V. K. A. Ranganatha Konar vs The Tiruchirappalli Municipal ... on 18 December, 1964

Equivalent citations: 1966 AIR 65, 1965 SCR (2) 645

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, K.N. Wanchoo, J.C. Shah

PETITIONER:
V. K. A. RANGANATHA KONAR

Vs.

RESPONDENT:
THE TIRUCHIRAPPALLI MUNICIPAL COUNCIL, BY ITSCOMMISSIONER, A

DATE OF JUDGMENT:
18/12/1964

BENCH:
GAJENDRAGADKAR, P.B. (CJ)
BENCH:
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
SHAH, J.C.

CITATION:
1966 AIR 65 1965 SCR (2) 645

ACT:
The Madras City Tenants' Protection Act, 1921 (Mad. Act 3 of 1922), ss. 4(1) and 4(4)-Landlord to pay compensation to evicted tenant for improvements on land-Decree in favour of landlord under s. 4(1) not specifying time within which payment to be made-Payment not made within three months-Provisions of s. 4(4) whether attracted Suit whether liable to be dismissed.

HEADNOTE:
The appellant was the tenant of respondent No. 1 on a piece of land and had built a cinema house thereon. On the expiry of the lease, respondent No. 1 filed a suit for rent and eviction against the appellant and his sub-lessee. The suit was decreed. Under s. 4(1) of the Madras City Tenants' Protection Act, 1921, the court determined the value of the superstructures made by the appellant, and the decree said

that possession of the suit properties was to be delivered to respondent No. 1 on the latter making payment of the compensation for the superstructures as determined by the court. The decree did not specify the time during which the payment was to be made. According to s. 4(4) of the Act the compensation money had to be paid within three months of the passing of the decree in the landlord's favour, otherwise the landlord'& suit would stand dismissed. Respondent No. 1 paid the compensation money into court after the said period of three months had expired and prayed to the court that the decree be amended by specifying the time during which the payment was to be made. The court amended the decree by inserting therein that the payment was to be made within three months from the passing of the original decree. Thus respondent No. 1 remained in default under s. 4(4) and the court dismissed the suit. Respondent No. 1 appealed to the High Court which held that s. 4(4) did not come into play when the decree under s. 4(1) did not specify the period within which payment was to be made and its decision went in favour of respondent No. 1. The appellant then applied for a certificate of fitness to appeal to the Supreme Court which was granted.

It was urged on behalf of the appellant that the provision prescribed by s. 4(4) is mandatory and any defect in the decree which is passed under s. 4(1) cannot help the plaintiff-landlord to circumvent the effect of the said provision. On behalf of the respondent No. 1 it was urged that s. 4(1) should be read as controlling s. 4(4), first a decree must be properly passed under s. 4(1) specifying the period of three months within which the amount should be paid and then only s. 4(4) could be invoked.

HELD : The High Court was in error in reversing the order passed by the trial court.

(i) The controversy had to be decided in the light of the object of the Act. The object was clearly to give protection to tenants who had taken open land on lease and had built superstructures on it in the hope that as long as they paid rent they would not be evicted. [649 H]

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(ii) Having regard to the mandatory terms in which s. 4(4) is couched it would not be reasonable to construe s. 4(1) as controlling a. 4(4). The relevant clause provides that the decree should direct that on payment by the landlord into court, within three months, of the amount found due, the tenant shall put the landlord into possession. The clause in respect of the payment by the landlord into court within three months amount to a condition which has to be satisfied by the landlord before the tenant is required to deliver to him possession of the property in question. In other words, reference to the payment by the landlord of the amount found due within the specific period in s. 4(1) is not so much a direction issued by the court as specification of a condition expressly and independently provided by s. 4(4).

[651 D-F]

(iii) In s. 4(4) the expression "the decree passed under sub-s. (1)" merely describes the sub-section under which the decree is passed, the emphasis in the context being on the date of the said decree and not so much on the strict compliance with the form prescribed in s. 4(1). The logical way to reconcile s. 4(1) and s. 4(4) would be to treat the provision prescribed by s. 4(4) as mandatory and paramount and read in the relevant portion of s. 4(1) accordingly. Even if the decree does not mention that the amount has to be paid within three months, the landlord's obligation to make the payment within three months is still enforceable under s, 4(4); otherwise defective decrees would deprive the tenants of the benefit intended to be conferred on them by s. 4(4). [651 G652 E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 675 of 1963. Appeal from the judgment and decree dated August 17, 1960 of the Madras High Court in Appeal Suit No. 92 of 1957. T. V. R. Tatachari, for the appellant.

A. V. Viswanatha Sastri and S. Venkatakrishnan, for respondent No. 1.

The Judgment of the Court was delivered by Gajendragadkar, C.J. The short question which this appeal raises before us relates to the construction of S. 4(1) read with S. 4 (4) of the Madras City Tenants' Protection Act, 1921 (Madras Act III of 1922) (hereinafter called 'the Act'). This question arises in this way. On September 1, 1944, respondent No. 1, Tiruchirappalli Municipal Council, leased T.S. No. 3283/1-A/2 to the appellant, V. K. A. Ranganatha Konar, for a term of three years at a rent of Rs. 100/- per month. On the premises thus let out to him, the appellant erected a building for the purpose of exhibiting cinematographic films. In 1945, he sub-leased the property to the second respondent, A. Muthukumaran. In 1947, the lease was renewed for a period of three years, and so, it expired on March 31, 1950. Nevertheless, the appellant and respondent No. 2 continued in possession.

On December 23, 1954, respondent No. 1 instituted a suit for the eviction of the appellant and respondent No. 2 and for arrears of rent. While the suit was pending the Act was extended to the Municipal Town of Tiruchirappalli. Accordingly, the value of the improvements made by the appellant and respondent No. 2 was determined by the learned trial Judge and declared to be Rs. 64,661-13-5 under s. 4(1) of the Act. On March 26, 1956, the trial Court passed a decree which, inter alia, provided "that the defendants do put the plaintiff in possession of the suit properties described hereunder on payment of Rs. 64,661-13-5 by the plaintiff to the first defendant being the compensation for the superstructure belonging to the first defendant." The appellant was the first defendant in the said proceedings. This decree did not in terms direct respondent No. 1 to say the, said amount within three months from its date, and it is the comission to issue this direction which

has caused the present controversy between the parties. On October 1, 1956, the appellant filed an application I.A. No. 301 of 1956 inviting the attention of the Court to the fact that respondent No. 1 had not made the deposit within three months from the date of the decree, and claiming that by virtue of the provision prescribed by s. 4(4) of the Act, the Court was bound to dismiss the suit filed by respondent No. 1 for ejecting him and respondent No. 2. On November 5, 1956, respondent No. 1 filed a counter to this interlocutory application. On the same date, respondent No. 1. filed another interlocutory application praying that the decree in question should be amended so as to specify the time within which the deposit should be made. Pending these applications, on November 15. 1956, respondent No. 1 sent a cheque to the Court in regard to the said amount .The said cheque was duly cashed and the amount credited in the accounts of the Court on November 20, 1956. On the date the trial Judge passed an order directing that the decree should be amended by inserting a direction to the effect that the deposit should be made before June 23, 1956, that is to say within three months from March 26, 1956 on which date the original decree had been passed. Since this amendment could not help respondent No. 1, the learned trial Judge processed to pass an order dismissing the suit under the provisions of s. 4(4) This order of dismissal was challenged by respondent No. 1 by an appeal preferred before the Madras High Court. It was urged before the High Court on behalf of respondent No. 1 that since the original decree did not give a specific direction that the amount of compensation should be paid within three months, the provisions of s. 4(4) could not be invoked until the decree was suitably amended. The argument was that it is only when the decree makes a direction calling upon the plaintiff to deposit a certain amount by way of compensation to the defendant-tenant within three months, that the requirements of s. 4(1) are complied with. and it is only where a decree has been properly drawn in accordance with the requirements of s. 4(1) that the mandatory provisions of s. 4(4) could be invoked. In substance, the High Court has accepted this plea, with the result that the appeal preferred by respondent No. 1 has been allowed and the original decree passed on March 26, 1956, has been confirmed. The result of this decision is that respondent No. 1 is at liberty to take out execution for obtaining possession of the property. The appellant then applied for and obtained a certificate from the High Court and it is with this certificate that he has brought this appeal before us. On behalf of the appellant, Mr. Tatachari has urged that the High Court's decision under appeal proceeds on a misconstruction of the provisions contained in s. 4(4) read with s. 4(1) of the Act. He argues that the provision prescribed by s. 4(4) is mandatory and any defect in the decree which is passed under s. 4(1) cannot help respondent No. 1 to circumvent the effect of the said provision.

Before dealing with this point, it is necessary to read s.

4(1) & (4). Section 4(1) reads thus "In a suit for ejectment against a tenant in which the landlord succeeds, the court shall ascertain the amount of compensation, if any, payable under section 3 and the decree in the suit shall declare the amount so found due and direct that, on payment by the landlord into court, within three months from the date of the decree, of the amount so found due, the tenant shall put the landlord into possession of the land with the building and trees thereon."

Section 4(4) provides "If the amount found due is not paid into court within three months from the date of the decree under subsection (1) or of the interim order under sub-section (2), or if no application is made under section 6, the suit or application, as the case may be, shall stand

dismissed, and the landlord shall not be entitled to institute a fresh suit for ejectment, or present a fresh application for recovery of possession for a period of five years from the date of such dismissal."

Mr. Sastri for respondent No. 1 has strenuously contended that in appreciating the effect of the two relevant provisions, it is necessary to bear in mind that ultimately, the direction contained in the decree must be enforced, and if the original decree did not require respondent No. 1 to pay the compensation amount within three months, the right of the appellant to recover that amount must inevitably be enforced by execution proceedings under Article 182 of the Limitation Act. In the case of such a decree, s. 4(4) cannot apply, because s. 4(4) postulates that a proper and valid decree has been passed in conformity with the requirements of s. 4(1) Section 4(4) provides a period of three months "from the date of the decree under sub-section (1)"; it is the decree under ,sub-section (1) which starts the period of limitation, and before a decree can be said to be a decree under sub-section (1), it must comply with all the requirements prescribed by the said sub-section; in the present case, the decree did not specify that the amount in question should be paid within three months, and so, it is not a decree properly passed under sub-section (1) and as such, s. 4(4) cannot be invoked.

Mr. Sastri has put his argument in another form. He con- tends that though the original decree passed between the parties in the present proceedings did not comply with the requirements of s. 4(1) inasmuch as it failed to specify the period of three months within which the amount of compensation should be paid, it cannot be said to be a nullity; it is a decree passed by a court of competent jurisdiction, and so, when the appellant seeks to invoke s. 4(4), what he is virtually asking the Court to do is to ignore the fact that the decree did not direct respondent No. 1 to pay the amount within three months, and in the absence of a direction in the decree, it would not be permissible to the Court to enforce the provisions of s. 4(4) against respondent No. 1. He would, therefore, read s. 4(1) as controlling s. 4(4); first a decree must be properly passed under s. 4(1) specifying the period of three months within which the amount should be paid, and then s. 4(4) can be invoked. That is how Mr. Sastri has presented before us his solution to the problem of construing section 4(1) and (4) together.

In dealing with this question, it is necessary to bear in mind the object which the Act is intended to achieve. As the preamble indicates, the Act was passed to give protection to certain classes of tenants in areas to which it was extended. The Legislature thought that it was necessary to give protection to tenants who had constructed buildings on others' lands in the hope that they would not be evicted so long as they paid a fair rent for the land. In other words, the Legislature took the view that in a large majority of cases where open plots were let out to the tenants and the tenants, in their turn, invested money by constructing buildings on the said plots in the hope that they would be allowed to remain in possession of the leased property so long as they continued to pay a fair rent, it was necessary to protect their tenancy rights. Though this Act was passed in 1922, it was not extended to the whole of the State of Madras; it has been extended stage by stage to different areas. In fact, we have already seen that the Act was extended to the municipal area of Tiruchirappalli while the present suit between the parties was pending in the trial Court.

In order to carry out its object of affording protection to the tenants, s. 3 has provided for the payment of compensation on ejectment. It lays down that if a tenant is ejected, he would be entitled to compensation for the value of the building which he might have constructed on the plot let out to him. Section 3 deals with a question of compensation and provides how it should be determined. Section 4 then deals with the disposal of suits for ejectment. Section 4(1) provides that if the landlord succeeds in obtaining a decree for ejectment, the Court shall ascertain the amount of compensation payable to the tenant, and the decree in the suit shall declare the amount so found due and direct that, on payment by the landlord into court, within three months from the date of the decree, of the amount so found due, the tenant shall put the landlord into possession of the land with the building and trees, thereon. Section 4(4) contains a mandatory provision that if the amount found due is not paid within three months, the suit of the landlord shall stand dismissed. We will presently deal with the question of construing these two sub-sections. Meanwhile, we may refer to s. 10. Section 10(1) provides that sections 4, 5, 6, 8, 9 and 9-A shall, inter alia, apply to suits in ejectment which are pending or in which decrees for ejectment have been passed, but have not been executed. Section 10(2) deals with cases in which decrees for ejectment have been passed, but the amount of compensation has not been determined, and it provides that on an application by the tenant, such amount would be determined in accordance with s. 4. Section 10(3) deals with cases of decrees which are pending execution; and it requires that the Court shall, on the application of the tenant, recall execution orders, ascertain the amount of compensation, and pass an interim order under s. 4. It will thus be clear that wherever the Act is extended, the protec- tion afforded by the Act and the benefits conferred by it can be claimed not only by tenants against whom suits are pending or would be filed in future, but also by tenants against whom decrees have already been passed, but have not been fully executed. Section 10 clearly brings out the fact that the policy of the legislature was to extend ample protection to the tenants in the areas to which 'he Act would be extended from time to time.

Reverting then to the question of construing s. 4(1) and (4), it would appear that what s. 4(1) purports to do is to require that the decree in the suit to which it applies shall, in the first instance, declare the amount found due by way of compensation. The said provision also requires that .he decree shall declare that the tenant shall put the landlord into possession of the land on payment by the landlord into court, within three months from the date of the decree, of the amount found due. The two operative parts of the decree as contemplated by s. 4(1) are : the declaration of the amount due to the tenant, and the direction to the tenant to deliver possession of the land to the landlord in case he paid into Court within three months of the date of the decree the amount declared due. It is true that the decree would state that the landlord has to pay the amount within three months from its date; but having regard to the specific and mandatory terms in which s. 4(4) is couched, it would not be reasonable to construe s. 4(1) as controlling s. 4(4). The relevant clause provides that the decree shall direct that on payment by the landlord into Court, within three months, of the amount found due, the tenant shall put the landlord into possession. The clause in respect of the payment by the landlord into court within three months amounts to a condition which has to be satisfied by the landlord before the tenant is required to deliver to him possession of the property in question. In other words, reference to the payment by the landlord of the amount found due within the specified period in s. 4(1) is not so much a direction issued by the Court as specification of a condition expressly and independently provided by s. 4(4).

The provision of s. 4(4) clearly shows that if the amount found due is not paid within three, months, the suit of the landlord shall stand dismissed. The opening clause of s. 4(4) shows that the amount has to be paid within three months from the date of the decree passed under sub-section (1). The expression "the decree under sub-section (1) "

> merely describes the sub-section under which the decree is passed, the emphasis in the context being on the date of the said decree and not so much on the strict compliance with the form prescribed by s. 4(1). If the decree is passed under s. (1), its date is material for the purpose of deciding the period beyond which s. 4(4) would come into operation. In other words, as soon as it is shown by a tenant that a decree has been passed under s. 4(1) declaring the amount of compensation due to him from the landlord, he is entitled to claim that he is no longer under obligation to deliver possession of the property to the landlord, because three months have passed from the date of the decree and the amount declared as compensation has not been paid to him. If the decree happens to be defective in the sense that it does not reproduce the requirement of s. 4(1) expressly in its terms, that would not take the case outside the purview of s. 4(4). We are inclined to think that having regard to the mandatory terms used in s. 4(4), it would be illogical and unreasonable to suggest that a defective decree like the present enables the landlord to circumvent the provisions of s. 4(4). The applicability of s. 4(4) cannot be repelled merely on the ground that the decree passed under 6. 4 (1) does not specify the period of three months within which the amount found due has to be paid. In our opinion, the logical way to reconcile S. 4(1) and S. 4(4) would be to treat the provision prescribed by s. 4(4) as mandatory and paramount and read the relevant portion of s. 4(1) accordingly. That is why even if the decree does not mention that the amount has to be paid within three months, the landlord's obligation to make the payment within three months is still enforceable under s. 4(4), otherwise defective decrees would deprive the tenants of the benefit intended to be conferred on them by s. 4(4). We are therefore satisfied that the High Court was in error in reversing the order passed by the trial Court. Respondent No. 1 has not paid the amount within three months from the date of the decree and the suit instituted by it shall stand dismissed under s. 4(4).
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> The result is, the appeal is allowed, the decree passed by the High Court is set aside and that of the trial Court restored. In the circumstances of this case, there would be no order as to costs throughout.
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> Appeal allowed.