Kasturchand

Vs

Raman Rajan and another

Civil Appeal No. 3765 of 1992 with Spl. Leave Petn. (C) No. 8890 of 1990

(Dr. T. K. Thommen, S. P. Bharucha JJ)

24.07.1992

JUDGMENT

1. The appellant Kasturchand challenges the judgment of the Madras High Court in C.R.P. No. 158 of 1982 whereby the High Court confirmed the concurrent findings of the courts below. All the courts have held that the appellant is liable to be evicted from the premises on the ground of default in payment of rent.

2. The case of the respondent is that the premises had been let out by him to the appellant in May 1978 on a rent of Rs. 2,500/- per month. The appellant defaulted payment as a result of which the petition for eviction was lodged. The sole contention of the appellant in answer to the eviction petition was that he was not the tenant, but Dhanalakshmi Social Club was in fact the tenant. The eviction petition having not been brought against the real tenant, the appellant contended, it was unsustainable. He did not, however, raise any other contention.

3. The trial court accepted the contentions of the landlord and ordered eviction on the ground of default. The trial court found that the appellant Kasturchand was the tenant of the premises. All cheques in payment of rent were paid by him in his personal capacity. Receipts were issued to him, and the counterfoils of such receipts were duly signed by him in his personal capacity. At all material times, the parties understood the appellant as the tenant and the respondent as the landlord. This finding was confirmed by the appellate court. In the memorandum of appeal, a ground had been raised for the first time by the appellant to the effect that the plaintiff was not the owner of the building because he had parted with his ownership and possession in favour of his adult sons. Although this ground was raised, apparently no argument was urged, for there is no reference to it in the judgment, and no point was raised on it. This point was, however, urged in Revision before the High Court. The High Court found that at all material times, the parties treated each other as landlord and tenant. The appellant understood the respondent as the landlord. The respondent treated the appellant as the tenant. The documents evidencing the lease indicated that they understood each other as landlord and tenant.

4. Appearing for the appellant, Mr. Tarkunde contends that the definition of landlord under Section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Act No. l8 of 1960) shows that a person who acted on behalf of another being an agent is also a landlord, but Section 10(8) of the Act says that such an agent is not entitled to institute proceedings except with the previous written consent of the landlord. Section 10(8) reads:

> "Section 10(8). Notwithstanding anything contained in this section no person who is receiving or is entitled to receive the rent of a building merely as an agent of the landlord shall, except with the previous written consent of the landlord, be entitled to apply for the eviction of a tenant."

5. Section 2(6) is an inclusive definition of landlord and it is wide in terms. It includes various persons in the category of landlord. Sub-section (6) of Section 2 reads:

> "Section 2(6). "landlord" includes the person who is receiving or is entitled to receive the rent of a building whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant".

6. The sub-section thus shows that any person acting on his own account or on behalf of another or on behalf of himself and others is a landlord. An agent is defined as a landlord; so is a trustee; so is a guardian. The definition being wide and also inclusive does not exclude a person who at all material times acted as a landlord to the knowledge of all the parties concerned and whose authority to deal with the premises has never been disputed. A person who so acts falls within the definition not as a mere agent, as defined under Section 182 of the Contract Act. He may also be an agent, but not a mere agent. He is much more than that, particularly in the light of the facts of the case. It cannot be gainsaid that the respondent was for all purposes treated by all parties interested in the transaction as a landlord. In respect of such a person, Section 10(8) which refers to a mere agent, is not attracted.

7. In the light of the concurrent finding that the transaction was between the parties to the present proceedings, and not with the Club, as now contended by the appellant, and that he was in default of payment of rent, we see no reason to interfere with the impugned judgment. The appeal is accordingly dismissed with costs throughout. S.L.P.(CIVIL) No. 8890 OF 1990 In the light of our Order in Civil Appeal No. 3765 of 1982, this special leave petition is also dismissed. Appeal dismissed.

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