

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

Review Application No.2 of 2014 and M.P.No.1 of 2014
in C.R.P.No.1656 of 2008

1.Sampath

2.Kuppammal @ Sarala

...Petitioners

Vs

1.S.N.Sundaram

2.R.Gnanasambandam @ Thirugnanasambandam

3.R.Shanmugam

4.R.Ramakrishnan

... Respondents

Prayer :- Review Petition filed to set aside the order dated 02.08.2013
in CRP PD No.1656 of 2008.

For Petitioners : Mr.R.Subramanian

ORDER

Heard Mr.R.Subramanian learned counsel for the petitioner and
perused the documents available on record.

2.This Review Application is filed to review the order in
C.R.P.No.1656 of 2008 dated 02.08.2013. The said Revision Petition
was filed under Article 227 of the Constitution of India challenging the
order dated 12.11.2007 in C.M.A.No.24 of 2007 on the file of the VII

Additional City Civil Court, Chennai, reversing the order dated 12.11.2003 in I.A.No.8107 of 1989 in O.S.No.2878 of 1984 on the file of the VI Assistant City Civil Court, Chennai.

3.The Review Petitioners were the Revision petitioners and defendants 3 and 4, the respondents being the plaintiffs in the suit. The suit was filed for declaring the defendants as tenants under the plaintiffs and to direct them to deliver vacant possession of the 'B' schedule property after removing super structure, payment of arrears of rent and damages for wrongful use and occupation.

4. An application was filed in I.A.No.8107 of 1989 under Section 9 of the Madras City Tenants Protection Act, 1955 (The Act). The plaintiff resisted the application by filing counter, thereupon the court by an order dated 18.10.1996 allowed the application, while examining the order, it was observed that the court did not consider the issue whether the defendants were entitled to invoke Section 9 of the Act, there was no list of documents mentioned in the order and the Court made observation that those issues should be decided at the time of trial. This Court therefore, observed that the manner in which the trial court disposed of the application was wholly erroneous and that settled law being a

tenant, denying title of the landlord is not entitled to claim benefit under the Act. Therefore, the plaintiffs were led to believe that the question as to whether the defendants are entitled to benefit of Section 9 of Act would be decided at the later point of time. However, subsequently Interlocutory Application in I.A.No.8107 of 1989 was posted for further orders and the trial court ordered that an extent of 1507 sq. ft. should be conveyed at the rate of 275 per sq.ft and the amount to be payable in 18 monthly installments.

5. Aggrieved by the same, the plaintiffs/respondents preferred an appeal before the Lower Appellate Court in C.M.A.No.24 of 2007. The appeal was allowed by an order dated 12.11.2007. Thereafter, the trial court has ordered to close the suit by Judgment dated 07.09.2004 with liberty to restore the same, after completion of the 18th month period stipulated in the order dated 12.11.2003. Taking note of the order passed by the lower appellate court in C.M.A.No.24 of 2007, it was held that the judgment passed by the trial court dated 07.09.2004 should necessarily be revoked. This court examined the correctness of the order passed in C.M.A.No.24 of 2007 after hearing both the parties elaborately and after taking note of the various judgments confirmed the order and held that defendants are not entitled to benefits of Section 9

of the Act. The operative portion of the order, passed in the Revision petition is as follows:-

13. In the affidavit filed in support of the Petition filed under section 9 of the Act, in unequivocal terms, the tenant has stated that the suit property is an endowed property of Arulmighu Sandana Vinayagar Thirukoil, Thoppetai, and not the joint family property of the plaintiffs claimed by them. However, a plea has been raised stating that without prejudice to such defence they are willing to purchase the suit land on a price to be fixed by the Court inasmuch as the plaintiffs are also trustees of the said temple.

14. The plaintiffs claim that late Murugappa Mudaliar died issueless and adopted one S.Nadaraja Mudaliar as his son. As per law of succession as it stood at the time of Angu Mudaliar, Sadayappa Mudaliar and Murugappa Mudaliar, S.A.Ramalinga Mudaliar, S.Nataraja Mudaliar and S.Appavoo Mudaliar alone are absolutely entitled to the joint family property. That S.Nataraja Mudaliar was managing the joint family property on behalf of members of the family and he died on 7.9.1983 leaving behind the plaintiffs 2 & 3 as his legal heirs. Though S.A.Ramlinga Mudaliar died in the year 1964 leaving behind plaintiffs 4 to 6 as his legal heirs and the suit property is the only joint family available for partition and it was kept in common without any division and the other properties have been already divided.

15. It is the further case of the plaintiffs that the defendant became a tenant under late S. Nataraja Mudaliar in respect of a vacant land described in schedule B of the Plaint schedule and he did not pay rents regularly. It appears that the defendants did not file written statement, but filed an Application under section 9 of the Act.

16. The Hon'ble Supreme Court in **PALANIAMMAL v. VISWANATHA CHETTIAR (DEAD) AND OTHERS [(1998) 3 SCC 654]**, considered an appeal arising out of a proceedings under the City Tenants Protection Act. One among the question which fell for consideration in the said case was whether the defendants therein were entitled to invoke the benefits of the Act. While deciding the question, the Hon'ble Supreme Court took note of the scheme of the Act and observed as hereunder:

"15...Consequently it must be held that for operation of Section 9 an admitted relationship of landlord and tenant must exist. If the tenant alleges that the landlord is not the real owner of the property but somebody else is the owner or he himself is the owner there would remain no occasion for him to offer any price of such land to such a landlord whom he treats as a stranger to that land. On such a stand taken by the tenant of the open land there would also remain no occasion for the so-called landlord to accept the price of the land and to convey his right, title and interest in the land pursuant to the order of the court to such tenant."

"19...On the other hand learned Senior Counsel for the plaintiffs invited our attention to two decisions of Srinivasan, J. (as he then was) in the case of Subbaroyan v. Devadas Nadar¹¹ and in the case of Bhargavakula Nainargal Sangam v. Chakravarthi¹². The learned Judge in those cases had taken the view that a tenant who denies the title of the landlord would not be entitled to get the benefit of the provisions of the Protection Act. In our view, the said decisions of the learned Single Judge of the High Court also are well sustained on the statutory scheme of the Protection Act as discussed by us earlier.

17.In S.R.RADHAKRISHNAN AND OTHERS v. NEELAMEGAM [2003- 4-LW 426], the Hon'ble Supreme Court culled out the procedure for claiming the relief under section 9 of the Act and laid down four conditions to be satisfied before a tenant is entitled to relief. They being -

- i) He should be a tenant in possession of the land;*
- ii) He should have erected a superstructure on the land in respect of which he would be entitled to claim compensation under Section 3;*
- iii) A suit or proceeding for eviction should have been taken by the landlord against him;*
- iv) He should have applied to the court for direction in that regard within one month from the date of service of summons in such suit.& quot;*

18. The learned counsel for the petitioners contended that the plea raised in the affidavit filed in support of the Application under section 9 of the Act is an alternate submission and even in the same affidavit, the petitioners had agreed to purchase the property from the plaintiffs.

19. As noticed above, the plaintiffs have traced their title and claimed that the property is a joint family property. The defendants on the other hand made a categorical statement that the property is not a joint family property, but a property endowed to a temple. Having taken such a stand, there cannot be any contrary stand to state that inspite of the denial of title of the plaintiffs the defendants are willing to purchase the property from the plaintiffs. Though it has been stated that the party would be entitled to take inconsistent plea, such a plea cannot be mutually destructive moreso in an Application under section 9 of the Act. The defendants having taken a stand that the plaintiffs are not the owners of the property there would be no occasion for the plaintiffs to accept the price of the land and to convey any right or interest in the property to the defendants. Therefore, this Court is of the firm view that the stand taken by the defendants that the suit property is not a joint family property of the plaintiff, but an endowed property is the categorical stand and it amounts to denial of landlord-tenant relationship, thereby dis-entitling the defendants to the

benefit of section 9 of the Act.

20.As observed earlier, the defendants did not produce any oral or documentary evidence before the trial Court. The trial Court noticed the objection raised by the plaintiffs regarding the maintainability of the Application under section 9 of the Act, on the ground that there is denial of landlord tenant relationship. Whiles, the trial Court did not make any endeavour to decide such question, but made an erroneous observation that such question will be decided at the time of trial. The landlord- tenant relationship is sine quo non for maintaining an Application under section 9 of the Act. Therefore when a dispute arose as to whether the defendant is a tenant under the plaintiff or not, there was a duty cast on the trial Court to decide such issue. The further serious error committed by the trial Court is that after having postponed the decision in the matter relating to the landlord-tenant relationship to be decided at the time of trial, proceeded further with the Application and fixed the price payable for the property. This direction of the trial Court is wholly without jurisdiction and patently erroneous.

21.The learned counsel for the petitioners submitted that the plaintiffs have challenged only a consequential order and not the order appointing the Advocate Commissioner under section 9 of the Act. As the trial Court made an observation that the question relating to landlord and tenant relationship is to be decided latter, in my view, the plaintiffs

were fully justified in being lead to believe that the matter will have to be thrashed out at the time of trial and therefore the order at that point of time did not cause any prejudice to the plaintiffs for them to challenge the same. The prejudice was caused only when the trial Court took up the very same application, without going into the question relating to landlord-tenant relationship and proceeded to fix the market value of the property. Therefore such contention raised on behalf of the petitioner must necessarily fail.

22.For all the above reasons, it is held that the petitioners/ defendants are not entitled to the benefit of section 9 of the Act and the Civil Revision Petition being devoid of merits, is dismissed. No costs.

6.The petitioner has now filed this review petition contending that the Court should have seen that the defendants had filed written statement and additional written statement and the trial court order could not have

T.S.SIVAGNANAM,J.,

ssd
been challenged and the plaintiffs are estopped from questioning the same. Further it is submitted that written statement has to be read as a whole to find out whether the tenant has willfully denied a title. On the perusal of the grounds of review, it is evident that petitioners are seeking

to re-argue the matter. It is settled legal position that Review is not an appeal in dis-guise and the petitioners have failed to make out any grounds to establish that order passed by this Court in the Civil Revision Petition suffers from any error apparent on the face of the record.

7.For all the above reasons, the Review petition fails and the same is dismissed. No costs.

23.01.2015

Index:Yes/No
Internet:Yes/No

To
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2.The VI Assistant City Civil Court, Chennai.

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