

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 03/09/2015

DATED: 29/ 09 /2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.992 of 2015 &
M.P.Nos.1 and 2 of 2015

G.Devaraj ... Appellant /Petitioner

Vs.

1.G.Ranganathan
2.G.Ramachandran
3.Tmt.Susila Narayanasamy
4.Tmt.Sasikala
5.Tmt.Valli
6.Sri.Latha
7.Tmt.Kamalam
8.Tmt.R.Neelaveni Kannammal
9.Tmt.Lakshmikantham
10.V.Balakrishnan
11.C.V.Rajagopalan
12.R.Balasundaram
13.R.Velumani
14.T.S.R.Kannaiyan

... Respondents/Defendants

PRAYER: Civil Miscellaneous Appeal is filed under Section 9 of Tamil Nadu City Tenants Protection Act and Section 151 of CPC, to set-aside the fair and decretal order dated 11.06.2009 and made in C.T.O.P.No.15 of 2002, on the file of Principal Sub Court, Coimbatore.

For Appellant : Mr.G.Devaraj (party-in-person)

For Respondents : R-1 to R-12 (Notice served)-
No appearance
R-13 No appearance
Mr.Thangavel for R-14

J U D G M E N T

The short facts of the case are as follows:-

The petitioner is the son of one Late K.Govindasamy Naidu. The respondents are the legal-heirs of the Late

Kanagammal, who is the wife of Raju Naidu, and are co-sharers of the petition mentioned property. The petition-mentioned property to an extent of 52 cents of land was leased out to the Late father of the petitioner, by the said Kanagammal by virtue of a Registration Lease Deed dated 24.11.1955 under Registration No.4128 of 1955 in the Office of Registrar, Coimbatore on 24.11.1955. Ever since the date of said Lease Deed, Late K.Govindasamy Naidu and the petitioner have been in possession and enjoyment of the petition-mentioned property. During the year 1975, Late K.Govindasamy Naidu constructed the superstructures in the petition-mentioned property with the knowledge and consent of the said Late Kanagammal and other co-sharers. All the expenses for the said construction to the tune of Rs.15,000/- were paid by the Late K.Govindasamy Naidu. Late Govindasamy Naidu died on 01.03.1991. Even before his death, the petitioner has been in joint possession and enjoyment of the property.

2. The petitioner and his Late father K.Goindasamy Naidu have been in uninterrupted and peaceful possession and enjoyment of the property as their own for more than 12 years with the knowledge and consent of the respondents. Therefore, the petitioner is entitled to the petition-mentioned property by law of adverse possession and reserves his right to institute appropriate proceedings for the same. The right of the petitioner to file the petition is affirmed by the High Court of Madras in L.P.A.No.61 of 1990, dated 03.08.2000. The certified copy of the said Orders is produced herewith. The petitioner has been paying the property tax for the property from the year 1975. The petitioner has been running a business concern in the name and style of M/s.Brilliant Engineering Company in the petition-mentioned property for the last 26 years. From 1991 till the period 31.07.2000, the petitioner has paid the rent amount of Rs.1,500/- per month into the credit of O.S.No.75 of 1976 on the file of Subordinate Court, Coimbatore, on the orders of High Court in C.M.P.No.4261 of 1990 in L.P.A.No.61 of 1990. The petitioner is entitled to purchase the petition-mentioned property from the respondents at the Guideline value prevailing as on 21.02.1958. The petitioner undertakes to deposit the said consideration as and when directed by this Court.

3. T.S.R.Kannaiyan / 14th respondent had filed a counter statement and opposed the petition. The 14th respondent had submitted that the petitioner had no right to file application seeking City Tenants Protection Act. The averment that the petitioner's father was in possession and enjoyment of the petition mentioned property until his death is false and it is equally false to state that the petitioner is in possession and enjoyment of the same. The averment that in a portion of the property a tenant was residing and that about 15 days ago, he vacated the same and handed over possession to the petitioner is false. This respondent submits that neither the petitioner nor his father is in possession

and enjoyment of the property measuring 52 cents comprised in T.S.No.607/2 of Krishnarayapuram Village. A perusal of the judgment passed in Appeal No.1222 of 1980 will clearly reveal that the petitioner's father was not in possession of the property. On the other hand, the original owner Smt.Kanagammal leased out 52 cents to various tenants. In fact, in the said lease deeds, the petitioner's father was one of the attestors. He never retained any portion of the property in T.S.No.607/2. This respondent submits that he purchased the entire suit property under various sale deeds and he is in possession and enjoyment of the same. The tenants who were in occupation under the previous landlord have vacated and delivered possession. This respondent submits that the petitioner with a view to illegally occupy the property, made attempts and hence, this respondent was forced to give complaint before Police Authorities. The petitioner is not in possession and enjoyment of the petition mentioned property. Therefore, the question of dispossessing the petitioner does not arise. This respondent submits that the petitioner is not entitled to seek any order of temporary injunction. This respondent submits that the relief prayed in the Interlocutory petition is different and greater in scope than that of the relief claimed in the main petition. The relief claimed in the petition is not in conformity with the main relief. On that score alone, the application was liable to be dismissed. This respondent further submitted that there is no necessity for appointment of Commissioner to inspect the petition mentioned property. The petitioner is trying to fish out the facts by seeking appointment of Commissioner. This respondent submitted that there is no dispute with regard to identity of the property. Hence, there is no necessity for the appointment of Commissioner.

4. After considering the averments of both parties, the trial Court had framed two issues viz.,

"(i) Whether the petitioner is entitled to purchase the suit property from the original owner under the City Tenants Protection Act?

(ii) Whether the sale deed executed in favour of the 14th respondent is null and void?"

5. On the side of the petitioner one witness was examined and on the side of the respondents, one witness was examined. On the side of the petitioner 162 documents were marked. On the side of the respondents 10 documents were marked along with a report and photographs filed by the Advocate Commissioner.

6. After recording the evidence of both parties, the trial Court had dismissed the petition.

7. Against the dismissal of the petition, the above appeal has been filed.

8. The appellant-G.Devaraj has appeared in party-in-person and submitted a written submission which are as follows:-

"(i) The appellant submits that in the lease deed dated 24.11.1955 executed by Kanagammal there is an extent of 0.54 cents and in this place total extent will come to Av.1.1742 sq.ft. Ac.10.4 cents and in this place in Eastern side South North Width Eastern Side is less and on the South North in the West Side there is more width and total extent of 0.58.86 cents 25,642 sq.ft. and he has noted down the genuine measurements in T.S.No.607/2 and the Re-Survey No.6056 and this is mentioned in the Government Gazette. The 14th respondent in the reply sent by the Police it has been mentioned as 25,433 sq.ft which is less valued and this is mentioned in the document at Page No.145. Respondent No.14 in C.T.O.P.No.15 of 2002, asked to include in the case in I.A.No.845/2004 and in the reply it has been mentioned and in the above order in I.A., it has been mentioned unlawfully and against law and informed not included in the case and reiterated, he is a third party and the petitioner decided to sell the same but the above 14th respondent is arguing that he has purchased the same. In the above I.A.No.845 of 2004, the Hon'ble Judge instructed to implead the 14th respondent in the above said case.

(ii) When the case in L.P.A.No.61 of 1990 is pending, 14th respondent disobeying the order of this Court had purchased the property from the opposite side. The above mentioned facts have been concealed instead of intimating the same to this Court. The petitioner's father Late K.Govindasamy Naidu had constructed two buildings in the suit property. With regard to this, the above said Kanagammal in her witness mentioned about this. The respondent No.1 had accepted it. Along with this, the appellant has filed the photographs taken by his father. 14th respondent mentioned that he was getting possession and enjoyment of the same from the Sub Tenant and it has also been mentioned in I.A.No.845 of 2004 by the 14th respondent. The act of the 14th respondent is an unlawful one and against law.

(iii) The appellant further submits that his sisters were not in possession and enjoyment of the property and with regard to the property they have not maintained the same. After the death of his father on 01.03.1991 his father's name has been included in the impleadment petition and the advocate engaged by his father was

Mr.S.K.Raghunathan. But the appellant's sisters got a change of vakalat by name T.R.Rajaram. The appellant has filed C.T.O.P.No.15 of 2002, on the file of Principal Sub Court, Coimbatore under Section 9 of the City Tenants Act. The appellant further submits that in the order passed by the Principal Sub Court, Coimbatore in O.S.No.75 of 1976 in I.A.No.23 of 1980 in the petition confirming the determination of rate of land and this is not a final judgment and during the time of final judgment which has been dismissed and on that basis, it has been dismissed.

(iv) The appellant further submits that for the sake of Hindustan Travels under T.S.No.60/56 purchaser by name Muthammam who is owner from her and in respect of the above Travels Lease agreement was registered under Document No.336/12, S.R.O., Meena Estate, Coimbatore. From the website of Hindustan Travels, a print out was taken and filed before this Court. Further, His Excellency The Governor of Tamil Nadu during the opening ceremony of Library in the Hindustan College at Coimbatore on 25.07.2015, which was published in the Tamil Dina Thanthi paper and the paper clipping is filed. In the matter, the 14th respondent is a influential person and rich person and well known to VIPs and the Government Officials and in this regard, 14th respondent by T.S.R.Kannaiyan, who belonged to Coimbatore."

9. The highly competent counsel Mr.Thangavel appearing for the 14th respondent submits that one Ponni Naidu was the owner of the property, who had executed a Settlement Deed in favour of his grand children on 17.05.1949 and one of the beneficiaries viz., Kanagammal maintained the property. The above beneficiary had executed a lease deed in favour of Govindasamy Naidu, the father of the appellant for a period of one year. Subsequently, the other beneficiary viz., Mr.Ranganathan had filed a suit in O.S.No.75 of 1976, on the file of Sub Court, Coimbatore, for partition and separate portion among the beneficiaries who are the grandchildren of Ponni Naidu. In the said suit, the appellant's father Govindaswamy Naidu was arrayed as the 12th defendant. During the pendency of the suit, the Govindaswamy Naidu filed an application under Section 9 of the Tamil Nadu City Tenants Protection Act and claiming that he is entitled to purchase to an extent of 52 cents in T.S.No.607/2 of the scheduled mentioned property. However, the partition suit in O.S.No.75 of 1976 was decreed on 30.08.1980. Consequently, the petition filed by the appellant's father Govindaswamy Naidu was dismissed. As such, the father of the appellant has retained some portion of the property and put up construction over the portion retained by him and the rest of the portion out of 52 cents was surrendered to the two shareholders.

10. The highly competent counsel Mr.Thangavel appearing for the 14th respondent further submits the appellant's enjoyment is not covered under the provisions of Tamil Nadu City Tenants Protection Act since the land is classified as dry land and is being used for the purpose of cultivation. The father of the appellant has constructed a superstructure over a portion of the land. The partition suit in O.S.No.75 of 1976 was decreed and hence, the plaintiff has filed an appeal in A.S.No.1212 of 1980 before this Court. The father of the appellant did not file any appeal or cross appeal against the trial Court decree and judgment and as such, the father of the appellant was satisfied with the findings of the trial Court. However, the appeal suit was allowed by this Court. Hence, the father of the appellant has filed L.P.A.No.61 of 1990 before the Hon'ble Division Bench of this Court. The father of the appellant had expired on 01.03.1991, therefore the legal-heirs viz., the appellant herein and his mother and two sisters were impleaded as the legal-representatives of the deceased Govindasamy Naidu.

11. The highly competent counsel Mr.Thangavel appearing for the 14th respondent further submits that the legal-heirs of Ponni Naidu had executed different sale deeds on different dates to and in favour of the 14th respondent. Subsequently, the L.P.A was allowed on 03.08.2000, thereafter, the appellant herein has filed a petition under Section 9 of the City Tenants Protection Act in C.T.O.P.No.15 of 2002, on the file of Principal Sub Court, Coimbatore praying for directions to sell the petition-mentioned property to him at a price to be fixed by this Court. In the said case, the appellant's two sisters were not impleaded as necessary parties and as such, the original petition is not sustainable under law due to non-joinder of necessary parties. At the time of filing the petition, 14th respondent was holding civil rights over the subject matter of the land since he has purchased the said land under various sale deeds between 1995-1996. Thereafter, the appellant's petition was dismissed by the trial Court on 11.06.2009. Against the said dismissal order, the above appeal has been filed. In support of his contentions, the highly competent counsel has cited the following judgments:-

(i) DAIVASIGAMANI NAICKER v. TRUSTEES OF PACHAIAPPA'S CHARITIES reported in 1958 (2) MLJ 1991

"Madras City Tenants Protection Act (III of 1922) - Applicability - Lease for purposes of toddy tapping created after 192 - Tenant not constructing structures on land - Right of tenant to claim protection under Act - Lease of right to collect rents from occupiers and tenants - Character of - Rights of lessee to protection or compensation.

The Madras City Tenants Protection Act applies only to tenancies created before 1921 and not to those coming into existence after 1921. Secondly, it gives protection to those tenants who have constructed buildings on the lands of others. The entire scheme of the Act is to afford protection to a tenant who has constructed a building on another's land, and not to throw obstacles in the way of a landlord enforcing his rights even where there are no rights of a tenant to be protected.

The Act further does not apply to agency e.g., a lease of mere right to collect the rents from the occupants or tenants of immovable property. A lease for purposes of toddy tapping is only an agricultural lease and is not the class of leases to which the Act will apply."

83

(ii) SYED IBRAHIM v. JALMA reported in 1968(2) MLJ

"Madras City Tenants Protection Act (III of 1922) Sections 2(4), 3 and 9 (1)(a) - Scope, applicability and construction of - Ejectment suit - Defendant (tenant) not filing application under Section 9(1) within the stipulated - Death of defendant pending suit - Legal representatives brought on record - Right of legal representatives - Competency to file application under Section 9(1) - Legal representatives cannot claim fresh opportunity or right to prefer application - No independent right."

(iii) P.S.Balakrishnamaraja v. S.K. Alagar Raja reported in AIR 1993 MADRAS 357

"Madras City Tenants Protection Act (3 of 1992), S.9(1)(a)(ii)-Right conferred on tenant to purchase property of landlord against whom even no proceeding for eviction is instituted - Travels beyond object of Act - Violates Art.14 - Also violates right to hold property under Art.19(1)(f) and right under Art.31."

(iv) J.Lease & Co. v. M.S.A.Mohamed Farooq reported in 2000 (III) CTC 423

"Tamil Nadu City Tenants Protection Act, 1921, Section 9 - Nature of right of tenant - Right of tenant under Section 9 is only statutory right and not vested right - Section 9 can be invoked only when landlords filed suit in ejectment - Tamil Nadu City Tenants Protection Act, 1921, Sections 2(4) and 9 - Position of assignee as tenant - Land originally leased out to one 'D' and

he put up superstructure - On D's death rights in respect of such property devolved on his widow 'A' - 'A' inducted her sister's daughter and son as partner of firm which was tenant in respect of leased out land - 'A' executed will bequeathing property to her sister's daughter and brother's children - 'A' died - Petitioners claimed their right as tenant under said Will - Legatee under Will is assignee - Right of tenant is a inchoate doubly contingent right - Assignee of leasehold interest of original tenant cannot claim benefits of Act merely based on assignment - Such assignee has to prove that there was an agreement of tenancy between him and landlord and that landlord received rent from such assignee.

Tamil Nadu City Tenants Protection Act, 1921, Section 2(4) - History of legislation and position of assignee after 1973 amendment - Persons deriving title included assignees in original Act - Section 2 (4) was amended in 1960 and assignees went out of reckoning as person deriving title from tenant was excluded from definition - Section was again amended by Act 24 of 1973 and after such amendment assignee from tenant is also tenant and entitled to protection only if there was an agreement express or implied between him and landlord - Matter remanded for fresh consideration."

12. From the above discussions, this Court is of the view that:-

(i) The original owners of the land lease out the land under a lease deed dated 24.11.1955 measuring an extent of 52 cents to the father of the appellant for cultivation purpose for one year. Subsequently, the father of the appellant had surrendered some portion of the property and later the original owners of the said land had leased out various portions to third parties under lease deeds dated 25.09.1955 and 06.10.1956, wherein the father of the appellant was a witness, while that being the case, the appellant can not claim tenancy over the said 52 cents of the property. That apart, the original owners had subsequently executed sale deeds to and in favour of 14th respondent herein on various dates between 25.09.1955 and 06.10.1956 for the entire extents of 52 cents.

(ii) The City Tenancy Act will be applicable only for residential purpose but will not be applicable in respect of lease for cultivation purpose. Since the petitioner's father had taken the property measuring an extent of 52 cents for cultivation purpose and application filed by the appellant under section 9 of the City Tenant Protection Act is not maintainable. If at all the appellant has any right over the property which he claims to be possession, he should have

taken shelter only under Tamil Nadu Cultivating Tenants Protection Act, since the lease was for agricultural as per the lease deed dated 24.11.1955. Further in the absence of any suit or other proceedings against him for ejection, the application filed by the appellant under section 9 of the City Tenants Protection Act is not maintainable and is premature.

13. On considering the facts and circumstances of the case and arguments advanced by the appellant and the highly competent counsel appearing for the 14th respondent and on perusing the typed-set of papers, and the views of this Court listed as (i) and (ii) as above, the said appeal is disposed of with above observation. Consequently, the fair and decreetal order dated 11.06.2009 and made in C.T.O.P.No.15 of 2002, on the file of Principal Sub Court, Coimbatore is modified. Accordingly ordered. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

r n s

To

The Principal Subordinate Judge,
Coimbatore.

+1 cc to Prof.S.Krishnaswamy, sr.52758

Pre Delivery Judgment made in
C.M.A.No.992 of 2015 &
M.P.Nos.1 and 2 of 2015

tej co
kra 29/10/2015

WEB COPY