

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM

THE HON'BLE Mr. JUSTICE R.SUBRAMANIAN

A.S Nos.68 of 2012

M/s. Crystal Services,
represented by its Partners
Mrs.Zebunissa Hashim
Mrs.Hava Ismail
Office at No.20,
Nungambakkam High Road,
Chennai-600 034.

... Appellant/Plaintiff

Versus

1. Hindustan Petroleum
Corporation Ltd., Bombay
Office at No.17, Jameshedji
Tata Road,
Bombay-400 020.

2. Hindustan Petroleum
Corporation Ltd.,
represented by its
Senior Regional Manager
Branch office at No.8,
Gandhi Irwin Road,
Egmore, Chennai-600 008.

... Respondents/Defendants

Prayer :

Memorandum of First Appeal filed under section 96 of Civil Procedure Code, against the Judgment and Decree dated 25.02.2011 passed in OS No.11888 of 2010 on the file of the Additional District Judge, Chennai (Fast Tract Court No.1, Chennai-1)

For Appellant : Mrs.Rita Chandrasekaran
for M/s. Aiyas & Dolia

For Respondents : Mr. O.R.Santhana Krishnan

JUDGMENT

This appeal by the plaintiff is directed against the dismissal of the suit in O.S.

2. The case of the plaintiff is that the property in question was originally leased to Caltex India Ltd under a lease deed dated 09.03.1966. On expiry of lease dated 09.03.1966, the lease was extended for the further period of 10 years by way of executing a renewal of lease dated 31.12.1973. While so, by virtue of the provisions of the Act 17 of 1977 Caltex India Limited got amalgamated with Hindustan Petroleum Corporation Limited on and from 09.05.1978 and by operation of statute, Hindustan Petroleum Corporation became the tenant. Subsequently, the original owner Ranganathan sold the property to the plaintiff on 28.02.1979. The lease in favour of the corporation with the erstwhile owner expired on 31.04.1986. Even before the expiry of lease, the defendant corporation sent a letter dated 22.01.1983 to plaintiff for extension of lease stating that the defendant exercised their right to get the lease extended in their favour for a period of 10 years till 30.04.1993. On 30.04.1993, further renewal was sought for but the same was not accepted by the plaintiff. There were correspondence between the plaintiff and the defendant regarding the quantum of rent payable. Since, there was no agreement for extension of lease, by notice dated 15.02.1998, the plaintiff terminated the tenancy and filed the present suit for eviction.

3. The defendant Corporation resisted the suit contending that the suit is bad for want of notice under section 11 of the Chennai City Tenant Protection Act 1921. It was further contended that the defendant is a statutory statutory tenant under the plaintiff within the meaning of section 2(4)(ii)a of the Tamil Nadu City Tenant Protection Act 1921, as such it is entitled for protection under the said Act. Thus, the main defence projected by the defendant is that the suit is bad for want of notice under Section 11 of the Act.

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4. On the above pleadings, the Trial Court framed the following issues
(i) Whether the suit is not in conformity with the provisions of Section 69(2) of

- the Indian Partnership Act?
- (ii) Whether the defendants are entitled to protection under the Tamil Nadu city Tenants Protection Act?
 - (iii) Whether the lease of the defendants has not been validly terminated as required, under law?
 - (iv) Whether the suit is not maintainable for the reasons stated in the written statement?
 - (V) Whether the defendants are liable to vacate and deliver vacant possession of the suit property to the plaintiffs?
 - (vi) Whether the defendants are liable to pay damages to the plaintiffs at the rate of Rs.22,400/- per month till handing over vacant possession of the suit property to the plaintiffs?
 - (vii) To what other reliefs the plaintiffs are entitled to?

5. On the side of the plaintiff, its power of attorney agent was examined as PW1 and Ex.P1 to P22 were marked. On the side of the defendant, its Sales Executive has been examined as DW1 and Ex. D1 alone marked.

6. The learned Trial Judge upon consideration of the oral and documentary evidence on record answered the first issue namely whether the suit is in conformity with Section 69(2) of the Partnership Act in favour of the plaintiff and held that the suit for eviction is maintainable. But, on the other issue, the learned Trial Judge found that the defendant is a statutory tenant as defined under 2(4)(ii)a and in the absence of notice under Section 11, the suit is not maintainable. By holding so, the Trial Judge dismissed the suit. In so far as the question of damages is concerned, the Trial Court found that no evidence was let in, on the side of the plaintiff, to prove that the plaintiff is entitled for damages for use and occupation of the property at the rate of Rs.22,400/- per month and rejected the said claim also. Aggrieved the plaintiff is on the appeal.

7. I have heard Mrs. Rita Chandrasekar, learned counsel appearing for the appellant and Mr. O.R. Santhana Krishnan, learned counsel appearing for the respondents/defendants.

8. Mrs. Rita Chandrasekar, learned counsel appearing for the appellant would submit that in order to claim the benefit of Section 11 of the Tamil Nadu City Tenants Protection Act, the defendant must show that he is a statutory tenant as defined under Section 2(4) of the Tamil Nadu City Tenants Protection Act 1921. The learned counsel invited my attention to the Judgment of the Divisional Bench of this Court in **Bharat Petroleum Corporation vs. Ravikrishnan & another** reported in **2011-4-L.W.385**, wherein this Court had an occasion to consider the difference in language between Section 2(4)(i), 2(4)(ii)a and 2(4)(ii)b and held that in order to be the tenant within the definition of 2(4)(ii)a, the applicant must be in actual physical possession of the land.

9. Mr. O.R. Santhana Krishnan, learned counsel appearing for the Corporation would submit that the question whether a tenant should be in actual physical possession to be entitled to protection under the Act as has been referred to a larger Bench by the Hon'ble Supreme court in **Bharat Petroleum Vs. R. Ravikrishnan & another**. He would therefore contend that the dictum in **S.R.Radhakrishnan Vs Neelamegam 2003(10) SCC 705** should not be followed.

10. On the above contentions, the following question arises for determination in this appeal:-

- (i) Whether the respondent/Corporation falls within the definition of the tenant under section 2(4)(ii)a of the Tamil Nadu City Tenant Protection Act, 1921 ?
- (ii) Whether the Trial Court was right in dismissing the suit for want of notice under Section 11 of the Act ?
- (iii) Whether the Trial Court was right in rejecting the claim for damages?

Points 1 and 2

11. It is an admitted case of the plaintiff that the lease expired as early as on 30.04.1993 and there was no further renewal. Therefore, the defendant was

only a tenant holding over as contemplated under Section 2 (4) of the Tamil Nadu City Tenant Protection Act which reads as follows:-

'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-

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

(b) any person who was a tenant in respect of such land under a tenancy agreement to which this Act is applicable under sub-section (3) of section 1 and who or any of his predecessors in interest had erected any building on such land and who continues in actual physical possession of such land and building, notwithstanding that-

(1) such person was not entitled to the rights under this Act by reason of the proviso to section 12 of this Act as it stood before the date of the publication of the [Chennai] City Tenants' Protection Amendment Act, 1972 (Tamil Nadu Act 4 of 1972), or

(2) a decree for declaration or a decree or an order for possession or for similar relief has been passed against such person on the ground that the proviso to section 12 of this Act as it stood before the date of the publication of the [Chennai] City Tenants' Protection (Amendment) Act 1972 (Tamil Nadu Act 4 of 1972) disentitled such person from claiming the rights under this Act and

(c) the heirs of any such person as if referred to in sub-clause (i) or sub-clause (ii) (a) or (ii) (b), but does not include a sub-tenant or his heirs

12. It is clear that Section 2(4)(i) of the Act will not apply to the case on hand, as the lease has already expired. The plaintiff will only come within the definition of Section 2(4)(i)(a) of the Act. So far as Section 2(4)(ii)a is concerned, it clearly states that person who continues in possession after determination of tenancy will also be a Tenant under the Act. The very same question was considered by the Division Bench of this Court in **Bharat Petroleum Corporation Ltd. V. R. Ravikrishnan & another** reported in **2011-4-L.W.395**, wherein Division

between Section 2(4)(ii)(a) and 2(4)(ii)(b) of the Act and as such, the finding that actual physical possession is sine quo non for claiming the benefits under Section 9 of the Act, cannot be taken as a binding precedent. According to the learned senior counsel, the issue regarding physical possession within the meaning of Section 2(4)(ii)(a) was not an issue before the Supreme Court in S.R. Radhakrishnan Case and session was nothing but obiter dicta. The learned senior counsel further contended that the order of remand passed by the Supreme Court in C.A No.5903/2006 etc. batch gives a clear indication that to claim the benefits of Section 2(4)(ii)(a), legal possession alone is sufficient.

It is true that in S.R.Radhakrishnan, the Supreme Court has not considered the issue provision wise and the conditions to be satisfied by the tenant to claim the benefits of City Tenants' Protection Act. It is also a matter of record that in the remand order, the Supreme Court has not given a definite finding with regard to the requirement of actual physical possession so as to come within the definition of "tenant" under Section 2(4)(ii)(a). In fact, the Supreme Court directed this Court to decide the issue without in any way being influenced by the observation as contained in the said judgment. Therefore, as on today, the views expressed by the Supreme Court in S.R.Radhakrishnan holds the field.

In view of our discussion in the preceding paragraphs, we are convinced that the oil Companies are in legal possession of the subject lands notwithstanding the actual physical possession by the dealers. However, we reject the claim made by the oil Companies under Section 2(4)(ii)(a) in view of the decision of the Supreme Court in S.R. Radhakrishnan and ors. vs. Neelamegam, 2003 (10) SCC 705 -2003-4-L.W. 426(S.C.), holding that actual physical possession is sine quo non for claiming the benefits of Section 9 of the City Tenants' Protection Act.

13. The Division Bench of this Court has observed that in order to come within the definition of Tenant under Section 2(4)(ii)(a) of the Act, the defendant must show that he is in actual physical possession of the Property. Admittedly, the defendant corporation is not in actual physical possession of the Property. In view of the pronouncement of the Division Bench of this Court, the Corporation cannot claim to be a statutory tenant under Section 2(4)(ii)(a) of the Tamil Nadu City Tenants Protection Act 1921 and it follows no notice under section 11 is required before instituting the suit for eviction. Therefore, reasoning of the Trial Court that

the Corporation is Tenant as defined under the Act and notice of termination is required under Section 11 of the Act cannot be sustained. Point Nos.1 & 2 are answered in favour of the appellant.

Point 3

14. In so far as damages is concerned, the Trial Court has found that there is no evidence on the side of the plaintiff to fix the quantum of the damages. The learned counsel appearing for the appellant is also unable to point out that there was any evidence that the appellant would be entitled to claim damages against the respondent Corporation. Thus, the decree of the Trial Court with regard to the damages is confirmed.

15. In the result, the Judgment and Decree passed by the trial Court is set aside in so far as it relates to eviction of the corporation. As regards the claim for

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R.SUBRAMANIAN, J

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 damages made by the plaintiff, the decree and judgment of the trial court stands
 confirmed. The appeal suit is partly allowed. Three months time is granted to the
 corporation to vacate and hand over the possession. No costs.

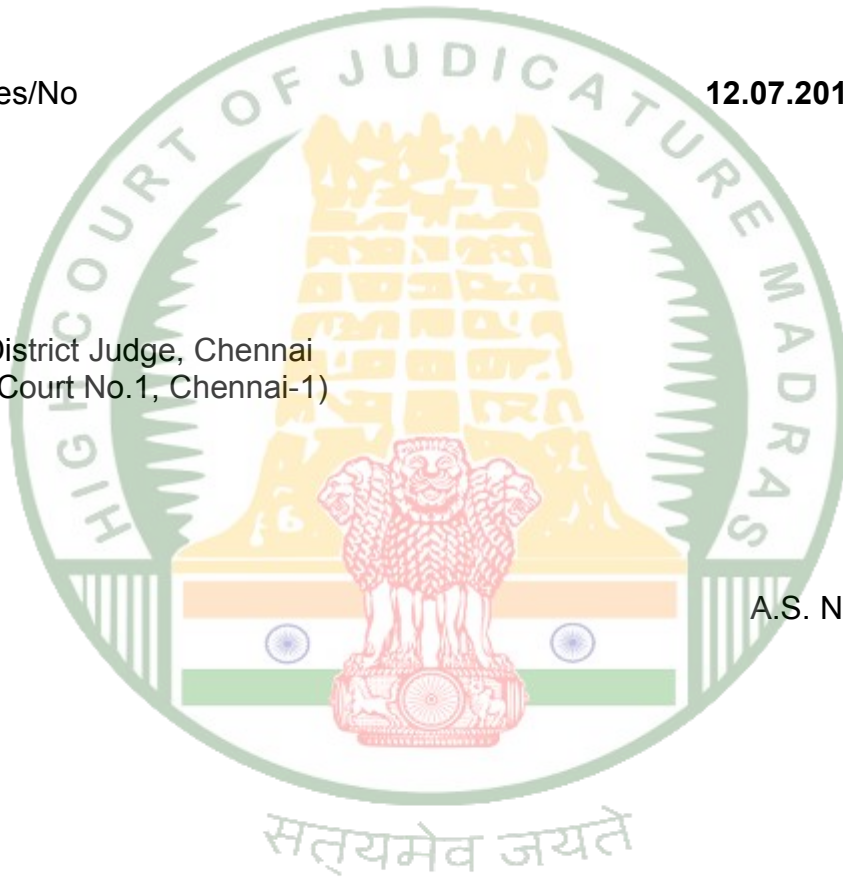
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To

Additional District Judge, Chennai
 (Fast Tract Court No.1, Chennai-1)



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