

(2014) 11 MAD CK 0541

Madras High Court (Madurai Bench)

Case No: Second Appeal (MD) No. 169 of 2011 and M.P.(MD) No. 1 of 2011

Solaiammal

APPELLANT

Vs

Thoothukudi Municipal
Corporation

RESPONDENT

Date of Decision: Nov. 17, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 9
- Companies Act, 1956 - Section 3, 9
- Constitution of India, 1950 - Article 226

Citation: (2015) 1 CTC 465 : (2014) 5 LW 881 : (2015) 1 MLJ 455

Hon'ble Judges: P. Devadass, J

Bench: Single Bench

Judgement

P. Devadass, J.

Having unsuccessful before the Trial Court, namely, Principal District Munsif Court, Tuticorin, in O.S.No. 233 of 2004 and before the 1st Appellate Court, namely, Sub Court, Tuticorin, in A.S.No. 133 of 2007, defendants 2 to 4, who are legal heirs of deceased first defendant, have directed this second appeal.

2. Admittedly, on 11.07.1992, the first defendant, bid at the auction held for the shops situate near the old bus stand at Tuticorin belonging to Thoothukudi Municipal Corporation. First defendant became successful with respect to shop No. 58. According to plaintiff, possession was given to him on 01.11.1992. He has also executed Ex.A1 solvency certificate. He has also deposited Rs.5,000/- towards advance and Rs.6,040/- towards security amount. However, he did not pay rent and he fell into arrears. Originally, in 1997, Thoothukudi Municipality instituted the suit to recover arrears of rent at the rate of Rs.1,510/- per month for the period from April 1994 to October, 1995 and adding 15% increase as per the agreement, for the period from November, 1995 to March, 1997, for 17 months, totaling Rs.58,219/-.

While the suit was pending, first defendant passed away. His legal heirs, namely, defendants 2 to 4 were brought on record.

3. Defendants 2 to 4 have filed written statement resisting the suit contending that possession of the shop was not given. They have also questioned the jurisdiction of the Civil Court, in view of Tamil Public Premises (Eviction and Unauthorized Occupants) Act, 1975, (hereinafter, it may be referred to as "Act No. 1 of 1975").

4. The Trial Court framed necessary issues. During the trial, Corporation staff Muniappan has been examined as P.W.1 and Exs.A1 to A4 have been marked and second defendant Solaiammal examined herself as D.W.1 and no document was marked on her side.

5. Appreciating the arguments of both and the evidence, the Trial Court negated the plea of want of jurisdiction of the Civil Court and accepted the suit claim and decreed the suit personally as against defendants 2 to 4.

6. Aggrieved, defendants 2 to 4 have directed the appeal in A.S.No. 133 of 2007, before the learned Sub Judge, Thoothukudi.

7. The learned 1st Appellate Judge, referring to Section 3 of the Act, as no estate officer was appointed, ruled the jurisdiction issue as against the appellants. As regards factual finding, he concurred with the Trial Court. The 1st Appellate Judge noted that the debt incurred by the first defendant is not tainted with illegality and further Ex.A1 shows that the deceased first defendant had left properties, sustained the personal decree granted as against the appellants.

8. In the circumstances, defendants 2 to 4 have directed this appeal.

9. The following substantial questions of law are formulated:

i. Whether the Courts below misunderstood the scope of Section 9 of the Code of Civil Procedure and Section 15 T.N.Act No. 1 of 1975 and come to a wrong conclusion?

ii. Whether in the facts and circumstances, the Courts below are correct in passing personal decree as against the legal representatives of deceased 1st defendant?

10. Learned counsel for the appellants would contend that cognizance of the suit is barred under Section 15 of T.N.Act No. 1/1975. The learned counsel for the appellants would contend further that there is no proof to show that when the possession was given to the first defendant and when it was taken over from him by the plaintiff. Further, it is a debt stated to have been due from the first defendant to the Municipality. In the facts and circumstances, if at all the claim is established, there cannot not be any personal decree as against the appellants. It could be as against the estate of the deceased in the hands of the appellants.

11. The learned counsel for the respondent/plaintiff would draw our attention to Section 9 of the Code of Civil Procedure Code and would submit that the present suit is a suit of a civil nature and the first defendant was not declared "an unauthorized occupant", thus the provisions of T.N.Act No. 1/1975 will not apply. Further, under Section 351-A of the District Municipalities Act, the plaintiff can maintain the suit for recovery of money due to it. In the circumstances both the Courts below have held the jurisdiction issue rightly as against the defendants 2 to 4. The learned counsel for the respondent would further submit that there is an admission in pleadings and evidence of D.W.1 that possession has been taken over by the first defendant.

12. I have anxiously considered the rival submissions, perused the record of the evidence and Judgments of the Courts below.

13. Admittedly, the plaintiff Municipality is the owner of shop No. 58, situate in the old bus stand in Thoothukudi. On 17.09.1992, it was auctioned. The first defendant took it in auction. Rent Rs.1,510/- per month has to be paid. There was a provision for 15% increase. P.W.1 had stated that the possession of the shop was handed over to the first defendant on 01.11.1992. Rental arrears have been claimed for the period from April, 1994 to March, 1997.

14. D.W.1, in her evidence, admits that her late husband run a sweet stall in the said shop. First defendant and others have filed the suit in O.S.No. 186 of 1995, in the Principal District Munsif's Court, Tuticorin, as against the present plaintiff challenging the lease agreement, they wanted reduction of the rent fixed. Ultimately, on 27.03.1997, the suit was dismissed. It is evident from Ex.A3, copy of the Judgment in O.S.No. 186 of 1995 that on 27.03.1997 also, the first defendant was in possession of shop No. 58. The claim period in the present suit is from April, 1994 to March, 1997. In the circumstances, the arguments of the appellants that when possession was given to the first defendant and when it was taken over by the Municipality not established is pale into insignificance.

15. In 1971, the Central Government passed the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Similarly, in this State, a similar enactment, namely, the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975, Act No. 1 of 1976, was passed. Both the Central Act and the State Act deal with the same subject and are in pari materia.

16. It has been contended by the learned counsel for the appellants that in view of the bar under Section 15 of the said Act, the present suit is not maintainable in a Civil Court.

17. However, according to the learned counsel for the respondent, under Section 351-A of the District Municipalities Act, the plaintiff Municipality can file the suit to recover the money due to it. Further, to apply the provisions of the said Act No. 1/1975, first of all the first defendant should have been treated an unauthorized occupant under Section 2(g) of the Act, then only the provisions of the Act No.

1/1975 can be made applicable to him. However, in the instant case, the first defendant has not been treated so, so Act No. 1 of 1975 is not applicable to this case, so the suit is maintainable in a Civil Court.

18. The general law of jurisdiction of Civil Court is found in Section 9 of the Code of Civil Procedure. Every Civil Court has got the right to take cognizance of every suit of a civil nature. However, it is subject to certain exceptions. One of the notable exception is if such taking cognizance is expressly barred by an enactment, then the Civil Court will lose its jurisdiction. Another exception is if the power of the Civil Court to take cognizance of civil case is barred by necessary implication, then also the Civil Court will lose its jurisdiction.

19. A provision in an enactment, which ousts the jurisdiction of the Civil Court/other, is called "ouster clause".

20. Section 15 of Act No. 1/1975 runs as under:

Bar of jurisdiction:

15. No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is unauthorized occupation of any public premises or the recovery of the arrears of rent payable under sub-section (1) of Section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the Government or the corporate authority under sub-section (5) of section 9 or any portion of such rent, damages or costs.

21. It is profitable to note the following observations of a Division Bench of this Court made in [A.N. Kumar Vs. Arulmighu Arunachaleswarar Devasthanam Thiruvannamalai and Others,](#).

37. The normal rule of law is that Civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under Section 9 of the code of Civil Procedure, but such exclusions are not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the Civil Courts to try civil suit. The test adopted in examining such a question is (i) whether the legislature's intention to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. However, where a statute gives finality to the orders of the special tribunals, jurisdiction of the Civil Courts must be held to be excluded, if there is adequate remedy to do what the civil Courts would normally do in a suit and such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure (vide [State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao \(D\) By L.rs. and Others,](#)

38. The authority for the proposition of law regarding exclusion of jurisdiction of Civil Court has been laid down by the Supreme Court [Dhulabhai and Others Vs. The State of Madhya Pradesh and Another,](#) wherein the Supreme Court held thus:

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the Inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

22. Now, let us examine whether Section 15 of Act No. 1/1975 has ousted the jurisdiction of the Civil Court conferred on them under Section 9 C.P.C.

23. Section 2(d) of Act No. 1/1975 defines what is public premises. It reads as under:

"public premises" means any premises belonging to or taken on lease or requisitioned by, or on behalf of, the Government, and includes-

(1) any premises belonging to, or taken on lease by, or on behalf of -

(i) any company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) in which not less than fifty-one per cent of the paid up share capital is held by the Government; and

(ii) any corporation (not being a company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) or a local authority) established by or under any law and owned or controlled by the Government; and

(2) any premises belonging to, or vested in, a local authority or any Board constituted under any law;

24. Thus, it is seen that as per sub-section (2) to Section 2(e) of the Act, the properties owned by a local authority will also fall under the provisions of Act No. 1 of 1976. The plaintiff is a local authority.

25. The Act envisages certain summary remedies to evict the "unauthorized occupants" (see Section 2(g) from the public premises and also to recover dues from them and also from the defendants. If a person becomes an unauthorized occupant, as per Section 4 of the Act, the Estate Officer has to issue a show cause notice to him giving time to him to give his explanation. Thereafter, under Section 5 of the Act, he

must conduct enquiry. He must observe principles of natural justice. While conducting enquiry, he will act as a quasi judicial officer. He must pass a speaking order. He must give reasons as to why eviction is ordered or not ordered.

26. Under Section 8 of the Act, the estate officer has been given the power of a Civil Court. Orders passed by the Estate Officer is final and conclusive. Such a "finality"/"preclusive" "conclusive" clause has been incorporated in Section 10 of the Act. Further, the estate officer has also been given power under Section 6 of the Act to remove any objector.

27. The other scheme provided under the Act is power to recover the dues and damages under Section 7 of the Act. If any person, who is in possession and enjoyment of the public premises is in arrears, the estate officer will initiate proceedings as against him under Section 7 of the Act, issue show cause notice calling for his explanation. After conducting an enquiry he shall pass orders determining the arrears of amount payable by the defendants or the damages payable by the unauthorized occupant.

28. The said Section 7 of the Act reads as under:

Section 7: Power to require payment of rent or damages in respect of public premises:

"7(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been in unauthorized occupation of any public premises, the estate officer may, having regard to such principles of assessment of damage as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer."

29. The Act itself contains execution machinery. Any order of the estate officer directing payment can be collected by the Collector as a an arrear of land revenue on receipt of a certificate from the Estate Officer. Section 13 enables to proceed as against the legal heirs and legal representatives of the deceased person when rental arrears or damages are due, but it could be collected only from the estate of the deceased. As per Section 8 of the Act, for certain purposes, the Estate Officer has been given the power of a Civil Court.

30. Under Section 9, the Act provides appeal remedy. As against both eviction order passed under Section 5 of the Act and an order directing payment of money passed under Section 7, appeal can be preferred. Two appellate authorities are designated, one is District Judge of the concerned District and other judicial officer of having not less than prescribed years of judicial experience. As against the order passed by the appellate authority, there is no further appeal, thereafter only writ remedy under Article 226 of the Constitution of India. Thus, those authorities are subjected to the judicial review of High Court under Article 226 of the Constitution of India.

31. To work out the machinery under the Act, an Estate Officer has to be appointed under Section 3 of the Act, he may not be a judge, but he is a quasi judicial authority. It implies that he should conduct his proceedings fairly and he must observe principles of natural justice. He cannot pass any arbitrary order. These are the quality of the judicial officer. Therefore, as per the scheme of the Act, an estate officer must have the trappings of a judicial officer.


32. Section 2(g) of the Act describes who is a person in "unauthorized occupation", whether a lease or licence with respect to a public premises for a fixed period or for agreed period, if it is, terminated or expired or the person continues thereafter also he becomes an unauthorized occupant.

33. But, Section 7 of the Act begins with the word where any person is in arrears of rent. The word employed in Section 7 is "any person", he may be an unauthorized person or he may not be an unauthorized occupant, but he shall be a defaulter in paying the rent. Therefore, for invoking Section 7, it is not a condition precedent, that the person should be an unauthorized occupant under Section 2(g) of the Act.

34. Now, it is seen that Act No. 1/1975 provides a quick and summary remedy as regards eviction as well as collection of rental arrears as opposed to the dilatory civil remedy in the ordinary Civil Courts. The Act provides for all contingencies. It provides a quasi judicial authority. Appeal remedy as against his orders. The Act gives all the necessary powers to the authorities to conduct a fair enquiry. The Act is a complete code in itself.

35. Section 15 of the Act clearly ousts the jurisdiction of the Civil Court with respect to eviction as well as recovery of arrears of rent, license fee or damages due from a person in occupation of the public premises and also from unauthorised occupants (See [M/s. Indo Imex Agencies \(Pvt.\) Limited Vs. Life Insurance Corporation of India etc.,](#)).

36. Considering the clear cut language employed in Section 15 of the Act and the intent and content of Act No. 1 of 1976, the jurisdiction of the Civil Court has been clearly ousted with respect to the public premises, to which Act No. 1 of 1976 applies.

37. With respect to the jurisdiction aspect, both the Trial Court as well as the First Appellate Court thoroughly failed in understanding the ambit, scope and application of Act No. 1 of 1976 vis--vis Section 9 C.P.C.

38. Jurisdiction question is an important question. It cannot be rectified. It cannot be set right, because it goes to the very root of the matter. Any action taken by the Court, without jurisdiction will entail all further action futile. They will all become invalid.

39. In this view of the matter, I answer the question with respect to jurisdiction as against the respondent. In such circumstances, we need not go to the other question.

40. Ultimately, this second appeal is allowed. Judgments and Decrees of the Courts below are set aside. The suit is dismissed as not maintainable. Parties shall bear their respective costs throughout. Consequently, connected miscellaneous petition is closed.