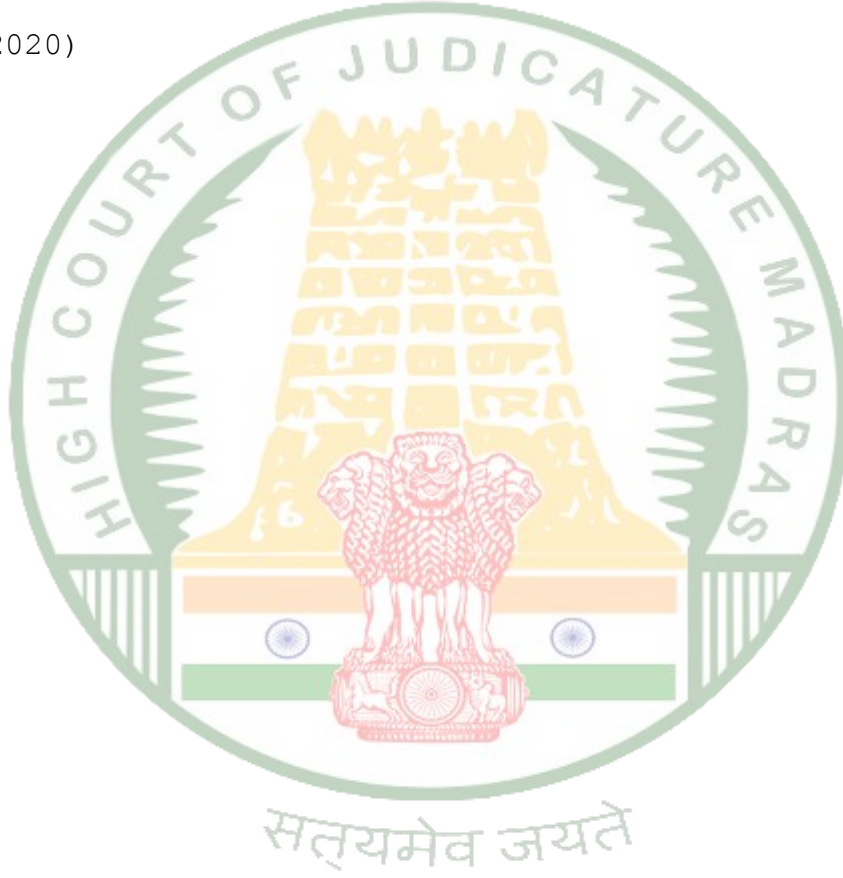
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V.R. Section, High Court,
Madras.

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