



WEB COPY



C.R.P.Nos.1616 and 1617 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2022

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.Nos.1616 and 1617 of 2019

A.N.Yesudoss .. Petitioner in both C.R.Ps
Vs.

C.Rajaram .. Respondent in both C.R.Ps
Prayer in C.R.P.No.1616 of 2019:- Civil Revision Petition filed under Section 115 of CPC to allow the Civil Revision Petition setting aside the Fair and Decretal Order dated 11.12.2018 in E.A.No.24 of 2016 in E.P.No.27 of 2015 in O.S.No.519 of 2003 on the file of Principal District Munsif Court, Poonamallee.

Prayer in C.R.P.No.1617 of 2019:- Civil Revision Petition filed under Section 115 of CPC to allow the Civil Revision Petition setting aside the Order dated 11.12.2018 in E.P.No.27 of 2015 in O.S.No.519 of 2003 on the file of Principal District Munsif Court, Poonamallee.

In both C.R.Ps

For Petitioner : Mr.M.V.Seshachari

For Respondent : Mr.R.Prabakar

COMMON ORDER

The Civil Revision Petition C.R.P.No.1616 of 2019 has been filed as against the Fair and Decretal Order dated 11.12.2018 in E.A.No.24 of 2016 in



C.R.P.Nos.1616 and 1617 of 2019

E.P.No.27 of 2015 in O.S.No.519 of 2003 on the file of Principal District Munsif Court, Poonamallee, thereby allowed the same.

2. The Civil Revision Petition C.R.P.No.1617 of 2019 has been filed as against the Order dated 11.12.2018 in E.P.No.27 of 2015 in O.S.No.519 of 2003 on the file of Principal District Munsif Court, Poonamallee, thereby dismissed in pursuant to the order passed under Section 47 r/w 151 CPC.

3. Heard, Mr.M.V.Seshachari, learned counsel appearing for the petitioner and Mr.R.Prabakar, learned counsel appearing for the respondent and perused the materials available on record.

4. The petitioner filed a suit in O.S.No.519 of 2003, for ejectment as against the respondent. The case of the petitioner is that he is the owner of the suit property. The respondent has attorned the tenancy with the petitioner and executed the agreement on 26.02.2001. The said agreement expired by efflux of time and the respondent is in illegal possession of the suit property. Therefore, the petitioner caused legal notice, thereby terminating the tenancy of the respondent and calling upon him to handover vacant possession of the suit property. Hence, the suit.



5. The respondent also filed a suit in O.S.No.422 of 2002 for permanent injunction restraining the petitioner from vacating the respondent from the suit property, without due process of law. Both the suits were tried together and the Trial Court allowed the suit filed by the petitioner and dismissed the suit filed by the respondent and thereby directed the respondent to vacate the suit premises and handover the vacant possession, within a period of six months.

6. Aggrieved by the same, the respondent preferred appeal suits in A.S.Nos.88 and 89 of 2013. The first Appellate Court allowed the appeal suit in A.S.No.88 of 2013 and thereby decreed the suit filed by the respondent. At the same time, the first Appellate Court dismissed A.S.No.89 of 2013, confirming the Judgment passed by the Trial Court in O.S.No.519 of 2003.

7. Aggrieved by the same, the respondent again filed a second appeal in S.A.No.912 of 2015 and the same was also dismissed, confirming the Judgment passed by the Courts below. Pursuant to execute it, the petitioner filed an execution petition in E.P.No.27 of 2015 for delivery of vacant possession of the suit premises. Pending the execution petition the respondent filed E.A.No.24 of 2016 under Section 47 r/w 151 of CPC, on the ground that the Judgment passed in O.S.No.519 of 2003 is not executable one, since the decree itself is invalid



and it was passed without any inherent jurisdiction. Further, the suit premises is situated at Thiruverkadu and the same was declared as Municipality. Therefore, the provisions under the Tamil Nadu Buildings Lease and Rent Control Act, 1960 should be made applicable to the suit property. According to the upgradation of local body and change of status of law, the decree passed in O.S.No.519 of 2003 had attained nullity. Subsequently, the Thiruverkadu municipality is upgraded as Selection Grade Municipality. Therefore, as per the Selection Grade Municipality, the Tamil Nadu Buildings Lease and Rent Control Act, 1960 is only applicable to the suit property and the learned Rent Controller cannot have any jurisdiction to try the suit and the Trial Court ousted the jurisdiction as and when the local body was upgraded and the Civil Court has no jurisdiction to entertain the suits for ejectment.

8. It is seen that the suit property is situated in the Thiruverkadu Village and it was not part of the municipality as on the date of filing of the suit viz., in the year 2003. Therefore, the petitioner filed a suit for ejectment of the respondent after terminating the tenancy relationship by issuance of notice as contemplated under Section 106 of Transfer of Property Act. The said suit was decreed and confirmed up to this Court in S.A.No.912 of 2015. Without considering the same, the Execution Court mechanically allowed the



C.R.P.Nos.1616 and 1617 of 2019

application filed under Section 47 of CPC, on the ground that the suit premises is located within the Thiruverkadu municipality and as such the Tamil Nadu Buildings Lease and Rent Control Act, 1960 is only applicable.

9. It is also seen that the Tamil Nadu Buildings Lease and Rent Control Act, 1960 was repealed by the Tamil Nadu Regulation of Rights and Responsibilities of Landlord and Tenants Act, 2017 and as such there is no bar for the Execution Court to execute the decree. Section 10(1) of the Tamil Nadu Buildings Lease and Rent Control Act, 1960 does not bar institution of the suit or passing of decree. It is barred only for the execution of decree. However, this argument no longer survives in view of the fact that the Tamil Nadu Buildings Lease and Rent Control Act, 1960 has been repealed by the Tamil Nadu Regulation of Rights and Responsibilities of Landlord and Tenants Act, 2017 and the New Act enacted does not bar execution of the decree obtained against the tenant. Therefore, the decree passed by the Civil Court is executable as per the repeal Act.

10. That apart, the Hon'ble Supreme Court of India in the judgment reported in ***C.A.No.2816 of 2022*** in the case of ***Shankarlal Nadani Vs Sohanlal Jain***, cited the Judgment reported in ***2017 4 SCC 202***, wherein the



landlords were appellants who filed the suit for eviction of the tenants. The suit was filed in the Civil Court. The premises in question were outside the ambit of rent legislation on the day the suit was filed. However, during the pendency of the suit and before it could be finally decided, the area in question was brought within the sweep of rent legislations by requisite notifications and also held as follows,

“18. From the aforesaid discussion in Atma Ram Mittal [Atma Ram Mittal v. Ishwar Singh Punia, (1988) 4 SCC 284] , Vineet Kumar [Vineet Kumar v. Mangal Sain Wadhera, (1984) 3 SCC 352] , Ram Saroop Rai [Ram Saroop Rai v. Lilavati, (1980) 3 SCC 452] , Ramesh Chandra [Ramesh Chandra v. III Addl. District Judge, (1992) 1 SCC 751] and Shri Kishan [Shri Kishan v. Manoj Kumar, (1998) 2 SCC 710] cases, the apparent principles which can be culled out, forming the ratio decidendi of those cases, are as under:

18.1. Rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the law applicable on the date of filing of the suit will continue to apply until the suit is disposed of or adjudicated.

18.2. If during the pendency of the suit, the Rent Act becomes applicable to the premises in question, that would be of no consequence and it would not take away the jurisdiction of the civil court to dispose of a suit validly instituted.

18.3. In order to oust the jurisdiction of the civil court, there must be a specific provision in the Act taking away the jurisdiction of the civil court in respect of those cases also which were validly instituted before the date when protection of the Rent Act became available in respect of the said area/premises/tenancy.

18.4. In case the aforesaid position is not accepted and the protection of the Rent Act is extended even in respect of suit validly instituted prior in point of time when there was no such protection under the Act, it will have the consequence of making the decree, that is obtained prior to the Rent Act becoming applicable to the said area/premises, unexecutable after the application of these Rent Acts in respect of such premises. This would not be in consonance with the legislative intent.”

11. Thus, it is clear that the rights of the parties stand crystallized on the



date of the institution of the suit and therefore, the law applicable on the date of filing of the suit will continue to apply until the suit is disposed of or adjudicated. In the case of hand, admittedly, the suit was filed in the year 2003. At the time of initiating of suit for ejectment of the respondent, the suit village was under the Village Panchayat. Therefore, the Civil Court only has got jurisdiction to try the suit for ejectment. After decreeing the suit in O.S.No.519 of 2003, the Thiruverkadu village came under the jurisdiction of Thiruverkadu municipality. Hence, in the suit filed before the Trial Court prior to the applicability of the Tamil Nadu Buildings Lease and Rent Control Act, 1960, the decree passed by the Civil Court is valid and executable, which is not interdicted by the applicability of the Act to the area in question. The Act is applicable to the area in question from the date the notification came into force and it does not bar the decree of the Civil Court or the pendency of such civil suit. That apart, the petitioner is entitled to a decree on that day when he initiated the proceedings. Therefore, rights of the parties have to be examined as on the said day.

12. Hence, the decree passed in O.S.No.519 of 2003 is executable one and the Fair and Decreetal Order dated 11.12.2018 in E.A.No.24 of 2016 in E.P.No.27 of 2015 in O.S.No.519 of 2003 on the file of Principal District



C.R.P.Nos.1616 and 1617 of 2019

Munsif Court, Poonamallee and the Order dated 11.12.2018 in E.P.No.27 of 2015 in O.S.No.519 of 2003 on the file of Principal District Munsif Court, Poonamallee are hereby set aside. The execution petition in E.P.No.27 of 2015 is hereby allowed and the respondent shall vacate the suit premises and hand over vacant possession of the same to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

13. Accordingly, these Civil Revision Petitions are allowed. No costs.

13.12.2022

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

mn

G.K.ILANTHIRAIYAN,J.



C.R.P.Nos.1616 and 1617 of 2019

mn

WEB COPY

To

The Principal District Munsif Court, Poonamallee.

C.R.P.Nos.1616 and 1617 of 2019

13.12.2022