

RAMDOSS
v.
K. THANGAVELU

NOVEMBER 24, 1999

[V. N. KHARE AND S.N. PHUKAN, JJ.]

Rent Control and Eviction—Tamil Nadu Buildings (Lease and Rent Control) Act, 1960—Section 25—Tenant refused to recognise new owner as landlord—Defaulted in rent payments—Rent Court ordered eviction on the finding that there was landlord tenant relationship—Held: High Court cannot treat Revision application as on appeal and reassess evidence—In revision, Court can look into records only to satisfy itself of the legality/correctness of the proceedings and the propriety of the judgment/order.

The appellant, having purchased the property from the original owner, became the owner of the premises which was already rented out to the respondent. However the respondent refused to recognise him as the landlord and failed to pay the rent. On an application by the appellant for eviction, the Rent Controller, held that there was a landlord-tenant relationship and in view of defaulted rent payment, ordered eviction. An appeal there from was dismissed. On Revision, High Court set aside the order of the Rent Controller holding that landlord tenant relationship was not established, against which this appeal is filed. In the appeal, it was contended that High Court erred in exercising revisional jurisdiction under Section 25 of the T. N. Buildings (Lease and Rent Control) Act as appellate power and reassessing the evidence before the lower courts.

Allowing the appeal, the Court

HELD : The revisional power of the High Court under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control), Act not being appellate power, it is impermissible for the High Court to reassess the evidence in a revision petition. In this appeal the High Court proceeded to decide the revision as if it was deciding an appeal. In the present case the Rent Control Authority and the Appellate Court on assessment of evidence concurrently recorded a finding of fact that there existed relationship of landlord-tenant between the parties. Both the Rent Control Authority and the Appellate Authority placed reliance on account books produced by the appellant to show that the

A respondent tenant had been paying rent in respect of the said premises. The Rent Control Authority also took note of the fact that the respondent tenant admitted in his evidence that the disputed premises do not belong to him and had been constructed on the land covered by survey No. 592-593. Mere non-filing of lease deed, which could not be traced, would not necessarily lead to the conclusion that there existed no landlord-tenant relationship between the parties at least when there were numerous documents on record to show that the appellant purchased this premises from R. The High Court was not justified in interfering with the finding of fact recorded by the two courts below. [3-H; 4-A-C; G-H]

C *Dr. Sankarnarayanan v. Punjab National Bank*, [1995] Supp. 4 SCC 675, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4865 of 1998.

From the Judgment and Order dated 19.11.1996 of High Court of Madras in C. R.P. No. 1644/91.

D TLV Iyer, Ms. N. Annapoorani, V. Krishnamurthy, S. Aravindh and T. Harish Kumar for the appearing parties.

The Judgment of the Court was delivered by

E V. N. KHARE, J. The appellant herein alleged himself to be the landlord of Door Nos. 24A and 25 situated in Ward No. II, Block No. III, Thanjavur Road, in the city of Tiruvarur. Originally the said premises was owned by Ramanathan Chettiar. Subsequently the aforesaid premises was purchased by the appellant on 7th March, 1980. The respondent is the tenant in the said premises from the time of predecessor-in-interest of the appellant. It appears that the respondent did not recognise the appellant as the owner of the premises and rent was also not paid for the said premises. Under such circumstances, the appellant filed a petition before the Rent Control Authority for eviction of the respondent on the grounds of denial of title and also for willful default of payment of rent. Before the Rent Controller, the appellant filed various documents including the sale deed executed in his favour for establishing that he is the owner of the said premises and the respondent is the tenant. Similarly evidence was also led by the respondent in support of his case. The Rent Controller, after assessing the evidence, came to the conclusion that there existed relationship of landlord-tenant between the appellant and the respondent and the tenant having denied the title and also **H** having committed default in payment of rent was liable to be ejected.

Consequently, the order of eviction was passed by the Rent Controller. The appeal preferred by the respondent-tenant was dismissed. However, the revision filed by the respondent-tenant was allowed by the High Court on the ground that the landlord had failed to establish the relationship of landlord and tenant between the parties. In view of that matter, the revision was allowed and the orders of the courts below were set aside. It is against the said order the landlord is in appeal before us.

Learned counsel appearing for the appellant has urged, that in the present case it was not open to the High Court in exercise of its revisional power to reassess the evidence and record finding contrary to the finding recorded by the courts below and, therefore, the impugned judgment deserves to be set aside. However, this was disputed by the learned counsel for the respondent. He submitted that the High Court in exercise of its revisional jurisdiction can interfere with the incorrect finding of fact recorded by the courts below and therefore, the judgment of the High Court has to be maintained. Learned counsel appearing for the respondent referred to a decision of this Court in the case of *Asram Motors v. Bina Kumari*, [1995] Supp. 4 SCC 679 wherein this Court held that the High Court, in exercise of its revisional power under Section 25 of the Act, can examine the correctness of the findings of fact. There is no quarrel as regards this proposition, but the question that arises for consideration is whether, while examining the correctness of the findings of fact, is it open to the revisional court to reassess the evidence? It is not disputed before us that Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, [1960] (hereinafter referred to as 'the Act') confers the revisional jurisdiction upon the High Court which is not an appellate power. The High Court, under Section 25 of the Act, can call for and examine the record of the appellate authority in order to satisfy itself as to regularity of such proceedings or the correctness, legality or propriety of any decision or orders passed therein. In *Dr. D. Sankaranarayanan v. Punjab National Bank*, [1995] Supp. 4 SCC 675, it was held as thus:

“We are of the view that learned counsel for the appellant is right when he contends that the revision petition was treated by the High Court as if it were a second appeal and, upon a reassessment of the evidence, the findings of facts of the first appellate court were reversed.”

Thus, in our view, the revisional power of High Court under Section 25 of the

- A** Act not being an appellate power, it is impermissible for the High Court to reassess the evidence in a revision petition filed under Section 25 of the Act. In this appeal what we find is that, the High Court in the revision petition filed by the tenant proceeded to decide the revision as if it was deciding an appeal. In the present case the Rent Control Authority and the appellate Court on assessment of evidence concurrently recorded a finding of fact that there existed relationship of landlord-tenant between the parties. The Rent Control Authority and the Appellate Authority both for purposes of determining the relationship of landlord-tenant placed reliance on accounts books produced by the appellant to show that the respondent tenant had been paying rent in respect of the said premises. The Rent Control Authority also took note of the fact that the respondent tenant admitted in his evidence that the disputed premises i.e Door Nos. 24A and 25 do not belong to him and Door Nos. 24A and 25 had been constructed on the land covered by survey No. 592—593. Curiously, the High Court in its revisional jurisdiction acting as an Appellate Court re-assessed the evidence of the parties and held that since the appellant landlord having undertaken to file the lease deed for showing that the respondent was a tenant of erstwhile landlord failed to file the same, the relationship of landlord and tenant therefore is not established between the parties. This view of the High Court is legally and factually not correct. The relevant paragraph of the petition filed by the appellant landlord thus runs as under:—
- E** “The petitioner learns that Kuppuswamy Chettiar has executed a lease deed in favour of Ramanathan Chettiar at the time of taking the building on lease. The lease deed is missing and will be filed after it is traced.”
- F** A perusal of the said paragraph would show that the lease deed executed between Kuppuswamy Chettiar and Ramanathan Chettiar was neither in the personal knowledge of the appellant nor was in his possession which could have been filed. The only allegation that was made in the petition was that the appellant has learnt that a lease deed has been executed which is missing and the same would be filed after it is traced. Mere non-filing of lease deed, which could not be traced, would not necessarily lead to the conclusion that there existed no landlord-tenant relationship between the parties atleast when there were numerous documents on record to show that the appellant purchased this premises from Ramanathan Chettiar. We are, therefore, of the view that the High Court was not justified in interfering with the finding of fact recorded by the two courts below.
- H**

The second reasoning given by the High Court for upsetting the judgment of the two courts below was that the sale deed filed by the landlord does not mention Door Nos. 24A and 25. This finding of the High Court is contrary to the evidence on record. A copy of the sale deed has been filed before us and the said sale deed shows that it was also in respect of Door Nos. 24A and 25. A

For the aforesaid reasons, the judgment of the High Court is not sustainable in law. We, accordingly set aside the judgment and order under appeal. The appeal is allowed with costs. B

I. M. A.

Appeal allowed. C