

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 07-11-2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.No.142 OF 2008

Sri Bashyakara Adichenna Kesavaperumal Temple,
rep.by its Executive Officer. ...Appellant/Defendant
Chennai 600 033.

-vs-

1.Smt.N.Padmavathi (deceased)
represented by L.Rs.
2.N.Narasimhan
3.N.Sundar
4.N.Sadagopan
5.Radha ...Respondents/Plaintiff
(R2 to R5 brought on record as LRS of the
deceased sole respondent
vide order of court dated 15.07.2014
made in M.P. 1 to 3/2012 in
S.A.No.142 of 2008)

This Second Appeal filed under Section 100 of CPC
preferred against the judgment and decree, dated 28.09.2007,
passed in A.S.No.347 of 2007 on the file of VII Additional City
Civil Court, Chennai confirming the Judgment and decree dated
26.09.2005 on the VI Assistant City Civil Court, Chennai in
O.S.No.3246 of 2003.

For appellant : Mr.K.Ashok Kumar

For respondents: M/s.P.B.Balaji & W.C.Sridhar

JUDGMENT

Defendant has preferred this appeal, after his
unsuccessful attempts to get the suit dismissed before the
Courts below. The suit was filed by the tenant/respondent for
mandatory injunction, directing the appellant/defendant to
execute and register sale deed in her favour. The right of the
respondent/plaintiff was said to have been accrued pursuant to
an order passed by the trial Court in O.S.No.6461 of 1991. The
appellant temple also filed a suit for eviction of the
respondent/tenant, in which the respondent has filed a petition
under Section 9 (1) (a) of the Tamil Nadu City Tenants'
Protection Act, claiming the benefits, thereby, the trial Court

appointed a Commissioner to evaluate the property. As per the Commissioner's Report, the market value of the property was fixed at Rs.1,27,500/- and three months' time was granted to the respondent to deposit the amount. Thereafter, pursuant to the order, dated 12.02.1992, the tenant also deposited the amount. After the deposit was made by the respondent/tenant, the suit filed by the appellant for eviction was dismissed. However, no sale deed was executed pursuant to the deposit. Therefore, the respondent filed another suit viz., O.S.No.3246 of 2003 for a direction to execute sale deed. In the meanwhile, there is an amendment vide Amendment Act 2 of 1996, giving benefits to the religious institutions and taking away the right of the tenant under Section 9 of the Act with effect from 11.01.1996. By virtue of the said amendment, religious institutions were exempted from the Tamil Nadu City Tenants' Protection Act. Section 3 of the Amendment Act would specify that every proceeding instituted by a tenant in respect of any land owned by any religious charity, in so far as the proceeding relates to any matter falling within the scope of the principal Act (The Tamil Nadu City Tenants' Protection Act), shall abate and all the rights and privileges, which may have accrued to that tenant in respect of any such land, shall cease and not be enforced.

2. In *Arulmigu Kasi Viswanathaswamy Devasthanam by Fit Person v. Kasthuriammal*, 2006 (2) CTC 452, a Full Bench of this Court has held that on deposit of the value stipulated by the Court and, on dismissal of the suit, Amendment Act 2 of 1996 does not apply to that case. Paragraph 50 of the said judgment, which is relevant for this purpose, is extracted hereunder :

"50. To sum up: The Amendment Act 2 of 1996 would apply when the two conditions exist :

- i) The proceedings initiated by the tenant in respect of any land owned by the religious institution must be pending before any Court on the date of publication of the Act.
- ii) The decree or order has not been executed or not satisfied in full.

In this case, on the application filed under Section 9, seeking for a direction to the landlord to sell the land by execution of the sale deed, an order has been passed under Section 9(3)(a) after compliance of the conditions imposed by the trial Court by the tenant. Therefore, the moment the order under Section 9(3)(a) is passed, it shall be construed that the proceedings got terminated and the suit stood dismissed as per Section 9(3)(b) of the Act. Accordingly, the first ingredient, namely the pendency of the proceedings is absent. Further, when once a final order under Section 9 (3)(a) is passed, the deeming provision 9(3)(b)

comes into play, thereby meaning that the order is fully satisfied and complied with by the tenant and the statute does not contemplate any further action in this regard. Consequently, the second ingredient also is absent. Hence, the Amendment Act 2 of 1996 would not apply to the present case. The question is answered accordingly."

Thereafter, following the judgment of the Full Bench, several cases have been allowed by this Court. On an appeal against the order passed, the matter was taken to the Supreme Court and the Supreme Court has disposed of the matter, directing the appellants to approach the High Court by way of review, as the matters were allowed in limine and without any discussion as to the Full Bench decision.

3. According to the learned counsel for the respondents, the review application is still pending.

4. Per contra, learned counsel for the appellant would contend that the Hon'ble Supreme Court in S.Bagirathi Ammal v. Palani Roman Catholic Mission, 2007 (5) CTC 881, has discussed the matter elaborately and found that deposit of money will not satisfy the ingredients of Section 9 (3) fully and, unless sale deed is executed, the proceedings do not come to a close and it cannot be deemed that matter has reached finality. Therefore, whatever proceedings are pending shall abate and the right of the tenant ceases. The Hon'ble Supreme Court has discussed the issue on the subject matter, which is pending before the Full Bench of this Court, as under :

"9. It is relevant to mention here that the Amendment Act No. 2 of 1996 has been upheld by the Full Bench of the High Court in N. Sreedharan Nair vs. State of Tamil Nadu, (2000) 3 M.L.J. 616 and the said decision of the Full Bench has also been approved by this Court by dismissing C.A.Nos. 4531 of 2003 etc.etc. titled Mylapore Club vs. State of T.N. & Anr. 2005 (5) CTC 494, filed against the same.

10) Both before the High Court as well as before this Court, it was contended that in view of the orders/decisions of various Courts including this Court, the issue cannot be agitated once again by way of review application; hence, the impugned order of the High Court is to be set aside. Mr. P.P. Rao, learned senior counsel appearing for the respondent, has brought to our notice that in the earlier proceedings, this Court in Civil Appeal Nos.

1055-1056 of 2001 directed the High Court to consider the review applications afresh. In other words, by virtue of the said order, the High Court was directed to decide the review applications on merits. In such circumstances, the High Court was fully justified in analyzing the issue as directed by this Court and its ultimate decision that Roman Catholic Mission is a "religious institution" cannot be faulted with since it relied on acceptable materials in the form of oral and documentary evidence (vide Ex. A-1 to A-15 and evidence of PW-1, PW-2). It was demonstrated that these religious and charitable institutions were not only deprived of their legitimate income but also their valuable properties. It was also their claim that because of the provision, namely, Section 9 of the Act, the tenants flourished and the landlord-institutions were crippled. It was further pointed out that in those circumstances Act No.2 of 1996 was enacted in order to protect those religious institutions. We have already concluded that pleadings of the respondent herein-review petitioners and various orders/judgments show that it is a "religious institution". As rightly observed by the High Court, the claim that the "Mission" is a "religious institution" is apparent from the materials without any further investigation. In such circumstances, as per Section 1(f) of the amended Act, all proceedings instituted by a tenant would abate. The amended Act came into force from 11.1.1996 and on the question whether on the date of coming into force of the amended Act, giving certain benefits to the religious institutions and taking away the right of the tenant under Section 9, the High Court concluded as under: "The Transfer C.M.A. which was a continuation of the application under Section 9 of the Tamil Nadu City Tenants Protection Act filed by the respondent who is the tenant was still pending. The proceedings had not attained finality. Therefore, they terminated and they became unenforceable. On the date when the first appeal and the C.M.A. were disposed of, tenancy granted by religious institutions were still governed by the provisions of the Act. Now, by the introduction of Act 2 of 1996, they cease to apply, ergo, all proceedings instituted by the tenant shall abate. All rights and privileges that may have accrued to her cease. They come to an end and they shall not be enforceable. The jurisdiction of the Court to decide the tenants claim ceased."

It is clear that on the date when the amended Act came into force, the application under Section 9 of the principal Act filed by the tenant-appellant herein was still pending. Though Mr. M.N. Krishnamani, learned senior counsel appearing for the appellant, submitted that all formalities were completed before coming into force of the amended Act, as pointed out earlier, pursuant to the order of the High Court, the sale deed was executed only on 28.10.1996 whereas the amended Act (Act No.2 of 1996) came into force on 11.1.1996 much earlier to the execution of the sale deed, hence, the contention of learned senior counsel for the appellant is not acceptable and we are in agreement with the conclusion arrived at by the High Court. As rightly concluded by the High Court, the decree in O.P. No. 4 of 1977 became a nullity on and from 11.1.1996, the executing Court committed an error in executing the sale deed after coming into force of amended Act. Further as rightly observed by the High Court, unless the sale deed is executed either by the Mission or by the Court, the fruits of the decree will not be realized by the tenants and the proceedings will come to an end only upon execution of the sale deed. Therefore, the tenant cannot be heard to say that the proviso applies to him and that the proceedings are not invalidated. The High Court is right in holding that the decree not having been executed by means of a sale deed, the proceedings are deemed to be pending and, therefore, were determined with the coming into force of the amendment Act.

11) Finally, Mr. M.N.Krishnamani placing reliance on the Full Bench decision of the Madras High Court rendered in CRP(NPD) 2758 of 1996 titled Arulmigu Kasi Viswanathaswamy Devasthanam vs. Kasthuriammal submitted that the moment tenant deposited the amount the order is fully satisfied. He further pointed out that as per the said decision the moment the order under Section 9 (3) (a) is passed, it shall be construed that the proceedings got terminated and the suit stood dismissed as per Section 9 (3)

(b) of the Act. We are unable to accept the said proposition. The relevant provisions are as follows:-

"9. (3) (a) On payment of the price fixed under clause (b) of sub-section (1) the Court shall pass an order directing the conveyance by the landlord to

the tenant of the extent of land for which the said price was fixed. The Court shall by the same order direct the tenant to put the landlord into possession of the remaining extent of the land, if any, the stamp duty and registration fee in respect of such conveyance shall be borne by the tenant.

(b) On the order referred to in clause (a) being made, the suit or proceeding shall stand dismissed, and any decree or order in ejectment that may have been passed therein but which has not been executed shall be vacated."

It is clear that if the tenant complies with the order passed under Section 9 (1) (b) and deposits the amount within the time as fixed, the Court has to pass an order directing the conveyance by the landlord to the tenant. It is true that as per Section 9 (3) (b) on passing an order under clause (a) the suit or proceeding shall stand dismissed. In the light of the language used in clause (a) i.e. "conveyance" to be made by the landlord to the tenant, till the proper document conveying title to the tenant it is presumed that the proceeding is kept pending. To put it clear that unless the sale deed is executed by the landlord in favour of the tenant or in the alternative by the Court on behalf of the landlord the fruits of the decree can not be realized. The suit or proceeding will come to an end immediately on execution of sale deed either by the landlord or by the Court on behalf of the landlord. In our case, as said earlier, the sale deed was executed only on 28.10.1996, however the amended Act 2/96 came into force on 11.01.1996 much earlier to the execution of sale deed. The view expressed in the Full Bench decision runs counter to the language used in the statute and we are unable to accept the same."

From a reading of the judgment of the Hon'ble Supreme Court, it is very clear that unless sale deed is executed by the landlord in favour of the tenant, or, in the alternative by the Court on behalf of the landlord, the fruits of the decree cannot be realised.

5. In the absence of any execution of sale deed, in the instant case, it cannot be said that the proceedings reached finality and the ingredients of Section 9 of the Tamil Nadu City Tenants' Protection Act have been satisfied. Following the judgment of the Hon'ble Supreme Court, the judgment and decree passed by the Court below are not sustainable and the respondent/plaintiff is not entitled to the relief. The

respondent/plaintiff, though has obtained orders in his favour under Section 9 (1) (a) of the Tamil Nadu City Tenants' Protection Act, he has not pursued the matter and got sale deed executed in his favour. Therefore, in the absence of execution of sale deed, it cannot be said that the accrued right of the tenant has been fructified. On the other hand, she has filed a suit for mandatory injunction, directing the appellant/landlord to execute and register sale deed only in the year 2003, that is after a period of 12 years. In the meantime, as already stated supra, the Amendment Act 2 of 1996 came into effect with effect from 11.01.1996. Hence, as per Section 3, the claim of the respondent/tenant was still pending and, in view of the operation of law under Section 3, all the proceedings stood abated and the accrued right of the tenant ceased to take effect and the order passed by the trial Court, dated 10.08.1992, could not be executed.

6. In view of the findings, the respondents / tenants lost their right to get the sale executed as per Section 9 (1) (a) of the Tamil Nadu City Tenants' Protection Act, the decree and judgment passed by the Courts below are set aside. The suit stands dismissed. Since the questions of law are answered in favour of the appellant, the Second Appeal is allowed. No costs.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

dixit/tk

To

1.VII Additional Judge,
City Civil Court,
Chennai.

2.VI Assistant Judge,
City Civil Court,
Chennai.

3. The Record Keeper
VR Section, High Court, Madras.

+1 CC to Mr.K.Ashok Kumar, Advocate sr 78788.

+1 CC to Mr.W.C.Sridhar, Advocate sr 78716.

S.A.NO.142 OF 2008

RSI (CO)

SP(21/03/2019)