

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.4275-4276 OF 2002

P. DEVRAJ (DEAD) THROUGH PROPOSED LRS. . . . APPELLANT (S)

VERSUS

K.S. BULKISH BIVI & ANR. . . . RESPONDENT(S)

O R D E R

Interlocutory Applications are allowed.

These appeals by Special Leave are directed against the judgment of the learned Single Judge of the High Court of Madras in Civil Revision Petition Nos. 1526 and 2465 of 1999. The appellants before us are the legal representatives of the original tenant.

The premises in question is located in Madurai Town in Tamil Nadu. It is a non-residential premises. The landlord in the year 1989 (the original landlady) filed a Petition being R.C.O.P. No. 110 of 1989 for eviction on the ground of willful denial of title by the tenant. That petition was dismissed. Thereafter, the landlady filed another petition being R.C.O.P. No. 236 of 1989 for fixation of fair rent under Section 4 of the Madras Buildings (Lease and Rent) Control Act, 1960. The prayer made in R.C.O.P. No. 236 of 1989 was to fix the fair rent for the scheduled building at Rs.12,865/- per month in accordance with the

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provisions of Section 4 of the Act and for a direction directing

the tenant to pay the said fair rent from the date of the

petition. The learned Rent Controller framed the following two

issues for consideration, namely, (1) Whether there is

relationship of landlord and tenant between the Ist petitioner and

the respondent? and; (2) Whether fixation of fair rent

is

necessary as prayed for by the petitioners in respect of the

petition mentioned property?

So far as Issue No. 1 is concerned

the learned Rent Controller answered the same in favour of the

landlord and held that there is a relationship of landlord and

tenant between the parties. So far as Issue No. 2 is concerned the

learned Rent Controller fixed the fair rent at Rs.10145/- and

accordingly allowed the petition filed by the landlord.

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the Appellate Authority reduced the fair rent and accordingly

fixed the same at Rs.500/- per month.

the Aggrieved by the order of the Appellate Authority

landlord filed a Civil Revision Petition No. 2465 of 1999

questioning the quantum of fair rent.

The tenants also preferred

Civil Revision Petition, inter alia, contending that no rent and

much less any fair rent could have been fixed in respect of super

structure inasmuch as the super structure was constructed by the

tenants themselves.

Both the Civil Revision Petitions were taken

up for hearing together.

The High Court fixed the fair rent for scheduled mentioned

building at Rs.10,145/- confirming the order of the Rent

Controller payable by the tenant from the date of the original

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petition. The High Court further ordered the eviction of the

tenants on the ground that they have denied the title of the

landlord. The High Court relied upon the judgment of this Court

in the case of Majati Subbarao Vs. P.V.K. Krishna Rao reported in

1989 (4) SCC 732 to grant decree of eviction on the ground of

denial of title of the landlord by the tenants.

In these appeals learned counsel for the appellants

submitted that the High Court committed serious error in granting

order of eviction on the ground of denial of title. The

submission is that the judgment of the High Court suffer from

incurable infirmity for more than one reason.

It is submitted

that there was no issue between the parties as regard the denial of title of the landlord is concerned, nor was there any finding in this regard by the lower authorities. Learned counsel for the landlord, relying upon the said judgment, submits that the tenants have denied the title of landlords and therefore High Court is right in ordering the eviction of the tenant on the ground of denial of title.

This Court in the case of Majati Subbarao (supra) having noted that the Trial Court, namely, the Rent Controller framed an issue; as to whether the tenants' denial of the landlord's title to the scheduled property was bona fide and the parties went to Court on this clear issue and had full knowledge of the ground alleged against the tenants held in Para 6 of the judgment which reads as under:

"It was submitted by learned counsel for the appellant that, in any event, the respondent

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failed to apply for amendment of his plaint and incorporate the ground of denial of title therein as he was bound to do so in order to get relief on that ground which had arisen after the eviction petition was filed. We agree that normally this would have been so but, in the present case, we find that the trial court, namely, the Rent Controller, framed an issue as to whether the tenant's denial of the landlord's title to the schedule property including the said premises was bona fide. The parties went to trial on this clear issue and the appellant had full knowledge of the ground alleged against him. It was open to him to have objected to the framing of this issue on the ground that it was not alleged in the eviction petition that the appellant had denied the title of the respondent and that the denial of title was bona fide. If he had done that the respondent could have well applied for an amendment of the eviction petition to incorporate that ground. Having failed to raise that contention at that stage it is not open now to the appellant to say that the eviction decree could not be passed against him as the ground of denial of title was not pleaded in the eviction petition. No other arguments have been advanced before us."

In the present case, as noticed hereinabove, there is no issue as such framed as to whether the tenant's denial of the landlord's title to the premises in question was a bona fide one. There is no finding recorded by the learned Rent Controller on this issue. The finding recorded by the learned Rent controller

was about their being landlord and tenant relationship between the parties. It is needless to point out the difference between the issue as to whether there is any landlord and tenant relationship and the issue relating to denial of title of the landlord by the tenant.

In the circumstances, we hold that the judgment of this Court in the case of Majati Subbarao has no application,
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whatsoever, to the facts of this case. The High Court undoubtedly exceeded its jurisdiction in ordering eviction of the tenants from the premises in question while considering the case relating to fixation of fair rent. That portion of the order granting eviction, in our considered opinion, is unsustainable. The same is accordingly set aside. We may, however, clarify that we have not interfered with the fixation of fair rent at Rs.10,145/- which the tenants are liable to pay to the landlord from the date of the original petition.

During the course of hearing of these appeals it is brought to our notice by the learned counsel for the landlord that they have filed Eviction Petition against the tenants on the ground of bona fide requirement and the same has been decreed. However, the learned counsel for the tenant submits that it is an ex-parte decree and steps have already been taken for setting aside the same. We wish to make no comments on the submissions so made by the counsel for the parties. The pending proceedings, if any, shall go in accordance with law uninfluenced by the observations made in this order.

The appeals are disposed of accordingly with no order as to costs.

.....J.
[B. SUDERSHAN REDDY]

New Delhi,
October 28, 2009

.....J
[J.M. PANCHAL]

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4275-4276 OF 2002

P. DEVARAJ(DEAD) THROUGH PROPOSED LRS. Appellant (s)

VERSUS

K.S. BULKISH BIVI & ANR. Respondent(s)

(With appln(s) for directions,bringing LRs on record and office report)

Date: 28/10/2009 These Appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY
HON'BLE MR. JUSTICE J.M. PANCHAL

For Appellant(s) Mr. Hari Shankar K,Adv.
Mr. Vikas Singh Jangra, Adv.

For Respondent(s) Mr. B. Sridhar, Adv.
Mr. K. Ram Kumar,Adv.

UPON hearing counsel the Court made the following
O R D E R

Interlocutory Applications are allowed.
The appeals are disposed of with no order as to costs.

(S. Thapar)
PS to Registrar

(Vijay Dhawan)
Court Master

The signed order is placed on the file.