

**SUPREME COURT OF INDIA AIR 2003 4149**

R. Kanthimathi

Vs.

Beatrice Xavier

C.A.No.12923 of 1996

(Ajay Prakash Misra and N. Santosh Hegde, JJ.)

08.02.2000

**ORDER**

1. Heard learned counsel for the parties. The question raised in this appeal is an interesting question and of some importance. The question is: "Whether on the execution of agreement to sell, by the landlord with the tenant and landlord having received substantial portion of the sale consideration, the relationship of landlord-tenant inter se between them ceases and fresh rights and obligations flows under this agreement?"

2. The present appeal is by the tenant who received decree of eviction against him by the order of trial Court confirmed by the appellate authority and finally affirmed by the High Court. The respondent landlord filed a suit for eviction on the ground of wilful default and also of committing an act of waste under Section 10(2)(i) and 10(2)(iii) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960. Her case is that though that tenant paid rent regularly upto March, 1977, but thereafter did not pay rent regularly. But on request of the tenant-appellants to the landlady she agreed to sell the disputed premises, as a consequence, the agreement of sale was executed on 4-5-1977. According to the landlady, a breach was committed by the appellants, hence she repudiated that agreement by returning the amount she received under it and then she filed a suit for eviction against the tenant. It is not in dispute that in terms of the said agreement, the total sale consideration

was a sum of Rs. 25,000/-. Out of this tenant paid Rs. 20,000/- to the landlady on the date of agreement itself. The balance of Rupees 5,000/- remained to be paid on the date of registration of the sale deed.

3. Relying on this agreement of sale, the appellants case is that on its execution, the relationship between respondent and the appellant changed. They no more remained as landlord and tenant. Hence the present petition for eviction under the aforesaid Act is not sustainable. In the alternative it is submitted, in any case non-payment of rent for this period cannot be construed to be a wilful default within the meaning of Section 10 of the aforesaid Act. The Rent Controller and the appellate Authority, both rejected this contention of the tenant and held that tenant committed wilful default which was confirmed by the High Court.

4. As aforesaid, the question for consideration is, whether the status of tenant as such changes on the execution of an agreement of sale with the landlord. It is relevant at this junction first to examine the terms of the agreement of sale. The relevant portions of the agreement of sale records the following:

"I the aforesaid Mrs. Beatrice Xavier hereby agree out my own free will, to sell, convey and transfer the property to you Mrs. R. Kanthimathi wife of Mr. S. Ramaswami, 435 Trichy Road, Coimbatore for a mutually agreed sale consideration of Rs. 25,000/-.

I shall be proceeding to Coimbatore and shall execute the sale deed and present the same for admission and registration before the Registering Authority, accepting and acknowledge payment of the balance of consideration of Rs. 5000/- (Rupees five thousand only) at the time of registration and shall complete the transaction of sale and conveyance as the property demised has already been surrendered to your possession."

(Emphasis supplied)

5. Submission for the tenant is after entering into the agreement, the landlady accepted Rs. 20,000/- confirming delivery of possession in this context which clearly constitute clear intend of the landlady of entering into new relationship with the tenant under it. On the other hand, learned counsel for the respondent submits that the words "already been surrendered" therein, only refer to the existing possession of the tenant and nothing more. So far this submission for the respondent we have no hesitation to reject the same. The reference of the words "already been surrendered" has been incorporated with consciousness. This is to be construed in the background of landlady having received major amount of sale consideration and as normally, if substantial sum is received by the seller, the purchaser is put in possession of the property hence to fall in the same lines the said words were used to confirm of this possession in this context. There could be no other reason to record therein as such. Even if it be said to refer to the possession's as a tenant the reassertion in the agreement of sale is only for the purpose of denoting possession given in pursuance to this agreement of sale.

6. Any jural relationship between two persons could be created through agreement and similarly could be changed through agreement subject to the limitations under the law. Earlier when appellants were inducted into tenancy it only means both agreed that their relationship is to be that of a landlord and tenant. Later when landlord decides to sell this property to the tenant and tenant agreed by entering into agreement they by their positive act changed their relationship as purchaser and seller. When seller-landlord accepts sum he actually acts under this agreement. This acceptance preceded by agreement of sale changes their relationship. This is how they intended. Once accepting such a change then their relationship of landlord tenant ceases.

7. This Court in *Arjunlal Bhatt Mall Gothani v. Girish Chandra Dutta*, (1973) 2 SCC 197 (AIR 1973 SC 2256) held as under:-

The appellants were tenants in the premises of the respondent-landlord and three suits, including an eviction suit, were pending against them. By an agreement between the appellants and the respondent, the respondent agreed to sell the whole property to the appellants for a certain sum to be paid to him by equal instalments. Clause 5 of the agreement provided that in case of default of any instalment, the agreement for sale would stand cancelled and if the purchasers failed to pay the defaulted instalments within one month's notice the payments made would stand forfeited and purchasers would make over possession of the property to the vendor.

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"Under Clause (5) of the agreement the question of giving notice arises only if the vendor wanted to forfeit the instalments paid by the purchaser. Not even one instalment having been paid the question of forfeiture does arise and no notice was necessary for cancelling agreement. It stood automatically cancelled. It was sought to be argued before us that once the agreement stood cancelled the appellants stood restored to their original position as tenants and the suit could not be filed without giving notice under the Transfer of Property Act. We are of opinion that when the agreement, D/- June 7, 1959 was entered into the old relationship of landlord and tenant came to an end. The rights and liabilities of the parties have to be worked out on the basis of that agreement."

This decision clearly spells out that once there is agreement of sale between a landlord and a tenant, the old relationship as such comes to an end. It goes on to record that even after the cancellation of such agreement of sale the status of tenant is not restored as such. In other words, on the date of execution of the aforesaid agreement of sale their status as that of landlord and tenant changed into a new status as that of a purchaser and a seller.

8. Thus within this legal premises, the submission by learned counsel for the respondent of revival of their old relationship of landlord and tenant when she repudiates this agreement by sending back to the tenant Rs. 20,000/- through a cheque, (which according to the appellant was not encashed) cannot be accepted. So we have no hesitation to reject the same. Every conduct of the landlady right from the date of entering into agreement of sale, accepting money towards the sale consideration, delivering possession in lieu of such agreement all clearly indicates and has to be construed in law that she repudiated her old relationship of landlord and tenant. Thus after this parties enter into new cloak of seller and purchaser and their relationship to be governed under the said terms of the agreement. Every right and obligation thereafter would flow from it. Even if parties under the agreement of sale does not perform their obligations remedy may be availed in law as permissible under the law. Hence we have no hesitation to hold that Courts below including High Court committed error in holding that tenant committed wilful default. When appellant is no more tenant how can non-payment be construed as wilful default.

9. Accordingly, we find merit in this appeal and the same is allowed. The judgment of the High Court and that of the Rent Controller and the appellate authority is hereby set aside. However, this is without prejudice to the rights of the parties to pursue their remedy as is available to them under the law. Costs on the parties.

Appeal allowed.