SUPREME COURT OF INDIA

C.Chandramohan

Vs.

Sengottaiyan

(Syed Shah Mohammed Quadri J.)

04.01.2000

JUDGMENT

SYED SHAH MOHAMMED QUADRI, J.

Thesethree appeals, by special leave, arise out of the common judgment of the High Court of Madras in C.R.Ps.3796 to 3798 of 1994 dated November 17, 1997. The common appellant is the landlord and respondents are the tenants of the three shops, Door Nos.19, 20 and 21, R.K.V.Road, Erode, (hereinafter referred to as the premises). The facts giving rise to these appeals may be noticed here. The father of the appellant, Late Chockalingam who was the owner, let out the shops on rent bearing - Door No.19 to T.

Subramaniam @ Rs.75/- per month; Door No.20 @ Rs.250/- per month to M. Sengottaiyan who died during the pendency of the proceedings (his legal representatives are brought on record as respondents 2 to 6), and Door No.21 to Nachimuthu @ Rs.200/- per month. They are said to be in occupation for the last 25 to 40 years. On June 8, 1978 the said Chockalingam executed release deed (Exhibit P-4) in favour of the appellant and thus he became the absolute owner and landlord of the premises. The landlord claimed that the rent of the shops, Door Nos.19, 20 and 21, was enhanced to Rs.400/-, Rs.850/- and Rs.700/- respectively. He issued notice to the said three tenants stating that the premises were required for demolition and reconstruction and asking them to vacate the same. They replied that he was only a co- owner as the original landlord (Chockalingam) died leaving behind three daughters and a widow also, therefore, he could not seek eviction for demolition and reconstruction of the premises. On the allegation that the appellant was not receiving rent, the respondents issued notices to him to nominate a bank and furnish account number to which the rent may be credited but no reply was given by him. Thereafter, they filed applications under Section 8(5) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (for short the Act) seeking permission of the Rent Controller to deposit the rent in his Court. While so, the appellant filed three eviction petitions under Sections 10(2) and 14(1)(b) of the Act against them seeking their eviction from the premises on three grounds, namely, (i) wilful default in payment of rent; (ii) for demolition and reconstruction of the premises and (iii) denial of the title of the landlord.

They resisted those petitions pleading that the quantum of rent claimed by the appellant was not correct; the agreed rent for the Shops bearing Door Nos.19, 20 and 21 was Rs.75/-, Rs.250/- and Rs.200/- respectively and reiterating the plea taken in the reply notice that he is a co-owner and cannot seek eviction of the premises for demolition and reconstruction. It was also submitted that the transfer of the premises in favour of the appellant was not known to them and that they were paying the rents regularly to him and that there was no wilful and malafide denial of title of the appellant. The Rent Controller, on the basis of the evidence led before it by the parties, held that all

the three grounds were proved by the appellant and allowed the eviction petitions by order dated April 09, 1992; however, the petitions filed by them for deposit of rent were dismissed. Appeals were preferred before the Appellate Authority against both the orders directing eviction and dismissing applications for deposit of rent. The Appellate Authority found that the quantum of rent pleaded by them was correct and that the appellant failed to establish that the rent was enhanced to the amounts claimed by him. But it held that as the applications filed by them for deposit of rent before the Rent Controller were without any valid reasons, they committed wilful default in payment of rent.

On the point of denial of the title, the order of the Rent Controller was confirmed. However, the Appellate Authority was not satisfied that the landlord required the premises for demolition and reconstruction and on that point the finding of the Rent Controller was reversed. In that view of the matter, the Appellate Authority dismissed all the appeals filed by them on September 27, 1992. Dissatisfied with the order of the Appellate Authority, the respondents filed three revision petitions before the High Court of Madras. By a common order dated November 17, 1997, the High Court allowed the revision petitions and set aside the order of eviction passed against them. The present appeals arise from that order. Mr.R.Venkataramani, learned senior counsel appearing for the appellant, challenged the order of the High Court on both the points and submitted that as the plea of deposit of rent in the court of the Rent Controller by the respondents was rejected, they committed wilful default in payment of admitted rent for the months of May, June, July and August, 1987 and as such the High Court erred in setting aside the well considered findings of the lower authorities. The impugned order non-suited the appellant in regard to eviction of the respondents under Section 10(2)(i) and (vii) which are extracted hereunder : 10. Eviction of tenants (2). A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied (i). that the tenant has not paid or tendered the rent due by him in respect of the building, within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable, (ii) to (vi) * * * (vii). That the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bona fide, the Controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application :

Provided that in any case falling under clause (i) if the Controller is satisfied that the tenants default to pay or tender rent was not wilful, he may, notwithstanding anything contained in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected.

Explanation. - For the purpose of this sub- section, default to pay or tender rent shall be construed as wilful, if the default by the tenant in the payment or tender of rent continues after the issue of two months notice by the landlord claiming the rent.

From a combined reading of clause (i) of sub-section (2), the proviso and the Explanation, it is manifest that it is only when the Rent Controller is satisfied that a tenants default to pay or tender the rent is wilful, that he can order eviction of the tenant. The question of wilful default to pay or tender rent to a landlord by a tenant is a mixed question of law and fact. Where the findings recorded by the Appellate Authority are illegal, erroneous or perverse, the High Court, having regard to the ambit of its revisional jurisdiction under Section 25 of the Act, will be well within its

jurisdiction in reversing the findings impugned before it and recording its own findings. It is true that the applications under Section 8(5) of the Act filed by the respondents for permission to deposit the rent of the premises were dismissed by the Rent Controller and the result of the appeals filed against those orders before the Appellate Authority was no different, as such the monthly rent deposited in those proceedings cannot be a valid payment or tendering of rent to the appellant. But, Mr.S.Sivasubramaniam, learned senior counsel for the respondents, brought to our notice that the appellant had withdrawn the rent deposited by the respondents for the months of May, June, July and August, 1987 before the filing of the eviction petition on January 30, 1988. Having accepted the rent deposited, the appellant cannot legitimately contend that the respondents committed default in payment of rent for that period. That being the position, on the date the appellant filed eviction petitions against the respondents, cause of action on the ground of wilful default in payment of rent was not subsisting to claim their eviction from the premises. See: Dakaya @ Dakaiah vs. Anjani [1995 (6) SCC 500]. Further, admittedly in this case no notice as contemplated by the Explanation, quoted above, was issued by the landlord to the respondents.

That apart, in the order under challenge, the learned Judge of the High Court considered the plea of the appellant in the eviction petitions and noted that the ground for seeking eviction of the respondents was that the respondents failed to tender correct rent and that was termed as wilful default in payment of rent. We have gone through the pleadings of the parties. Mr.Venkataramani could not point out any averment in the eviction petitions regarding non-payment of rent by the respondents for any specified month or period; he has, however, contended that if the pleadings are understood in the light of the notices exchanged between the parties, the plea of wilful default in payment of rent can be culled out. We are afraid, we cannot accede to this contention. That is not the way the pleadings are construed. We are inclined to agree with the submission of Mr.S.Sivasubramaniam, learned counsel for the respondents, that the eviction petitions were not filed on the ground of non-payment of rent for any specified period but were filed on the ground that the rent as claimed by the appellant (namely, at the rate of Rs.400/-, Rs.850/- and Rs.700/- per month) was not paid as the same is justified by the recitals in the eviction petitions. In view of the findings of the Appellate Authority regarding the quantum of rent payable by the respondents that the amount as pleaded by the respondents, namely, Rs.75/-, Rs.250/- and Rs.200/- is correct and regarding the ground on which eviction is sought recorded on the basis of the pleadings and the statement of the appellant himself that the respondents had failed to tender the correct rent to the appellant and thereby committed wilful default, the High Court is right in holding that no wilful default was committed by the respondents in payment of rent. There is, therefore, no illegality in the order under challenge on the question of wilful default in payment of rent by the respondents. It was next contended by Mr.Venkataramani that the respondents had denied the title of the appellant and on that point the Rent Controller held against the respondents, which was confirmed by the Appellate Authority, so the High Court ought not to have interfered with that finding of fact. A plain reading of clause (vii), noted above, makes it clear that to invoke this clause twin requirements, namely, - (i) denial of title of the landlord or claim of a right of permanent tenancy by the tenant and (ii) such denial or claim is not bona fide, have to be established by a landlord. To constitute denial of title of the landlord, a tenant should renounce his character as tenant and set up title or right inconsistent with the relationship of landlord and tenant, either in himself or in a third person.

In the case of derivative title of the landlord, in the absence of a notice of transfer of title in favour of the landlord or attornment of tenancy, a tenants assertion that the landlord is a co-owner does not amount to denial of his title, unless the tenant has also renounced his relationship as a tenant. The principle of equity that a person cannot approbate and reprobate finds legislative recognition in

Section 116 of the Evidence Act and Section 111(g) of the Transfer of Property Act. It is in the light of this principle, we have to construe clause (vii) of sub-section (2) of Section 10 of the Act. Adverting to the facts of this case, it has been noted above that the appellant derived his title to the premises under release deed executed by his father, late Chockalingam. The respondents became tenants of late Chockalingam long prior to his execution of the release deed Exhibit P-4 in favour of the appellant. It is a common ground that the appellant had not intimated the respondents that he became owner of the premises under the release deed. There is also nothing on record to show that after execution of the release deed, the appellant has got fresh lease deeds executed in his favour.

However, after the demise of Chockalingam, the respondents started paying the rent to the appellant. Indeed, the High Court has also referred to the evidence of the appellant in which he admitted that the respondents did not deny that he was the landlord when depositing the rent in the Court and that they were paying the rent to him. When a notice was issued by the appellant to the respondents seeking eviction of the premises for its demolition and reconstruction, the respondents replied that he was not the absolute owner of the property since late Chockalingam had also left behind him three daughters and a widow. In their counters, the respondents reiterated the said plea and added that they were unaware of the execution of release deed in favour of the appellant by late Chockalingam and that they had been paying monthly rent to him and that the denial of absolute title of the property was not wilful and malafide, as alleged in the petitions. Now, in this background, when we consider the conduct of the respondents that from the date of the said reply notice (Exhibit P- 18) the respondents neither denied the relationship of landlord and tenant nor did they stop paying rent to the appellant nor did they set up any claim adverse to title or interest of the appellant in themselves or a third party and that after coming to know of the said release deed in favour of the appellant they did not persist in their plea that he was a co-owner, it cannot be said that the respondents denied the title of the appellant, much less can it be said that such a denial was not bonafide. For the above reasons, we cannot but hold that the High Court is right in coming to the conclusion that but for the release deed the appellant would be a co-owner and so the respondents were justified in calling the appellant as a co-owner for lack of knowledge of the release deed and that the appellant failed to make out a case of denial of his title to the premises by the respondents. From the above discussion, it follows that the appeals are devoid of any merit; they are accordingly dismissed but, in the circumstances of the case, without costs.