

## Neelakantan And Ors. vs Mallika Begum on 29 January, 2002

**Equivalent citations: AIR2002SC827, 2002(3)ALT14(SC), [2002(2)JCR63(SC)], JT2002(1)SC433, (2002)1MLJ166(SC), 2002(1)SCALE512, (2002)2SCC440, AIR 2002 SUPREME COURT 827, 2002 (2) SCC 440, 2002 AIR SCW 490, 2002 (1) SCALE 512, 2002 SCFBRC 154, 2002 (3) SRJ 506, (2002) 2 JCR 63 (SC), 2002 (1) SLT 548, 2003 (1) ALL CJ 417, (2002) 1 JT 433 (SC), (2002) 1 MAD LJ 166, (2002) 1 RENCER 166, (2002) 1 RENTLR 409, (2002) 1 SUPREME 369, (2002) 1 SCALE 512, (2002) WLC(SC)CVL 207, (2002) 3 ANDH LT 14**

**Author: Brijesh Kumar**

**Bench: R.C. Lahoti, Brijesh Kumar**

### JUDGMENT

Brijesh Kumar, J.

1. These appeals arise out of the common judgment and order dated 18.11.1997 passed by the Madras High Court in Second Appeals, Civil Revisions and Cross Objections filed by the parties against each other involving same questions. The tenants have come up in appeal before this Court. The respondent Smt. Mallika Begum is the landlady of the accommodation in dispute.

It will be convenient to refer to the parties as tenants and landlady.

2. The landlady had purchased the suit property in the year 1979. According to the tenant appellants, they have been residing in the accommodation in question since long before 1979. An earlier round of litigation between the parties, as initiated by the landlady for eviction of the tenants in 1980 ended in the High Court finally giving liberty to her to agitate the matter afresh in accordance with the law.

3. Later on however, in the year 1984, tenants filed four suits separately in the City Civil Court, Madras against the landlady with a prayer for declaration that the Super-structure standing on the suit property, belongs to the tenants and further prayed for grant of permanent injunction restraining her from disturbing their possession. The case of the tenant plaintiffs has been that the Suit Property situated in Survey No. 1303/1, has been declared as slum area under the provisions of the Tamil Nadu Slum Areas (Improvement and Clearance) Act 1971, (for short 'Act'). Section 3 of the Act provides that the State Government, on being so satisfied, may declare any area as slum area. Section 29 of the Act inter-alia, provides that no proceeding can be initiated for eviction of an

occupant from any building or land in the slum area except with the prior permission of the prescribed authority. The land-lady, namely, the defendant in all the suits, pleaded that the case of the tenant plaintiff to the effect that the super structure belongs to them is false. It was also pleaded that the property lay in Survey No. 1301/13 which was not been declared under the provisions of Section 3 of the Act, as slum area. The plaintiffs are not entitled for the relief of injunction since no prior permission was necessary before initiating any proceedings for their eviction.

4. The trial court by judgment dated 14.9.88 partly decreed the suits but did not accept the case of the plaintiffs to the effect that the super structure standing over the land in question belongs to them. It was however found that the property Survey No. 1303/1 lies in the slum area. Therefore, relief of injunction was granted to the extent that plaintiffs shall not be ejected except through process of law with the proper permission from prescribed authority.

5. The first appeals preferred by the land-lady were dismissed but the finding to the effect that the super-structure did not belong to the plaintiffs was maintained. The cross objections of tenants were dismissed. The defendant-landlady preferred second appeal against the judgment and decree passed by the first appellate court. The plaintiff-tenants also preferred their cross appeals.

6. The eviction proceedings also seem to have been initiated by the landlady in 1987, who instituted a petition (RCOP) for eviction of the tenants on the ground of willful default in payment of rent. The tenants, in defence took the same plea on the basis of which they had instituted Civil Suits for relief of declaration and injunction that super-structure belonged to them and the property in suit, is situate in slum area, hence, no order for their eviction could be passed unless prior permission was taken under Section 29 of the Act before initiating the proceedings. The landlady had denied the claim of the plaintiff tenants that suit property lies in slum area as it was not in Survey No. 1303/1. According to the landlady, it was Survey No. 1303/1 which was not declared as slum area under the Act. In these RCOP proceedings landlady had adduced evidence to support her case that it was Survey No. 1303/13 and not 1303/1. The Rent Control Petition of the landlady was however dismissed on the ground that the permission was not taken under Section 29 of the Act. She preferred appeal before the Judge, Small Cause Courts. The appeal was allowed ex-parte against the tenants passing an order of their eviction. The tenants thereafter filed Civil Revisions in the High Court. The Civil Revisions, Second Appeals as well as tenants' Cross Objections preferred in the Second Appeal filed by the landlady, were heard together by the High Court and all came to be decided by a common judgment dated 18.11.1997.

7. On analysis of results in different cases, the position that emerges is indicated hereinafter, namely, the plea that the super-structure belonged to the tenants had been rejected throughout by all Courts, namely, all three Courts in the Civil Proceedings initiated by the tenants as well as in the proceedings on the Rent Control side. The High Court while dealing with the matter also took note of the fact that there has been admission on the part of the tenants that the original lease was taken by them alongwith super-structure. The Cross-objections, in that regard as preferred by the tenants have been dismissed. The other question regarding necessity of permission under Section 29 of the Act, depended on the fact whether for property in dispute lay in slum area or not. The Trial Court and the First Appellate Court, in Civil proceedings found that it lay in slum area bearing Survey No.

1303/1 as alleged and pleaded by the tenant plaintiffs in the suits. On the Rent Control side, the Trial Court also held the same. The Appellate Court, however, had allowed the appeal ex-parte. The High Court in its judgement held that the plaintiffs in the suit failed to prove that the disputed area was declared a slum area under Section 3 of the Act.

8. The main contention of the learned counsel for the appellant is that the High Court could not take a different view on question of facts. As proposition of law, the submission made on behalf of the appellant tenants cannot be faulted with. It is well settled that the High Court while considering the matter in exercise of its jurisdiction in Second appeal or Civil Revision would not reverse the finding of fact as recorded by the Court below. But it is not an absolute proposition. In a case where the finding is recorded without any legal evidence on the record, or on misreading of evidence or suffers from any legal infirmity, which materially prejudices the case of one of the parties or the finding is perverse, it would be open for the High Court to set aside such a finding and to take a different view.

The fact which is to be kept in mind is that the Civil proceedings were initiated by the tenant appellants as plaintiffs praying for relief of declaration that they were owners of the superstructure over Survey Plot Number 1303/1 which area had been declared as a slum area under Section 3 of the Act. On the same basis relief of injunction was also claimed in view of protection provided under Section 29 of the Act. The landlady as defendant had denied that the suit property was ever notified as slum area under Section 3 of the Act. The landlady had further pleaded that the property in dispute lay in Survey Number 1303/13 in respect of which there was no notification under Section 3 of the Act. In view of the above position, the High Court rightly held that the burden lay upon the plaintiff tenants in their suits to establish that property in dispute lay in Survey No.1303/1. On the other hand, it is observed by the High Court that the Courts below held that it was situated in Survey No.1303/13. The High Court in our view was right in holding that so as to be entitled for relief for injunction as prayed, the plaintiff tenants were legally required to prove by legal and cogent evidence that the property was situated in Survey No.1303/1 in respect of which a notification was issued under Section 3 of the Act. The case of the plaintiff tenants that they were the owners of the superstructure has been found to be incorrect and the same has been disbelieved and declaration to that effect has been (SIC). The High Court has observed that the document exhibits A-13 and A-14 do not speak about the suit property. There was oral evidence of PW-2 only saying that the property viz. Survey No. 1303/1 was notified by the Government as slum area, as claimed by the plaintiffs. The High Court rightly found that the plaintiffs failed to discharge the burden to prove that any declaration was issued under Section 3 of the Act in respect of the property in suit, by reason of which protection could be claimed by the plaintiff tenants under Section 29 of the Act.

9. The High Court observed that the case of the defendant land-lady was that the property is identified by door number which has been indicated as door No.40 and old door no.15. Survey numbers may not always be the same (and they change). According to her initially it was Survey No. 1303/1 but on sale to different persons in smaller areas the property in question was renumbered as 1303/13. The Door No.40 and old Door No.15 correctly bear Survey No.1303/13 and not 1303/1. The High Court has also taken into consideration a (SIC) received from the Chairman, Tamilnadu (SIC) Board No. MM No.21756/87/No.1 dated 2nd September 1987 indicating that the area situated in door No.40 (old Door No.15) bears survey NO. 1303/13 which has not been declared as slum area.

Evidence was adduced by the landlady in her RCPO. The property purchased by the landlady corresponded to new Door no.40 and old Door No.15.

In the face of such a rebuttal of the plaintiffs' case on the part of the defendant the onus was upon the plaintiffs to prove their case identifying the property ensuring benefit under Section 29 of the Act.

10. In view of the discussion held above, we find that the High Court committed no error in holding that the Courts below had wrongly placed the burden upon the defendant landlady to establish the fact that the property in question did not fall in the area declared as slum area. On the other hand, the burden lay on the plaintiffs to establish their case and fix the identity of the property in suit in reference to Door number which may have been declared as slum area under Section 3 of the Act. Plaintiffs will not be entitled for the relief of injunction as the basis of the provision under Section 29 of the Act.

11. We therefore, feel disinclined to interfere in the order passed by the High Court. In the result, the appeals fail and they are accordingly dismissed. The parties to bear their own costs.