

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.3356 of 2013

Indian Oil Corporation Limited
rep.by its Chief Divisional Retail Manager
1079, Avinashi Road
Coimbatore 641 018 ...Appellant/Defendant

-Vs-

1. K.Sivaraj
2. K.Balraj ...Respondents/Plaintiffs

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 9A of the Tamil Nadu City Tenants Protection Act read with Section 151 of the Civil Procedure Code, against the fair and final order dated 18.07.2013 made in I.A.No.1052 of 2011 in O.S.No.510 of 2011 on the file of the First Additional District Judge, Coimbatore.

For Appellant :: Mr.N.Anand Venkatesh

For Respondents :: Mr.R.Bharath Kumar

JUDGMENT

M/s Indian Oil Corporation Limited represented by its Chief Divisional Retail Manager, Coimbatore has brought this civil miscellaneous appeal challenging the correctness of the fair and decretal order dated 18.7.2013 passed in I.A.No.1052 of 2011 in O.S.No.510 of 2011 by the learned First Additional District Judge, Coimbatore.

2. Learned counsel for the appellant-Corporation submitted that the appellant has been in physical possession of the suit property for more than 40 years, since they have taken the suit land on lease from the father of the respondents on 1.12.67 by a registered lease deed dated 1.8.68 for 20 years and put up permanent structures for its business of running a petrol pump. The said period of 20 years was mutually extended for another period of 20 years commencing from 1.12.87 to 30.11.2007 by a registered lease deed dated 28.2.91. As per clause III(b) of the said lease deed, the appellant company has got the first option to purchase the suit vacant land on or before the 30th day of 2007. Accordingly, by issuing a legal notice dated 26.4.2007 to the father of the respondents, the appellant company exercised their option to purchase the suit vacant land. Immediately a reply was sent on 31.7.2007 stating that the legal notice dated

26.4.2007 was not in conformity with clause III(b) of the lease deed. Accordingly, it was informed that the right claimed under clause III(b) has been waived by the appellant company. Therefore, when the father of the respondents issued an eviction notice dated 24.8.2007 to the appellant company without any right to the suit land, since by settlement deed dated 26.4.2006, the first respondent bequeathed a portion of the suit land to the second respondent, it was contended that the eviction notice issued to the appellant company by the father of the respondents was not binding. Adding further, the learned counsel for the appellant submitted that when the settlement deed dated 26.4.2006 was not brought to the notice of the appellant company during the life time of Mr. Karuppusamy, the legal notice sent on 26.4.2007 to the father of the respondents exercising their option to purchase the suit vacant land under Section 9 of the City Tenants Protection Act cannot be rejected by the trial Court. Moreover, the suit itself is not maintainable for want of notice under Section 9 of the City Tenants Protection Act as well as under Section 106 of Transfer of Property Act.

3. Continuing his arguments, he submitted that the suit filed by the respondents is bad for non-joinder of the dealer who is running the petrol bunk put up by the appellant company in the suit vacant land. But the trial Court has wrongly come to the conclusion that the City Tenants Protection Act is not applicable to Kalapatti village in which the suit property is situate, as it is not included in the Coimbatore Corporation limit on the date of filing of the application. When the appellant company is always ready to purchase the suit vacant land by paying the market rate, the trial Court completely erred in giving a finding that the author of the document, Ex.P15 was not examined and that it did not state when the Kalapatti village was included in the Corporation limit. He also submitted that even assuming that the appellant company is not in physical possession of the suit land, since the petrol bunk has been given to a dealer, the trial Court has committed yet another mistake in holding that the appellant company is not running the petrol bunk and therefore when there is no physical possession with the appellant company as contemplated under Section 2(4) (ii)(a) of the City Tenants Protection Act, the appellant is not entitled to maintain the application under Section 9 of the Act. Therefore he pleaded that the dismissal of the application filed by the appellant under Section 9 of the City Tenants Protection Act is wholly untenable and unsustainable in law.

4. Opposing the above contentions, the learned counsel for the respondents submitted that the appellant company is not entitled to invoke the provisions of Section 9 of the City Tenants Protection Act, since the suit land is not situated within the jurisdiction of the Corporation limit. Secondly, when the appellant is running the retail outlet/petrol bunk in the suit land through its dealer, M/s Ramakrishna & Co., and they are not in actual physical possession, the application filed under Section 9 of the Act has been rightly dismissed by the trial Court.

5. I find merits in the submissions made by the learned counsel for the respondents. On the date when the appellant company filed the application under Section 9 of the Act on 18.10.2011, the burden was heavily on them to prove that Kalapatti village was included in the Coimbatore Corporation. However, no document was produced to prove the said fact, except Ex.P15. Even then, neither the author of the document, Ex.P15 was examined nor the date of inclusion of the suit village as falling within the jurisdiction of the Coimbatore Corporation was found mentioned therein. Therefore, the trial Court has rightly come to the conclusion that Ex.P15 does not help the appellant company. Moreover, it has also found that R.W.1 in his evidence has categorically deposed that the suit village was included only in the year 2012. But the application was filed by the appellant much prior to the said inclusion, namely, on 18.10.2011. Therefore, when the suit land was not brought within the jurisdiction of the Coimbatore Corporation, the Act cannot be made applicable. Hence the trial Court has rightly come to the conclusion that the appellant company has miserably failed to prove that Kalapatti village has been included within the jurisdiction of Coimbatore Corporation. The said factual finding requires no interference at the hands of this Court.

6. Further, to invoke the provisions of Section 9 of the Act, the appellant should have established the fact that he was a tenant in possession of the land. But the retail outlet/petrol bunk in the suit property has been run by its dealers Mr. Ravichandran and Mr. Rajagopal, partners of M/s Ramakrishna and Co. Even paragraphs 6 & 7 of the written statement filed by the appellant company also clearly admit this fact that as per the terms and conditions of the lease deed dated 1.8.68, the appellant company is entitled to grant licence to third parties to run the retail outlet/petrol bunk in the suit property, which prove that the appellant company is not in physical possession. When the appellant company has not been in actual physical possession of the suit land as contemplated under Section 2(4)(ii)(a) of the Act, they are not entitled to invoke the provisions of Section 9 of the Act. Moreover, as ruled by the Apex Court in the case of S.R.Radhakrishnan and others v. Neelamegam, 2003 (3) CTC 488, the actual physical possession is essential and rather it is sine quo non for filing an application under Section 9 of the Act. Admittedly the appellant was not in physical possession of the suit land on the date of filing of the application under Section 9 of the Act, therefore undoubtedly they are not entitled to get the benefit of Section 9 of the Act. Hence the finding reached by the trial Court on this aspect also cannot be interfered with by this Court. Moreover, the Apex Court in S.R.Radhakrishnan and others case (supra), to avoid misuse of the benefit given under Section 9 by the wrong user thereof, has laid down safeguards by making it clear that the tenant should be in actual physical possession of the suit land for invoking Section 9 on the date of filing of the application. Otherwise a tenant, who has taken the suit land, would induct a third party and would not part with the possession to the real landlord, by selling the suit land to a sub tenant. In the present case also, as highlighted above, the

appellant/tenant has admittedly not been in actual physical possession of the suit land on the date of moving the application, hence they are not entitled to maintain the application under Section 9 of the Act. In the light of the above, this Court is not inclined to entertain the appeal. Accordingly, the civil miscellaneous appeal fails and it is dismissed. Consequently, M.P.No.1 of 2013 is also dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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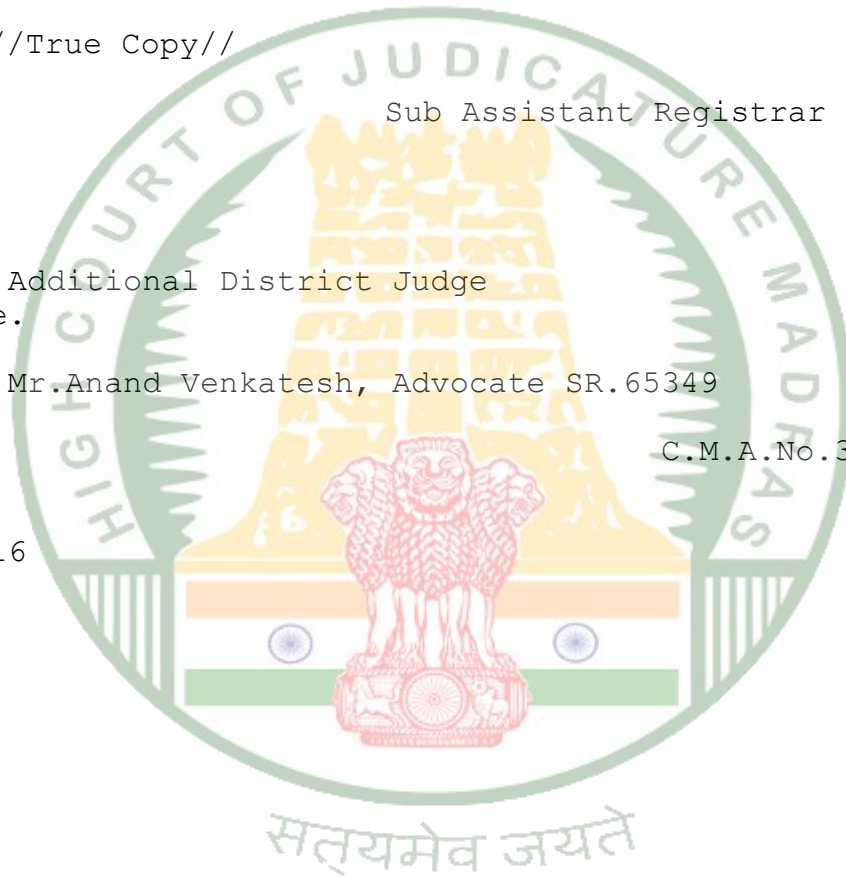
To

The First Additional District Judge
Coimbatore.

+ 1 cc to Mr.Anand Venkatesh, Advocate SR.65349

C.M.A.No.3356 of 2013

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