

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P.No.3118 of 2010 (PD)

and

M.P.Nos.1 and 2 of 2010

Hindustan Petroleum Corporation Limited,
Rep. by Senior Regional Manager,
Coimbatore Regional Office,
No.18/3, Big Bazaar Street,
Coimbatore - 641 001. ... Petitioner/Appellant

Vs.
Arumugam ... Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order passed by the Principal Sub Court, Tiruppur, dated 22.04.2010 and made in C.M.A.No.4 of 2009.

For Petitioner : Mr.M.Vijayan
for M/s.King and Partridge

For Respondent : Mr.S.V.Jayaraman, Senior Counsel
for Mr.K.Govi Ganesan

O R D E R

Challenging the judgment and decree dated 22.04.2010 and made in Civil Miscellaneous Appeal in C.M.A.No.4 of 2009, on the file of the learned Principal Sub Judge, Tiruppur, confirming the Order dated 28.11.2008 and made in I.A.No.397 of 2005, on the file of the learned District Munsif-cum-Judicial Magistrate, Palladam in O.S.No.115 of 2004, this civil revision petition is filed by the appellant in the civil miscellaneous appeal, who is the first defendant in the suit in O.S.No.115 of 2004, after invoking the provision under Article 227 of the Constitution of India. The respondent herein is the plaintiff in the suit and the other defendants have not been impleaded either in the civil

miscellaneous appeal or in the present civil revision petition.

2. The respondent herein has filed the suit in O.S.No.115 of 2004 against the revision petitioner/first defendant and other six defendants and thereby sought the relief of directing the defendants to vacate and surrender the vacant possession of the suit properties and direct them to pay damages for use and occupation of the suit properties at the rate of Rs.3,000/- per month from the date of suit till they deliver the vacant possession of the suit properties.

3. The plaintiff claims that he is the absolute owner of the suit properties. The revision petitioner herein, who is the first defendant in the suit, became a tenant under the respondent/plaintiff's mother under a registered lease deed in the year, 1973. The remaining defendants 2 to 7 in the suit are the dealers of the first defendant. In fact, the revision petitioner herein is the Hindustan Petroleum Corporation Limited, represented by its Senior Regional Manager. The second defendant in the suit is Sangam Traders, which is a partnership firm whereas the defendants 3 to 7 are the partners therein. During the pendency of the suit, the revision petitioner, who is the first defendant in the suit, had filed an application in I.A.No.397 of 2005 under Section 9 of the Tamil Nadu City Tenants Protection Act, seeking a prayer to direct the respondent/plaintiff to convey the suit property to the petitioner on payment of price to be fixed by the Court in accordance with the provisions of Tamil Nadu City Tenants' Protection Act. This petition was strongly resisted by the respondent/plaintiff by filing his counter statement. After hearing both sides, the claim of the revision petitioner was rejected by the learned District Munsif-cum-Judicial Magistrate, Palladam on 28.11.2008. Challenging the said order, the revision petitioner had preferred a Civil Miscellaneous Appeal in C.M.A.No.4 of 2009 on the file of the learned Principal Sub Judge, Tiruppur. The learned Principal Sub Judge, after hearing both sides, had proceeded to dismiss the appeal, after confirming the order of the trial Court. Against which, the present revision is preferred by the appellant in Civil Miscellaneous Appeal, who is the first defendant in the suit.

4. Heard Mr.M.Vijayan, learned counsel appearing for M/s.King and partridge who is appearing on behalf of the revision petitioner and Mr.S.V.Jayaraman, learned Senior Counsel appearing for Mr.K.Govi Ganesan, who is appearing on behalf of sole respondent.

5. As it appears from the averments of the plaint, the revision petitioner became a tenant under the respondent/plaintiff's mother under a registered lease deed in the year 1973. At the time of entering into the lease agreement, the monthly rent was fixed at Rs.125/- per month.

The defendants 2 to 7 in the suit were the dealers under the revision petitioner. Since the revision petitioner and other defendants were irregular in paying the rent even during the life time of the respondent/plaintiff's mother, immediately after death of the respondent/plaintiff's mother, the respondent/plaintiff had sent a registered letter along with the copies of Will and death extract of his mother informing the revision petitioner and other defendants about the death of his mother. Thereafter, on 05.01.2004, the respondent/plaintiff had sent a lawyer notice to the revision petitioner calling upon him to vacate and surrender the vacant possession of the property. In his reply, the revision petitioner had admitted his tenancy, but had claimed that he is the statutory tenant and therefore he is having the right of renewal. According to the respondent/plaintiff, after termination of the tenancy, i.e., after 20.02.2003, the occupation of the revision petitioner/first defendant is illegal. The revision petitioner has also contested the suit by filing his written statement. But, no proof is available as to whether the remaining defendants contested the suit or not. Under this circumstance, the revision petitioner had come forward with the above said application in I.A.No.397 of 2005 under Section 9 of Tamil Nadu City Tenants' Protection Act, seeking a direction as against the respondent/plaintiff to convey the suit property to them on payment of the price that may be fixed by the Court.

6. Mr.M.Vijayan, learned counsel appearing on behalf of M/s.King and Partridge, who is on record for the revision petitioner, during the course of his argument, has drawn the attention of this Court to Section 2(4) of the Tamil Nadu City Tenants' Protection Act. Section 2(4) defines the term 'Tenant'. Section 2(4) reads as under:-

"Tenant" in relation to any land

(i) means a person liable to pay rent in respect of such land, under a tenancy agreement express or implied, and

(ii) includes सत्यमेव जयते

(a) any such person as is referred to in sub-clause (i) who continues in possession of the land after the termination of the tenancy agreement."

7. Mr.M.Vijayan, learned counsel for the petitioner has admitted that the tenancy was not renewed after 20.02.2003. However, he would submit that the revision petitioner had been in physical possession of the property and hence as contemplated under clause (a) to sub clause (ii) of Section 4(2) of Chennai City Tenants' Protection Act, 1821, since the revision petitioner had continued in possession of the suit property even after the termination of the tenancy agreement, he was entitled to the benefit under Section 9 of the Chennai City Tenants' Protection

Act. Mr.M.Vijayan has also drawn the attention of this Court to Page Nos.24 to 26 of the typed set of papers, which contains water tax receipt, property tax receipt and electricity tariff receipt. Based on the above receipts, Mr.Vijayan has adverted that those documents go to show that the revision petitioner has been in physical possession of the suit property and therefore, the order passed by the trial Court which was confirmed by the lower appellate Court was absolutely wrong and hence he urged to set aside the order of the Courts below.

8. On the other hand, Mr.S.V.Jayaraman, the learned Senior Counsel appearing on behalf of the respondent/plaintiff has submitted that the tenancy agreement had not been renewed from 21.01.1993 to 20.02.2003, i.e., for the period of 10 years and after the expiry of tenancy agreement on 20.02.2003, the revision petitioner was not entitled to claim the benefit under Section 9 of the Chennai City Tenants' Protection Act. Secondly, he would contend that the tenancy came to end by efflux of time on 20.02.2003 and hence the revision petitioner could not be a lawful tenant and the lease was not a subsisting one. He has also pointed out that on the date of filing of the suit, Palladam was only a Town Panchayat and therefore the provision of City Tenants' Protection Act was not at all applicable to the suit properties. Thirdly, he would submit that though the revision petitioner was the tenant prior to the expiry of 20.02.2003, he was not in physical possession of the suit property, because the traders, i.e., the defendants 2 to 7 were running the Petrol Bunk and hence the revision petitioner, being the first defendant, could not claim that he was in physical possession of the suit property. Fourthly, he would contend that the claim of the revision petitioner was hopelessly barred by limitation. In support of his contention, Mr.S.V.Jayaraman has placed reliance upon the following decisions:-

(1) MALINI PARTHASARATHY Vs. HINDUSTAN PETROLEUM CORPORATION LTD., [(2002) 2 MLJ 416].

(2) HINDUSTAN PETROLEUM CORPORATION LIMITED, REP. BY ITS MANAGING DIRECTOR AND ANOTHER Vs. B.S.OJEEHA AND 18 OTHERS. [2011 (1) MWN (Civil) 387].

3.CHANDRAMOULEESWARAN AND OTHERS Vs. P.VASUDEVAN AND OTHERS [2007(2) MLJ 874].

9. In MALINI PARTHASARATHY's case(cited supra), the learned Single Judge of this Court has observed as under:-

"There is lot of difference between the 'legal possession' and 'physical possession' and also there is lot of difference between the 'legal possession' and 'actual physical possession'. It may be true that the respondent is in 'legal/constructive possession' of the suit property through its dealer Bhandri Agencies but by no stretch of imagination it

could be said that the respondent is in actual physical possession of the suit property. For being in actual physical possession the respondent should be running the outlet at the suit property through its own employees having full control over the entire operation and administration. The legal principles laid down in the decisions relied upon by the learned counsel for the appellant squarely applies to the facts of this case. Therefore it has to be held that the respondent does not come within the meaning of 'tenant' as defined in Section 2(4)(ii)(b) of the Act as the/respondent is not in actual physical possession of the suit property."

10. In HINDUSTAN PETROLEUM CORPORATION LIMITED, REP. BY ITS MANAGING DIRECTOR AND ANOTHER, (cited supra) the plaintiff had filed the suit for delivery of possession and award of damages against the defendant therein. The defendant had filed the interlocutory application under Section 9 demanding sale of vacant land leased out to the defendant. The trial Court had dismissed that application by observing that the defendant was not in actual physical possession of the suit property. Under this circumstance, the learned Single Judge of this Court observed that to maintain an application under Section 9, actual physical possession of demised premises is in, sine quo non, the defendant hand over physical possession of property to his dealer. The defendant is not a Tenant as contemplated under Section 2(4) of the Act and therefore, the application was not at all maintainable.

11. In another decision viz., CHANDRAMOULEESWARAN AND OTHERS, (cited supra), a suit for ejectment, filed by the plaintiffs/appellants against the defendants/respondents. An application was filed by the first defendant under Section 9 of the Act, claiming right to purchase the land, which was denied by all Courts and hence, reached finality. The trial Court had decreed the suit. The first appellate Court made reversal of Judgment holding that notice under Section 11 of the Act, should have been issued. Under this circumstance, the second appeal was filed by the appellants therein. After hearing both sides, the learned Judge has held that as the application under Section 9 of the Act was dismissed by all Courts, no question of claiming any right under Section 9 would arise, since, it has reached finality. Though non-issuance of Notice under Section 11 of the Act would be fatal to plaintiff's case, it would be applicable only where defendant was a tenant, as contemplated under the provisions of City Tenants' Protection Act. Since, the first defendant is in legal possession but not in actual physical possession of land in question, cannot be asked for issuance of notice under Section 11 of the Act and the question of waiver not would not assume importance.

12. On coming to the present case on hand, as argued by Mr.M.Vijayan, the petitioner was not in actual physical possession of the suit property and therefore, he could not be termed as a tenant contemplated under Section 2(4), 2(b) of the City Tenants' Protection Act. It is to be seen that both the lower Courts have given concurrent findings. It is settled principle of law that when the Courts below have given concurrent findings, this Court being the higher judiciary, will be reluctant in interfering with the findings of the Courts below and apart from this, since the revision petitioner is not in actual physical possession of the suit property, he is not entitled to maintain the application under Section 9 of the City Tenants' Protection Act.

13. Keeping in view the above fact, this Court is of the considered view that the revision petition deserves to be dismissed. Accordingly, the revision petition is dismissed, confirming the orders of the Courts below. No order as to costs. Consequently, connected M.Ps. are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rrg

To

1.The Principal Sub Judge,
Tiruppur.

2.The District Munsif-cum-Judicial Magistrate,
Palladam.

+1 cc to M/s.King & Partridge Advocate sr.52663
+1 cc to Mr.K.Govi Ganesan Advocate sr.52661

C.R.P.No.3118 of 2010 (PD)

aa03/11/2015